

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of )  
 ) DECISION OF  
[REDACTED] ) HEARING OFFICER  
 )  
 ) Case No. 200800107-O  
UTI # [REDACTED] )  
 )  
\_\_\_\_\_ )

A hearing was held on August 19, 2008 in the matter of the protest of [REDACTED] (Taxpayer), regarding a denial by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) of Taxpayer's request for the Department to issue a second refund check for tax credits pertaining to tax years 1986, 1987, 1988, 1989 and 1990. The record in this matter was left open until December 19, 2008 to allow for memoranda to be filed regarding the State of Arizona's process and procedures that occur when a refund check is not cashed. On December 1, 2008, the Section submitted its post-hearing memorandum. Taxpayer's reply memorandum was due on December 19, 2008 but the Hearing Office has not received Taxpayer's reply memorandum as of this date. Therefore, this matter is ready for ruling.

FINDINGS OF FACT

According to the testimony provided by the Section at the hearing, Taxpayer was sent a credit determination on April 4, 2007 for tax year 1985 allowing a refund on the taxes paid on her mandatory federal retirement contributions. Taxpayer did not dispute the credit determination for 1985. However, she did

file a protest stating that she did not receive a refund for tax years 1986 through 1990. Taxpayer spoke with numerous persons at the Department and was ultimately directed to [REDACTED], who was the manager overseeing issues relating to credits for federal retirement contributions. Mr. [REDACTED] informed her that a refund check, in the amount of \$[REDACTED], was sent to her on February 18, 1998 pertaining to credits for tax years 1986 through 1990. Taxpayer asserted that she never received the refund check and requested that another check be issued. The Section denied her request for refund.

At the hearing, the Section testified that in the latter part of 1997 the Department began to issue credit determinations and refunds to federal employees who had timely filed protective claim forms to keep the statute of limitations open for tax years 1986 to 1990 while a related case<sup>1</sup> was being litigated. The Section acknowledged that Taxpayer had timely filed her claim form for the applicable years. The Section asserted that the Department sent Taxpayer credit determinations on February 18, 1998 to her address on [REDACTED] (the address used by Taxpayer on her 1997 Arizona income tax return). The Section also asserted that it simultaneously requested that a warrant, or refund check, in the amount of \$[REDACTED] be issued to Taxpayer and mailed to the same address. In addition, the Section stated

---

<sup>1</sup> The case at issue was a class action lawsuit involving federal employees who had paid state income taxes to Arizona on mandatory contributions made to their federal retirement plans. See *Kerr v. Waddell*, 185 Ariz. 457, 916 P.2d 1173 (App. 1996).

that 1099s reflecting refunds for each of the years 1986 through 1990 were issued to Taxpayer and that information received from the Internal Revenue Service (IRS) referred to these 1099s. Taxpayer denied receiving the 1099s for the years at issue.

The Section further testified that the Department sent Taxpayer an "annual statement," dated December 28, 1999. A copy of this document was not provided at the hearing, but it presumably listed the credit amounts for the years at issue in this case. It is not clear whether the annual statement required Taxpayer to respond to the statement, or whether it was informational in nature. Taxpayer acknowledged receiving the December 28, 1999 annual statement. However, she also testified that on January 1, 2000 (only a few days after the date on the statement) her husband was in an automobile accident and had passed away. Taxpayer understandably stated that while dealing with this tragedy the document was likely put away and forgotten about.

Taxpayer testified that she received nothing else until April 4, 2007, when she received a credit determination letter from the Department for the 1985 tax year. Taxpayer subsequently contacted the Department for the first of many times on April 9, 2007 to let them know that she did not receive a refund check for the credits pertaining to tax years 1986 through 1990. Having been unable to resolve the matter through her phone calls, Taxpayer filled out the "Taxpayer Response Form" attached to the 1985 credit determination and sent it to the Department on April 19, 2007. In her written protest,

Taxpayer again asserted that she never received a check for the credits pertaining to tax years 1986 through 1990. Taxpayer also requested that the Department issue a new refund check in the amount of \$[REDACTED]. Taxpayer subsequently requested a formal hearing to be held via telephone.

Following the hearing, the Hearing Office issued an Order on September 17, 2008 requesting the Section to submit a memorandum addressing the procedures that occur when a refund check is not cashed. Pursuant to the post-hearing Order, the Section submitted its memorandum explaining the processes and procedures involved. The memorandum was supported by affidavits from [REDACTED] (the Department's Administrator of the Revenue Accounting Section), [REDACTED] (The Department's Administrator of the Unclaimed Property Section), and [REDACTED] (the Statewide Accounting Manager in the State of Arizona's General Accounting Office).

The Section's memorandum and affidavits provide as follows. The Department's records indicate that on February 18, 1998, the Department mailed credit determinations for tax years 1986 through 1990 to Taxpayer at her address on [REDACTED]. Simultaneously, the Section requested that a refund check (or "warrant") in the amount of \$[REDACTED] be issued to Taxpayer at the same address. A warrant is valid for six months from the date it was issued. During that time, the Arizona Department of Administration ("ADOA") tracks the status of the warrant through a computer system called the Arizona Finance Information System ("AFIS"). If the warrant is not cancelled (by the issuing

agency) or cashed (by the recipient) within six months, then the warrant expires.

At the beginning of each month, the ADOA supervisor responsible for AFIS is required to initiate an "Expired Warrant Program." The Expired Warrant Program reviews all outstanding warrants in AFIS and automatically changes the status of all warrants that expired the previous month (warrants that are still outstanding after 180 days) so that the status of such warrants reflects an "E" for expired. The computer system then determines the funding source. For expired warrants paid with state funds, such as the one at issue here, the cash is transferred to the Department of Revenue's Unclaimed Property Section ("Unclaimed Property") along with a report that lists all of the warrants that expired during that past month. Due to the AFIS record retention requirements, the status of warrants are not retained by the system indefinitely, but rather they are purged after a given time. In this case, AFIS records regarding the status of 1998 warrants have been purged.

However, when Unclaimed Property receives the expired warrants report from ADOA in electronic format, it uploads the information into the "Unclaimed Property System." The information regarding these expired warrants remains in the computer system in perpetuity, even if the funds are subsequently claimed by the intended recipient. Unclaimed Property's Administrator testified in his affidavit that "[t]here is no record in the Unclaimed Property System [of the warrant issued to Taxpayer] that expired on August 18, 1998 in

an amount of \$[REDACTED]. At issue is the propriety of the Section's denial of Taxpayer's request to issue another refund check for tax credits for tax years 1986 through 1990.

#### CONCLUSIONS OF LAW

Whether or not a refund was issued to a taxpayer is a question of fact. While A.R.S. § 42-1255 addresses the burden of proof in factual issues pertaining to a taxpayer's liability for tax, it does not apply in this case. There also appears to be no Arizona case law on point. Federal courts addressing the issue have held that "where the issue is the receipt of the refund check, the Government bears the initial burden of showing that the refund check was *issued and cashed*. Then, the burden shifts to the taxpayer-plaintiff to show that she has never received the refund." [CITATION REDACTED] (citing *Bolnick v. Comm'r*, 44 T.C. 245 (1965)). The government is given a "presumption of official regularity" and without "clear evidence to the contrary" the courts assume that public officers "have properly discharged their official duties." *United States v. Ahrens*, 530 F.2d 781, 785 (8th Cir. 1976)(quoting *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926)).

In this case, the Department's records indicate that a refund check (Warrant No. [REDACTED]) was sent to Taxpayer at her [REDACTED] address on February 18, 1998. There is no record that the warrant was cancelled by the Department. Therefore, the Department has met its burden of showing that the refund check was *issued*.

The evidence must also establish that the check was *cashed*. Taxpayer testified that she neither received nor cashed the refund check. Her testimony seemed sincere and credible. However, the weight of evidence regarding the State's policies and procedures for handling the issuing of refund checks, or warrants, suggests that the refund check was cashed.

The affidavits submitted by the Section establish as follows. If Taxpayer's warrant was issued in February of 1998, and it was neither cashed nor cancelled, it would have expired in August of 1998. Its status in the AFIS system would have been changed to "E" (for expired) and the funds would have been transferred to Unclaimed Property along with a record of the expired warrant. Unclaimed Property would have uploaded the information into the Unclaimed Property System in September of 1998. Because the Unclaimed Property System holds information regarding expired warrants in perpetuity, there would still be a record of its expired status. There is no record in the Unclaimed Property System showing that the warrant issued to Taxpayer in the amount of \$[REDACTED] was expired and sent to Unclaimed Property by ADOA. This suggests that the refund was cashed at some point prior to August 18, 1998.

Based on the "presumption of official regularity," it is assumed that the government officials properly discharged their duties with respect to the warrant at issue in this case. Therefore, the Hearing Office finds that a preponderance of evidence establishes that the refund check was issued and

cash. The Department has no statutory authority to issue a second refund check for the same credit determination.

Based on the foregoing, Taxpayer's request for a second refund check for the credit determinations pertaining to tax years 1986 through 1990 is denied.

DATED this 7th day of January, 2009.

ARIZONA DEPARTMENT OF REVENUE  
HEARING OFFICE

[REDACTED]  
Hearing Officer

Original of the foregoing mailed to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue  
Individual Income Tax Audit Section