

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
JEDEDIAH CORPORATION FROM A)
DECISION BY THE DEPARTMENT OF) Docket No. 2016-22
REVENUE (Sales Tax Refund Denial, Jan.–)
Sept. 2012))

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER

APPEARANCES

Erika Nash and Aaron Lyttle, Long Reimer Winegar Beppler LLP, appeared on behalf of Jedediah Corporation (Jedediah).

Karl D. Anderson, Senior Assistant Attorney General, Wyoming Attorney General's Office, appeared on behalf of the Wyoming Department of Revenue (Department).

DIGEST

Jedediah Corporation appeals a decision of the Wyoming Department of Revenue. The Department rejected as untimely the amended returns that Jedediah filed in 2016 for January through September 2012. Jedediah appealed, and the Wyoming State Board of Equalization (State Board)¹ considered written pleadings and oral arguments to determine whether the Department should be equitably estopped from asserting the statutory limitation period.

Jedediah contends that equitable estoppel should apply because it decided to forgo filing the amended 2012 returns, knowing that the Department would refuse to issue a refund on the same basis that led the Department to refuse refunds for the years 2009 through 2011. The Department contends that the facts of this case do not warrant equitable

¹ At the time of the hearing, the State Board was comprised of Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley. Ms. Cooley resigned and was succeeded by Board Member Dave Gruver. Mr. Gruver resigned and is succeeded by Board Member David L. Delicath. Mr. Delicath reviewed the record, listened to the recording of the oral argument, and participated in this decision. Mr. Hardsocg is currently the Chairman and Ms. Mockler is the Vice Chairman of the State Board.

estoppel. The State Board holds that equitable estoppel is not appropriate given the facts of this case and affirms the Department's rejection of Jedediah's amended returns as untimely.

ISSUES

Jedediah identifies two related issues:

1. Whether Jedediah's delay in filing amended returns was induced by Jedediah's good faith reliance on the Department's misleading representation that no refund or credit was due unless Jedediah could identify taxpayers who had erroneously paid excise tax.
2. Whether the Department is equitably estopped from asserting that Jedediah's refund claim was untimely.

(Pet'r's Prelim. Statement 4).

The Department, identifies a single issue:

Did the Department properly and correctly deny the amended returns in reliance on the statutory limitations of Wyo. Stat. Ann. 39-15-109(d)(i)?

(Dep't Prelim. Statement 3).

JURISDICTION

An aggrieved taxpayer may appeal to the State Board within 30 days of the Department's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006). Jedediah appealed the Department's February 28, 2016 rejection of its amended returns on March 29, 2016. The State Board has jurisdiction to decide Jedediah's timely appeal. *See* Wyo. Stat. Ann. § 39-11-102.1(c) (2015) (State Board shall review final decisions of the Department upon application of those adversely affected).

FINDINGS OF FACT

1. Jedediah operates a retail store and related businesses. *See In re Jedediah Corp.*, 2015 WL 6121954, Docket No's. 2013-08 & 2013-50, ¶ 1 (Wyo. State Bd. of Equalization, Oct. 9, 2015).
2. During 2009, 2010, 2011, and the first nine months of 2012, Jedediah improperly collected sales tax on products that were not subject to sales tax and remitted the tax to the Department. *Id.*

3. After realizing its error, Jedediah asked the Department for a refund or credit of the sales tax improperly paid in 2009 - 2011. *Id.* at ¶¶ 4-5.
4. The Department refused, citing Wyo. Stat. section 39-15-109(d)(i) (2015) for the proposition that Jedediah would not be entitled to a refund or credit until it identified the customers from whom it improperly collected sales tax and refunded the sales tax to them. *Id.* at ¶ 8.
5. Jedediah appealed the Department's decision to the State Board. *Id.* at 1-2.
6. After a hearing on July 27, 2013, the Board took the case under advisement. Jedediah did not submit amended sales tax returns, or otherwise seek a refund, for its business transactions engaged during the first nine months of 2012, which are the subject of this appeal.
7. On October 9, 2015, the State Board issued its decision holding that the Department's interpretation of Wyoming Statutes section 39-15-109(d)(i) (2013) was incorrect and that Jedediah was entitled to a credit for the sales tax it improperly remitted for 2009 through 2011. *In re Jedediah Corp.* at ¶ 58.
8. A few months later, Jedediah filed amended returns for January through September 2012 seeking a refund of the improperly collected and remitted sales tax. (Ex. 501).
9. The Department rejected those returns as untimely, citing Wyoming Statutes section 39-15-109(d)(i) (2015). (Ex. 500).
10. Jedediah appealed the Department decision to the State Board.

CONCLUSIONS OF LAW

A. State Board's review function: applicable presumptions and burdens of proof

11. The role of the State Board is to adjudicate disputes between taxpayers and the Department.

It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department. The statutory mandate to the Board is not to maximize revenue or to punish

nettlesome taxpayers, but to assure the equality of taxation and fairly adjudicate disputes brought before it.

Amoco Prod. Co. v. Wyo. State Bd. of Equalization, 12 P.3d 668, 674 (Wyo. 2000).

12. As the adjudicating body, the State Board shall “[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]” Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015).

13. Unless a statute or Board rule provides otherwise, the Petitioner has the burdens of going forward and of persuasion, and must satisfy those burdens by a preponderance of the evidence. Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006). If the Petitioner provides sufficient evidence that the Department’s determination is incorrect, the burden shifts to the Department to defend its action. *Id.* “A preponderance of the evidence is ‘proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.’ ” *Landwehr v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2014 WY 25, ¶ 14, 318 P.3d 813, 819 (Wyo. 2014) (quoting *Mitcheson v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2012 WY 74, ¶ 11, 277 P.3d 725, 730 (Wyo. 2012)).

14. An administrative agency’s long-standing statutory interpretation is entitled to weight if the Legislature has not changed the statute in response, because such legislative inactivity evidences acquiescence to the agency’s interpretation. *Pub. Serv. Comm’n v. Formal Complaint of WWZ Co.*, 641 P.2d 183, 186 (Wyo. 1982). Similarly, when interpreting an ambiguous statute, the State Board “will give some deference to an interpretation by the agency charged with execution of the statute unless its interpretation is clearly erroneous.” *Campbell Cty. School Dist. v. Catchpole*, 6 P.3d 1275, 1285 (Wyo. 2000). Still, the State Board is not bound by the Department’s interpretation. *Id.*; Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015) (State Board decides questions concerning construction of any statute affecting the assessment, levy and collection of taxes).

B. Relevant statutes

15. Wyoming’s sales tax statute requires that taxpayers, including vendors, must seek refunds or credits within three years of the date of overpayment:

Any tax, penalty or interest which has been erroneously paid, collected or computed shall either be credited against any subsequent tax liability of the vendor or refunded. No credit or refund shall be allowed after three (3) years from the date of overpayment. The receipt of a claim for a refund by the department shall toll the statute of limitations. Any refund or

credit erroneously made or allowed may be recovered in an action brought by the attorney general in any court of competent jurisdiction[.]

Wyo. Stat. Ann. § 39-15-109(d)(i) (2015); *see also* Wyo. Stat. Ann. § 39-15-109(c)(i) (2015) (Refund).

C. Application of the law to the facts

16. This case requires the State Board to decide whether the Department is equitably estopped from asserting the statute of limitations to reject Jedediah's untimely amended returns for January through September 2012.

17. "[A] claim of equitable estoppel asserted against a governmental entity requires a showing of (1) authorized affirmative misconduct; (2) reliance; (3) substantial prejudice; (4) rare and unusual circumstances; and (5) a situation that will not defeat public policy." *State, ex rel., Dep't of Family Servs. v. Kisling*, 2013 WY 91, ¶ 15, 305 P.3d 1157, 1162 (Wyo. 2013). The party asserting equitable estoppel has the burden of proof. *Snake River Brewing Co., Inc. v. Town of Jackson*, 2002 WY 11, ¶ 28, 39 P.3d 397, 408 (Wyo. 2002) (citing *Pickett v. Assocs. Disc. Corp. of Wyo.*, 435 P.2d 445, 447 (Wyo. 1967)).

I. *The Department did not commit affirmative misconduct*

18. "Affirmative misconduct exists where a person, by his acts, representations, or admissions, intentionally or through culpable negligence induces another to believe that certain facts exist and the other person rightfully relies and acts on such belief and will be prejudiced if the former is permitted to deny the existence of such facts." *Thompson v. Bd. of Cty. Comm'rs of the Cty. of Sublette*, 2001 WY 108, ¶ 11, 34 P.3d 278, 281 (Wyo. 2001) (citing *In re Gen. Adjudication of All Rights to Use Water in the Big Horn River System*, 753 P.2d 76, 90 (Wyo. 1988)).

19. Jedediah argues that the Department committed authorized affirmative misconduct by interpreting Wyoming Statutes section 39-15-109(d)(i) (2015) to deny Jedediah a refund for improperly collected and remitted sales tax. Jedediah claims the Department denied the refund claims "[d]espite an unambiguous statute and case law that interpreted the statutes contrary to the Department position[.]" (Pet'r's Opening Br. & Mem. of Law, at 7-8).

20. Jedediah directs the State Board to no evidence of affirmative misconduct beyond the Department's persistence in what we later determined to be an incorrect interpretation of a statute. We note further that the Department's underlying statutory and regulatory interpretations were not newly adopted at the time and it had interpreted the statutes and its regulations in that manner for some years. *See M & B Drilling & Constr. Co., Inc. v. State Bd. of Equalization*, 706 P.2d 243 (Wyo. 1985); *Wyo. Dep't of Revenue v. Buggy Bath Unlimited, Inc.*, 2001 WY 27, 18 P.3d 1182 (Wyo. 2001)).

21. While the State Board found that the Department's interpretation was incorrect, we did not find that it was unreasonable or that the Department acted in bad faith. The State Board does not agree that basing a decision on a statutory interpretation, that this Board later rejects, amounts to affirmative misconduct or culpable negligence.

22. Accordingly, the State Board holds that Jedediah has failed to prove affirmative misconduct.

II. *Jedediah has not demonstrated reliance*

23. Equitable estoppel is not available here unless Jedediah can demonstrate that it refrained from timely filing its amended 2012 returns in good faith reliance on the Department's interpretation of Wyoming Statutes section 39-15-109(d)(i) (2015). *Mullinex, LLC v. HKB Royalty Ins.*, 2006 WY 14, ¶ 23, 126 P.3d 909, 922 (Wyo. 2006).

24. Jedediah says it decided not to timely file the amended 2012 returns because it knew the Department would reject them based on its earlier rejection of similar claims and its interpretation of the relevant statute. (Pet'r's Opening Br. & Mem. of Law at 8).

25. But, Jedediah was still litigating those other claims on appeal before this Board. Jedediah has not alleged that it expected to lose that appeal, and we have no reason to infer that it so expected. If Jedediah believed it would prevail on its appeal, then it logically follows that Jedediah did not believe the Department's statutory interpretation was correct. Jedediah could not, logically, rely in good faith on the Department's statutory interpretation that it (correctly) believed was wrong.

26. Accordingly, the State Board holds that Jedediah has failed to prove good faith reliance.

D. Conclusion

27. Jedediah must establish all five elements to prevail on its equitable estoppel claim. Once we determine that it failed on any one element, there is no need to discuss the rest of them.² *See e.g. Knori v. State, ex rel., Dept. of Health, Office of Medicaid*, 2005 WY 48, 109 P.3d 905 (Wyo. 2005) (Having determined that the "affirmative misconduct" and "rare and unusual circumstances" elements were not satisfied, Court did not address the other elements).

² The State Board acknowledges that, out of an abundance of caution, it has elected to discuss two of the elements.

28. Therefore, having determined that Jedediah failed to establish the first two elements of the equitable estoppel test, we need not consider the remaining elements. The Department was not equitably estopped from rejecting Jedediah's amended returns at issue in this appeal as untimely.

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ORDER

IT IS HEREBY ORDERED the decision of the Department to reject Jedediah's amended returns as untimely is **affirmed**.

Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 11th day of January, 2018.

STATE BOARD OF EQUALIZATION


Martin L. Hardsogg, Chairman


E. Jayne Mockler, Chairman


David L. Delicath, Board Member

ATTEST:


Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 11th day January, 2018, I served the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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