

JASONS PHARMACEUTICALS, INC.

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IN THE

vs.

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MARYLAND TAX COURT

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COMPTROLLER OF THE TREASURY

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No. 14-SU-OO-0637

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### ***MEMORANDUM AND ORDER***

Jason Pharmaceuticals, Inc. (the "Petitioner") has challenged the Comptroller of the Treasury's (the "Respondent") denial of two claims for refund of interest with respect to claims of refunds of taxes which were allowed by the Hearing Officer at the lower administrative level. The Petitioner was refunded sales tax with respect to the Xerox Corporation lease payments for printing equipment used by the Petitioner in a production activity. The Respondent failed to appeal the allowance of the claimed refunds of sales tax paid and therefore the only issue is whether the Petitioner is entitled to interest on these refunds as provided in Section 13-603(a) of the Tax-General Article of the Annotated Code of Maryland.

Section 13-603(a) provides that "...the tax collector shall pay interest on the refund from the 45<sup>th</sup> day after the claim is filed," unless an exception exists under Section 13-603(b). The Respondent contends that Petitioner voluntarily paid the sales tax to Xerox Corporation, the leaser of the equipment, and that the mistake in paying the sales tax was entirely on the Petitioner. Consequently, according to the Respondent, he was not responsible for paying interest on the refund based on an error or mistake of the Petitioner not attributable to the State under Section 13-603(b)(2)(iii).

Respondent contends that Petitioner erred in paying sales tax to its vendor due to its failure to notify the vendor that the equipment would be used directly and predominantly in production activity. Absent proof of an exemption, the vendor was required to impose sales and use tax. Petitioner was aware of the exception but determined that equipment was not used directly and predominantly in a production activity. However, Petitioner knew or should have known whether the machines were used directly and predominantly in the manufacturing of the brochures. The Respondent was not in a position to make any determination until after a field audit. The auditor determined, after numerous material and papers were reviewed, that the leased equipment was not used directly or indirectly in a production activity. This determination by the field auditor supports Petitioner's position that its error or mistake in paying the tax was reasonable. Moreover, it is important to note that the Hearing Officer who granted the refund also reviewed the same material considered by the field auditor. The Court agrees with Petitioner that based on its understanding of the law, the Petitioner properly paid the tax in order to avoid penalty and not run afoul of the Respondent's regulation.

The fact that the field auditor and his supervisor agreed with the Petitioner, that the tax was due, supports Petitioner's view that the mistake of the Petitioner in paying the tax was attributable to the State. The Petitioner exercised reasonable judgment and should not be penalized when the auditors of the State wrongly concluded that the tax was due.

Petitioner, through its testimony and exhibits, established that the Respondent's auditor, Charles Luckie, was provided all of the documentation and information that he requested during the period commencing July 12, 2012 and ending on March 28, 2013. The Respondent, after receiving documentation, information, including a site visit to the

Eastern Shore facility where the printing activity occurs, made the determination that the refunds should not be allowed. This position continued through the informal hearing where Mr. Luckie testified that the production activity did not qualify under that Regulation as part of a production activity. There was no convincing evidence that the various exhibits introduced during the informal hearing were any different than what was provided to Mr. Luckie during the course of the sales tax audit. Apparently, after reviewing the same documentation and information, the Hearing Officer decided that the printing equipment did qualify as a production activity within the meaning of COMAR 03.06.01-32-2C, and was therefore, not subject to sales tax.

Thereafter, Miriam C. Kilerlane, the Respondent's Refund Supervisor, made the decision to deny interest on the claims. When Ms. Kilerlane was asked why the claims were not allowed, she stated that it was because Petitioner paid the sales tax to Xerox Corporation and not the Respondent.

The Court of Appeals in *Comptroller v. SAIC*, 405 Md. 185 (2008) adopted the Tax Court's standard for determining "what makes an error or mistake 'attributable to the State'?" Specifically, the Tax Court applied a standard it first articulated in *DeBois Textiles int'l v. Comptroller*, Income Tax No. 1630 (Md. Tax Aug. 23, 1985):

"The Tax Court stated that '[a]n error is attributable to the State when a taxpayer using reasonable judgment under the circumstances is lead by the laws, regulations, or policies expressed by the State to the mistaken conclusion the tax is owed.'" SAIC at 201 (2008).

In the present case, the Respondent denied the claim for refund and continued to refuse to pay the refund claim until the Hearing Officer ordered that the refund be paid. In

the present case, the Respondent denied the claims after it had been provided with significant documentation and examples of the products produced at the Petitioner's printing facility. Even so, the Respondent disputed Petitioner's right to a refund, forcing an informal hearing before the Respondent. Just as in SAIC case, it is illogical that a taxpayer could be said to have made an error not attributable to the State where the State took the position that the taxpayer was not entitled to a refund after spending months considering the taxpayer's claim for refund.

The Court finds that the Petitioner used reasonable judgment under the circumstances, and was led by the laws, regulations or policies expressed by the State to the mistaken conclusion that the tax was owed.

It is hereby ORDERED on this 18<sup>th</sup> day of February 2016, by the Maryland Tax Court, that the Respondent's denial of interest on the tax refunds issued to Petitioner is hereby **REVERSED**.

**CERTIFIED TRUE COPY**  
**TEST:** John T. Hearn, Clerk

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.

cc: Harry D. Shapiro, Esq.  
Renee Nacrelli, Esq.