

Court Affirms Assessment Not Barred by Statute of Limitations

GIBSON V. LEVIN

On September 30, 2008, the Ohio Supreme Court ruled that a personal income tax assessment was not barred by the statute of limitations because the taxpayers failed to file an amended tax return to report changes in their federal income.

In *Gibson*, the taxpayers were assessed Ohio income tax by the Ohio Department of Taxation (the “Department”) after the Department learned from the Internal Revenue Service that the Gibsons’ adjusted gross income (AGI) had been increased due to a federal income tax examination. Because Ohio ties its personal income tax to an individual’s federal AGI, an increase in an individual’s federal AGI typically leads to an increase in that individual’s Ohio income tax liability.

Upon learning of the increase in federal AGI, the Ohio Tax Commissioner (the “Commissioner”) assessed additional Ohio income tax. The taxpayers filed a petition for reassessment and argued that the assessment was barred by the four-year statute of limitations set forth in O.R.C. 5747.13(A).

The taxpayers argued before the Commissioner and the Board of Tax Appeals (BTA) that the assessment was barred by the four-year statute of limitations because they had timely filed their 1995 tax return. This argument was rejected by the Commissioner and the BTA.

The Ohio Supreme Court found that the taxpayers’ reliance upon the filing of their 1995 tax return was misplaced because the assessment at issue related to the liability that an amended return would have disclosed, not an assessment based on the return filed. Because the taxpayers never filed an amended return to reflect the increase in AGI, as required by O.R.C. 5747.10, the four-year statute of limitations never began to run and therefore, imposed no bar to assessment.

FOR MORE INFORMATION

For more information, please contact **Jim Balthaser, Thomas E. DeBrosse, LaVonda D. Napka**, or any member of our **Tax** practice group.

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