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**IN THE
INDIANA TAX COURT**

RAYTECH CORPORATION)	
AND SUBSIDIARIES,)	
)	
Petitioners,)	
)	
v.)	Cause No. 49T10-0306-TA-00031
)	
INDIANA DEPARTMENT OF)	
STATE REVENUE,)	
)	
Respondent.)	

ORDER ON PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

NOT FOR PUBLICATION

December 1, 2005

FISHER, J.

The Petitioners, Raytech Corporation and Subsidiaries (Raytech), appeal the final determination of the Indiana Department of State Revenue (Department) denying their claims for refund of gross income tax (GIT) and claims of entitlement to additional statutory interest on refunds of adjusted gross income tax (AGIT) and supplemental net income tax (SNIT) for the 1992-1997 tax years (years at issue). The matter is currently before the Court on the parties' cross-motions for summary judgment. The issues the Court must address are: (1) whether Raytech's claims for refund of GIT were timely filed with the Department; and (2) at what point does statutory interest on refunds of AGIT

and SNIT begin to accrue. For the following reasons, the Court GRANTS summary judgment in favor of Raytech in part and the Department in part.

FACTS AND PROCEDURAL HISTORY

The material facts in this case are undisputed. Raytech is a Delaware Corporation with its principal place of business in Shelton, Connecticut. While Raytech is a global manufacturer of energy absorption and power transmission products and custom engineered components, it acts primarily as a management company for its subsidiaries.

In the late 1980s, Raytech divested its interest in Raymark Corporation (Raymark), an entity engaged in an asbestos related field. Raytech, however, was named as a defendant in several product liability lawsuits against Raymark and its successors in interest. As a result, Raytech filed for bankruptcy protection in 1989. Nevertheless, Raytech continued to file returns reporting its GIT, AGIT and SNIT.

In 2001, when Raytech emerged from bankruptcy, it was required to issue a significant payout as a settlement of the product liability claims, resulting in a multi-million dollar net operating loss (NOL). Pursuant to Section 172 of the Internal Revenue Code, Raytech was able to carry back the NOL to each of the 10 taxable years preceding the year of the loss (2001). See 26 U.S.C.A. § 172 (2001); IND. Code ANN. § 6-3-2-2.6 (West 2001) (amended 2002). Accordingly, on April 25, 2002, Raytech filed amended corporate income tax returns reporting the NOL carryback for the 1992-1999 tax years.¹ Raytech simultaneously filed claims for refund of GIT based on alleged

¹ Raytech did not carry back the NOL to 1991 because it had no Indiana income for that year. The NOL carryback effectively eliminated Raytech's AGIT and SNIT liability for each of the years at issue.

reporting errors, unrelated to the carryback, on its original tax returns during the years at issue.

Between March and May of 2003 (and after conducting audits of the years at issue), the Department denied Raytech's claims for refund of GIT, stating that the claims were untimely filed and thus barred by Indiana Code § 6-8.1-9-1(a). Nevertheless, the Department paid refunds of AGIT and SNIT (along with statutory interest) to Raytech resulting from its NOL carryback.

On June 18, 2003, Raytech filed an original tax appeal. On March 18, 2005, Raytech filed a motion for summary judgment. On June 13, 2005, the Department also filed a motion for summary judgment. The Court heard the parties' oral arguments on both motions on August 26, 2005. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court hears appeals from denials of claims for refunds by the Department *de novo*. IND. CODE ANN. § 6-8.1-9-1(d) (West Supp. 2005-2006). Therefore, the Court is bound by neither the evidence presented nor the issues raised at the administrative level. *Snyder v. Indiana Dep't of State Revenue*, 723 N.E.2d 487, 488 (Ind. Tax Ct. 2000), *review denied*.

In addition, a motion for summary judgment will be granted only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). Cross-motions for summary judgment do not alter this standard. *Snyder*, 723 N.E.2d at 488.

Discussion

(1) Claims for refund of GIT

During the years at issue, Raytech, as a corporate taxpayer, was subject to GIT, AGIT and SNIT.² While Raytech was responsible for all three taxes, it was entitled to a credit, not to exceed the amount of the AGIT imposed, against the AGIT in the amount of its GIT liability for the same taxable year. See IND. CODE ANN. § 6-3-3-2 (West 1997) (repealed 2002). Thus, in effect, Raytech was to pay an amount equal to the greater of its GIT or AGIT, plus its SNIT liability. See IND. ADMIN. CODE tit. 45, r. 3.1-1-72 (1992 & 1996). In 1992, Raytech's GIT liability was greater than its AGIT; thus, Raytech was responsible for the amount of its GIT plus its SNIT for that year. During the 1993-1997 tax years, however, Raytech's AGIT liability exceeded its GIT liability; therefore, it was required to pay an amount equal to its AGIT plus its SNIT.

On April 25, 2002, Raytech filed claims for refund of GIT, for the years at issue, on the basis that: (1) it erroneously included gross receipts from one of its affiliates, Allomatic Products Company (Allomatic) in its consolidated returns;³ and (2) it erroneously included sales in its gross receipts that were already accounted for in Raytech's apportionment formula for AGIT purposes. (See Pet'r Br. at 3.) The

² The GIT, prior to its repeal, was imposed on a taxpayer's gross receipts resulting from Indiana activities. IND. CODE ANN. § 6-2.1-2-2 (West 1997) (repealed 2002). The AGIT is imposed on a corporation's adjusted gross income derived from sources within Indiana. IND. CODE ANN. §§ 6-3-2-1, -2 (West 1997) (amended 2002). The SNIT, also later repealed, was imposed on the net income of every corporation that was not subject to the financial institutions tax. IND. CODE ANN. § 6-3-8-1 (West 1997) (repealed 2002).

³ Raytech argues that because it owned only a 55% interest in Allomatic, Allomatic was not eligible for inclusion in Raytech's consolidated gross income tax returns. (See Pet'r Br. at 4.)

Department denied the claims, however, because it determined that they were barred by the statute's limitation period. (Pet'r Br., App. 1, Ex. 9-13.) More specifically, the Department maintains that Raytech's claims for refund were due three years from the due date of its original returns for each year at issue. The Department relied on Indiana Code § 6-8.1-9-1(a), which provides:

[i]f a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following: [t]he due date of the return[; or t]he date of payment.

A.I.C. § 6-8.1-9-1(a).

Raytech argues that the claims were timely filed because the three-year time period did not begin to run until Raytech had the legal right to secure a refund. (Pet'r Br. at 12.) More specifically, Raytech maintains that in the years where its AGIT exceeded its GIT, adjustments made to its GIT would not have produced a refund. Stated differently, Raytech asserts that because it paid the greater of the AGIT or GIT, (which in this case was the AGIT), an overpayment of GIT would not equate to paying more tax than was legally due. Thus, any claims for refund, prior to the NOL carryback, would have been "meaningless" because Raytech did not necessarily know that it would be entitled to the carryback. (See Pet'r Br. at 14-17; Pet'r Reply Br. at 4; Oral Argument Tr. at 43-44.)

To support its position, Raytech relies on *Horizon Bancorp v. Indiana Department of State Revenue*, 626 N.E.2d 603 (Ind. Tax Ct. 1993), *aff'd in part, rev'd in part* by 644 N.E.2d 870 (Ind. 1994). (See Pet'r Br. at 13; Pet'r Reply Br. at 2-4.) In that

case, the petitioner, a national bank, was subject to a bank tax as well as GIT. Any bank taxes paid, however, counted as a credit toward GIT. *Horizon Bancorp*, 626 N.E.2d at 606; see also IND. CODE ANN. § 6-2.1-4.5-1 (West 1989) (repealed 1990). Indeed, pursuant to Indiana Code § 6-2.1-4.5-1, the bank was allowed “to carryover excess credits from any given year to the three preceding and three succeeding years and to claim refunds of any unused credits.” *Horizon Bancorp*, 626 N.E.2d at 605. See also A.I.C. § 6-2.1-4.5-1(a). This Court held that the bank did not have a legal right to bring a claim for a refund of the bank tax credits until the expiration of a three-year carry-over term. The Court stated, “Horizon’s right to a refund of its excess [] bank tax credit did not arise until the amount of any excess could be determined, that is, until the carry-over term expired.” *Horizon*, 626 N.E.2d at 609.

The Indiana Supreme Court clarified this Court’s decision in *Horizon*. See *Indiana Dep’t of State Revenue v. Horizon Bancorp*, 644 N.E.2d 870 (Ind. 1994). While the Supreme Court agreed that the applicable statute of limitation (Indiana Code § 6-8.1-9-1) does not begin to run until the legal right to bring a claim arises, it held that the petitioner’s legal right to bring the claim for refund was not based on the expiration of the carry-over term. See *id.* at 873. In explaining that the taxpayer was not *required* to carry the credits forward, the Supreme Court placed emphasis on the language of Indiana Code § 6-2.1-4.5-1(a). In particular, the statute provided that a taxpayer “may” carry the excess backward or forward; furthermore, subsection (b) of the statute allowed for a refund of the credit if the bank was entitled to such credit. *Id.* Therefore, the Court held that the petitioner could have filed a claim for refund with the Department at any time, subject to the limitations of Indiana Code § 6-8.1-9-1. *Id.*

In the instant case, Raytech asserts that its legal right to a refund did not arise until it filed its amended return with the NOL carryback (April 15, 2002). (Pet'r Br. at 18.) Because Raytech filed its claims for refund of GIT on April 25, 2002, it maintains that the claims were well within the three-year period. A legal right is defined as "[t]he capacity of asserting a legally recognized claim against one with a correlative duty to act." BLACK'S LAW DICTIONARY 1348 (8th ed. 2004). In turn, a refund is "[t]he return of money to a person who overpaid, such as a taxpayer who overestimated tax liability or whose employer withheld too much tax from earnings. . . . The money returned to a person who overpaid." BLACK'S LAW DICTIONARY 1307 (8th ed. 2004).

Here, the Department admits that Raytech would not have been entitled to the return of money due to an overpayment until the NOL carryback eliminated its AGIT liabilities for the years at issue. (See Resp't Br. at 6.) Because the NOL carryback created Raytech's legal right to a refund, the three-year limitation period did not begin to run until Raytech was permitted to claim the NOL on its amended tax return.⁴ Accordingly, the claims for refund of GIT were timely filed with the Department.

(2) Accrual of statutory interest

Raytech also argues that it is entitled to statutory interest on its refunds of AGIT and SNIT, stemming from the NOL carryback, accruing from the due date of the original

⁴ The Court notes, however, that Raytech's claim for refund of GIT as it pertains to 1992 is partially barred. Raytech's original 1992 GIT liability exceeded its 1992 AGIT liability. Raytech's claim for that year is timely only to the extent that its reported AGIT exceeds the "corrected" GIT liability. (See Pet'r Br. at 18.) Although Raytech acknowledges this point and does not argue otherwise, the Court highlights the point now for clarity.

In addition, the Court notes that given its holding, it does not address the Department's claim that the Court lacks subject matter jurisdiction over Raytech's refund claims because they were untimely filed. (See Resp't Br. at 9-10.)

returns for each of the years at issue.⁵ To support its claim, Raytech relies on Indiana Code § 6-8.1-9-2(c), which states,

[a]n excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest, accrues interest from the date the tax payment was due or the date the tax was paid, whichever is later . . . until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made.

IND. CODE ANN. § 6-8.1-9-2(c) (West 2001); see also IND. CODE ANN. § 6-3-4-5 (West 2001) (a tax payment is due on the date the taxpayer is required to file the return for the year). Raytech also maintains that it should receive interest on the refunds from the date the taxes were originally due (also the date the returns were due) because the Department had use of the money until it was refunded, while Raytech did not. (See Pet'r Br. at 22.)

The Department, however, claims that if Indiana Code § 6-8.1-9-2 controls in this case, the phrase “the date the tax payment was due” refers to the date Raytech was required to file its return claiming the NOL carryback (i.e., April 15, 2002).⁶ (See Resp't Br. at 15 (footnote added).) See also A.I.C. § 6-3-4-5. The Department suggests that

⁵ Raytech also asserts that in the event that its claims for refund of GIT are timely filed, it is entitled to interest on those refunds from the due date of the original tax returns. The Court will address this claim below. See *infra* note 7.

⁶ The Department also claims that neither Indiana Code § 6-3-2-2.6 nor § 6-8.1-9-2 contemplate or address the accrual of interest on refunds based upon a NOL carryback. (See Resp't Br. at 11-13.) Therefore, the Court should defer to Internal Revenue Code § 6611(f)(1) to determine the date upon which interest begins to accrue. See 26 U.S.C.A. § 6611 (2001) (interest on overpayments of tax). Given its decision today, however, the Court does not address this argument.

because the overpayment of tax did not occur until 2001, when Raytech incurred the NOL, it would be illogical for the Department to pay interest on the resulting refunds from the due date of the original returns (i.e., April 15th of 1993-1998) – a point in which the Department was legally entitled to Raytech’s AGIT payments. Rather, since the NOL carryback created the overpayment and the Department’s indebtedness to Raytech, interest should begin to accrue from the date Raytech was allowed to claim the NOL deduction. (See Resp’t Br. at 15.)

When a statute is clear and unambiguous, the Court need not construe or interpret the statute. See *Gundersen v. Indiana Dep’t of State Revenue*, 831 N.E.2d 1274, 1276 (Ind. Tax Ct. 2005) (citation omitted). A statute susceptible to more than one interpretation is considered ambiguous and thus subject to judicial construction. *Id.* The rules of statutory construction require the Court to give effect to the intent of the legislature. *Id.* In doing so, the Court presumes that the legislature intends for the Court to apply statutory language in a logical manner, so as to prevent an unjust or absurd result. *Chavis v. Patton*, 683 N.E.2d 253, 257 (Ind. Ct. App. 1997). Based on these rules, the Court agrees with the Department’s interpretation of Indiana Code § 6-8.1-9-2(c). See A.I.C. § 6-8.1-9-2(c).

Indiana Code § 6-8.1-9-2(c) addresses the payment of interest when an excess tax payment is made but not refunded within a specific time period. Logic dictates that the purpose of the statute was to require the payment of interest on refunds of excess tax payments accruing from the date the excess tax payment was due or the date the excess tax was paid, whichever is later. Indeed, interest is “the compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money

by one who is entitled to its use[.]” BLACK’S LAW DICTIONARY 829 (8th ed. 2004). Thus, if a taxpayer is legally entitled to money and the Department fails to return that money (within the statutory time period), the Department must pay for the use of the taxpayer’s money during the intervening period.

In this case, however, prior to the carryback, the money that was ultimately refunded legally belonged to the State. Accordingly, the State (i.e., the Department) should not be required to pay interest for the use of money during a period in which it was legally entitled to that use. *Accord Comptroller of the Treasury v. Fairchild Indus.*, 493 A.2d 341, 345 (Md. 1985) (“[t]hat the law permits a taxpayer to subsequently carryback a net operating loss and to obtain a refund in no way reflects a taxpayer’s right to derive the benefits of the funds during the intervening period”). Thus, interest did not begin to accrue until Raytech was required to file the amended return claiming the NOL carryback.⁷

CONCLUSION

For the foregoing reasons, the Court determines that Raytech’s claims for refund of GIT were timely filed, and GRANTS summary judgment in favor of Raytech on that issue. Nevertheless, on the issue of statutory interest, summary judgment is GRANTED in favor of the Department. This matter is therefore remanded to the Department with instructions to treat Raytech’s claims for refund of GIT as timely filed and pay any statutory interest owed consistent with this opinion.

⁷ As previously mentioned, Raytech also contends that it should receive interest on the refunds of its GIT, accruing from the due date of the original tax returns. See *supra* note 5. Nevertheless, for the reasons given for the denial of additional interest on the AGIT refunds, the Court also denies the accrual of interest on any subsequently awarded refunds of GIT prior to the NOL carryback.

SO ORDERED this 1st day of December, 2005.

Thomas G. Fisher, Judge
Indiana Tax Court

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