



University of Baltimore Law Forum

Volume 39
Number 1 Fall 2008

Article 11

2008

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Recommended Citation

Cowan, Elizabeth (2008) "Recent Developments: Comptroller of the Treasury v. SAIC: The Comptroller Must Pay Interest on a Tax Refund Where the Tax Refund Resulted from the State's Error," *University of Baltimore Law Forum*: Vol. 39 : No. 1 , Article 11.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol39/iss1/11>

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RECENT DEVELOPMENT

COMPTROLLER OF THE TREASURY V. SAIC: THE COMPTROLLER MUST PAY INTEREST ON A TAX REFUND WHERE THE TAX REFUND RESULTED FROM THE STATE'S ERROR.

By: Elizabeth Cowan

The Court of Appeals of Maryland held that the Comptroller must pay interest on a refund resulting from the State's error and not solely from the fault of the taxpayer. *Comptroller of the Treasury v. Sci. Applications Int'l Corp.*, 405 Md. 185, 950 A.2d 766 (2008). Even if the Comptroller does not take an affirmative action that causes the error, the error is still attributable to the State if the taxpayer reasonably interpreted the Maryland tax laws. *Id.* at 203, 950 A.2d at 776.

Science Applications International Corporation ("SAIC") paid income taxes for the 1999 fiscal year under the assumption that it owed state taxes based on capital gains from the sale of stock. In 2003, SAIC amended its 1999 return, claiming that the capital gains from the stock sale were not taxable in Maryland because they did not have a "sufficient nexus" to Maryland. As a result, SAIC sought a refund. The Comptroller determined that the gain was taxable and denied SAIC's claim for a refund.

SAIC appealed to the Maryland Tax Court. The tax court agreed with SAIC's argument that there was not a sufficient nexus to Maryland and granted SAIC the refund, which the Comptroller paid. SAIC then filed a motion in the Maryland Tax Court to compel the Comptroller to pay interest on the refund. The Maryland Tax Court ruled in favor of SAIC, holding that the Comptroller owed SAIC interest on the refund. The Comptroller obtained review by the Circuit Court for Baltimore City, which affirmed the tax court's decision. The Comptroller appealed to the Court of Special Appeals of Maryland. On its own initiative, the Court of Appeals of Maryland granted *certiorari* before the intermediate appellate court had the chance to rule.

After holding that the Maryland Tax Court had subject matter jurisdiction to compel the Comptroller to pay interest on the refund and that *res judicata* did not bar SAIC from bringing the action, the court analyzed whether the Comptroller had to pay interest on the refund under section 13-603(b) of the Tax General Article of the Annotated Code of Maryland. *Science Applications*, 405 Md. at 191-97, 950 A.2d at 772-73. Section 13-603(b) provides that a tax collector does not have to pay interest on a refund if the claim for refund is based on “an error or mistake of the claimant not attributable to the State or a unit of the State government”. *Science Applications*, 405 Md. at 197, 950 A.2d at 773 (citing MD. CODE ANN., TAX-GEN. § 13-603(b) (1988, 2004 Repl. Vol.)). Since both parties agreed that there was a mistake, the issue was whether the error on the original return was “attributable to” SAIC or to the State. *Id.*

The Comptroller argued that the mistake was not attributable to the State because it did not take an affirmative act such as an assessment of tax against SAIC. *Id.* The Court of Appeals of Maryland disagreed, basing its analysis on the plain language of the statute. *Id.* at 198, 950 A.2d at 773. This included an interpretation of the legislative intent based on the plain meaning of the predecessor statute of section 13-603. *Science Applications*, 405 Md. at 199, 950 A.2d at 773 (citing *Comptroller v. Fairchild Indus.*, 303 Md. 280, 286, 493 A.2d 341, 344 (1985)). The court determined that the legislative intent was that the State should pay interest on refunds unless the error was solely on the part of the taxpayer. *Science Applications*, 405 Md. at 199, 950 A.2d at 774 (citing *Fairchild Indus.*, 303 Md. at 286, 493 A.2d at 344). Since the current version of section 13-603(b) was enacted in 1988 without any substantive changes, the court determined that this interpretation still applies. *Science Applications*, 405 Md. at 200, 950 A.2d at 774.

The court then considered the test used by the Maryland Tax Court to determine whether the taxpayer reasonably relied on the State’s policies in determining the amount of taxes owed. *Science Applications*, 405 Md. at 201, 950 A.2d at 775 (citing *DeBois Textiles Int’l v. Comptroller*, Income Tax No. 1630, 1985 WL 6117 (Md. T.C. Aug. 23, 1985)). Using the *DeBois* standard, the tax court found that SAIC’s decision to pay taxes on the capital gains was a reasonable decision based on state law, making the error attributable to the State. *Science Applications*, 405 Md. at 202, 950 A.2d at 776. The Court of Appeals of Maryland agreed with this analysis. *Id.* The court reasoned that the State’s policy at the time of the error required the tax because

Maryland law did not allow a subtraction for excluding capital gain. *Id.* at 205, 950 A.2d at 778. SAIC reasonably relied upon Maryland's law, and therefore, it was an error of the State rather than solely one of the taxpayer. *Id.*

The court rejected the Comptroller's position that it could not have been an error on the part of the State because the State did not make an affirmative assessment of tax. *Id.* at 203, 950 A.2d at 776. The court determined that it was sufficient that the State's policy at the time of the tax payment misled the taxpayer. *Id.* Ultimately, the court determined that the Maryland Tax Court based its decision on substantial evidence and did not err as a matter of law. *Id.* at 205, 950 A.2d at 778. The court held that the Comptroller was required to pay interest on the refund because the State was at least partly at fault. *Id.*

The decision in *Science Applications* protects taxpayers from errors of the State. Interest paid by the Comptroller replaces the interest that the taxpayer could have earned from his money while the State was holding it in error. A taxpayer is now more likely to be successful in an action to recover interest on his refund, even if the taxpayer was partially at fault. Maryland practitioners should seek interest on refunds for their clients if there is an indication that the State may have had some part in the error. The State's part, however, does not need to be an affirmative act. The crux of this premise is that the State is in a better position than a taxpayer to understand the tax law.