

SC88482

IN THE SUPREME COURT OF MISSOURI

KIDDE AMERICA, INC., *et al.*,

Petitioners/Appellants

v.

DIRECTOR OF REVENUE,

Respondent

On Petition for Review from the Administrative Hearing Commission

Hon. Terry M. Jarrett, Commissioner

APPELLANTS' REPLY BRIEF

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Kidde America, Inc. and its 37 Subsidiaries

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ARGUMENT

The Administrative Hearing Commission Erred In Denying Kidde Additional Interest On Its Income Tax Refund Because § 143.811.1, Providing For Interest At 6%, Applies To The Computation Of Interest On Income Tax Refunds Resulting From The Filing Of Amended Income Tax Returns, Rather Than § 32.068 And § 32.069, In That Where Two Statutes Passed At The Same Time Dealing With The Same Subject Matter Conflict, The More Specific Provision Governs Over The More General Provision

A. Introduction

This refund claim results from the filing of an amended corporate income tax return. Kidde was allowed to file an amended return because of the Court's decision in the first appeal. *See Kidde America, Inc. v. Director of Revenue*, 198 S.W.3d 153 (Mo. banc 2006). No one disputes that Kidde was entitled to a refund as a result of the filing of the amended return. No one disputes that Kidde was entitled to interest on the refund.

No one disputes that, but for the enactment of S.B. 1248, Kidde would be entitled to interest on the refund at 6% by virtue of the provision in the second clause of § 143.811.1 allowing interest at that rate if the “overpayment [that] resulted from the filing of an amendment of the [income] tax by the taxpayer after the last day prescribed for the filing of the [income tax] return.”

The question is whether §§ 32.068 and 32.069 RSMo changed the interest rate applicable to refunds resulting from the filing of amended income tax returns.

The Director says that § 143.811.1 does not apply because Kidde did not make its claim for refund until 2004. According to the Director, §§ 32.068 and 32.069 (which became effective January 1, 2003) authorize a refund only at the variable rates calculated by the Treasurer quarterly. (In this case, the rates ranged from 1.7% to 3.4%. L.F. 195.) But she is wrong. The 6% provision in the second clause of § 143.811.1 applies to a very specific circumstance: The issuance of a refund resulting from the filing of an amended income tax return — the very situation here.

There is no comparable specific provision elsewhere in the tax laws. The General Assembly chose to keep a different interest rate for such refunds. Regardless of whether one construes S.B. 1248 to, in effect, repeal the provisions of § 143.811.1 as they apply to most income tax refunds, the specific provision for allowance of 6% interest on income tax refunds resulting from filing amended income tax returns was not affected by the general provisions in § 32.068.

*B. Where Two Statutes Dealing With The Same Subject Matter Conflict,
The More Specific Statute Controls*

The Director concedes that §§ 32.068 and 32.069 conflict with § 143.811.1. Her contention that the language in § 32.069 — “Notwithstanding any other provision of law to the contrary” — means that the two sections added by S.B. 1248 supersede § 143.811.1 in its entirety, however, simply cannot stand.

Section 32.069.1 which contains this language does not authorize the payment of interest for any refund. Rather, it takes away any right to interest on a refund if it is paid by the State within 120 days of three specified events. That section does not conflict with

§ 143.811 because § 143.811.4 has essentially the same provision, which was also reenacted by S. B1248. (There may be some differences where the refund is made within four months instead of 120 days.)

The issue in *Hallmark Cards, Inc. v. Director of Revenue*, 159 S.W.3d 352 (Mo. banc 2005) was whether § 32.069.1 overrode § 144.190.2 so as to prohibit the payment of *any* interest, not what rate to apply. The question arose because there was nothing in the sales and use tax statute, specifically § 144.190, that authorized the Director to limit the payment of interest on refunds of such taxes, even if the refund were paid the day after the refund claim was made. *That* was the change made by § 32.069, and the only issue in *Hallmark*. The Court did not expressly address the issue of the proper interest rate because it held that the taxpayer was not entitled to any interest at all.

Clearly there is a conflict between § 32.068 and § 143.811.1. Section 32.068 authorizes the payment of interest at a rate different than the interest rate authorized by § 143.811.1. The difference in this case is not — as the Director claims — between the 1.7% to 3.4% calculated under § 32.068 and the rates that would be applied under § 32.065. Rather, the rate that applies to Kidde’s refund claim is the 6% rate for an “overpayment [that] resulted from the filing of an amendment of the [income] tax by the taxpayer after the last day prescribed for the filing of the [income tax] return.”

§ 143.811.1 (second clause).

The Director suggests that Kidde is claiming that no income tax refund is subject to the rates in § 32.068. That is not an issue in this case. Indeed, the Director’s analysis *might* be correct if the choice were between the rates in § 32.068 and § 32.065 as the

interest rate to apply *generally* to income tax refunds. But this isn't just any income tax refund. It is an income tax refund that resulted from the filing of an amended income tax return. Section 143.811.1 (second clause) specifically provides for a 6% interest rate on such refunds.

Thus, there is a conflict between § 32.068, which applies generally to refunds, and the 6% rate in the second clause of § 143.811.1, which applies *only* to income tax refunds resulting from the filing of amended income tax returns. That conflict brings into play the canon of statutory construction discussed in Kidde's Opening Brief (and ignored by the Director in her brief) — the more specific provision controls over a more general one.

The Director speculates that the General Assembly left § 143.811.1 in S.B. 1248 to allow for the payment of interest on refund claims filed after June 19, 2002 and before December 31, 2002. Resp. Br. at 15. Whether the Director's conjecture is true is irrelevant to the disposition of this case. That may be the proper way to resolve the conflict between § 32.068 and the first clause of § 143.811.1 as applied to most income tax refunds, but that is not the issue before the Court.

Kidde is *not* claiming a right to interest under the clause of § 143.811.1 allowing interest at the rate in § 32.065. It is seeking interest for the period based on the second clause in § 143.811.1 — allowing interest at a rate of 6% on an income tax refund resulting from the filing of an amended income tax return.

The General Assembly left the second clause of § 143.811.1 intact when it passed S.B. 1248. The original version of S.B. 1248 would have amended § 143.811.1 to apply

the new interest rates in § 32.068 to income tax refunds resulting from the filing of an amended tax return by making the following changes:

Under regulations prescribed by the director of revenue, interest shall be allowed **pursuant to section 32.069, RSMo**, and paid at the rate determined by section [32.065] **32.068**, RSMo, on any overpayment in respect of the tax imposed by sections 143.011 to 143.996; except that, where the overpayment resulted from the filing of an amendment of the tax by the taxpayer after the last day prescribed for the filing of the return, interest shall be allowed [and paid at the rate of six percent per annum] **pursuant to sections 32.068 and 32.069, RSMo**. With respect to the part of an overpayment attributable to a deposit made pursuant to subsection 2 of section § 143.631, interest shall be paid **pursuant to section 32.069, RSMo**, thereon at the rate in section [32.065] **32.068**, RSMo, from the date of the deposit to the date of refund. No interest shall be allowed or paid if the amount thereof is less than one dollar.

S.B. 1248 (as introduced), <http://www.senate.mo.gov/02info/billtext/intro/sb1248.htm> (91st Gen. Assem., 2d Sess., Feb. 28, 2002), App. at A15.¹

There is no reason to suppose that the General Assembly's decision to leave the 6% interest rate for income tax refunds resulting from amended income tax returns in the statute had anything to do with a so-called "gap," as suggested by the Director. If the General Assembly intended for § 143.811.1 to sunset as of December 31, 2002, it would

¹ The proposed changes are in bold type; the original provisions are in brackets.

have put that deadline in the statute specifically, as it did the effective date for § 32.068 as to “all *applicable* situations.”

Indeed, the normal procedure followed by Missouri’s General Assembly is to put the effective date of statutory changes into the language of the statute itself, rather than leaving “gaps” for unwary taxpayers. For example, in Chapter 143 alone, the following sections, in addition to § 32.068, have such provisions: §§ 143.005, 143.009, 143.071, 143.107, 143.113, 143.118, 143.121, 143.124, 143.125, 143.127, 143.143, 143.151, 143.161, 143.171, 143.183, 143.211, 143.451 and 143.541.

The General Assembly left intact this very specific exception to the new interest provisions of §§ 32.068 and 32.069.1 when it reenacted § 143.811.1. Because the second clause of § 143.811.1 conflicts directly with the provisions of §§ 32.068 and 32.069.1, the canons of construction dictate that the *specific* provisions of § 143.811.1, relating to interest on income tax refunds resulting from the filing of amended income tax returns, controls over the *general* provisions of §§ 32.068 and 32.069.1. *See, e.g., State v. Harris*, 337 Mo. 1052, 87 S.W.2d 1026 (1935).

Therefore, the 6% rate applies to Kidde’s refund. The proper rate for the *entire* period is 6% from April 16, 2001 to August 2, 2006, when the refund was made. Kidde is entitled to additional interest of \$617, 483.63.

CONCLUSION

For the foregoing reasons, Kidde America, Inc. and its 37 subsidiaries request that the Court reverse the decision of the Administrative Hearing Commission, hold that the proper interest rate on the refund due is 6% per annum from April 16, 2001 to August 2,

2006, order the Director of Revenue to pay an additional \$617,483.63 in interest, and grant such other relief as the Court deems proper in the circumstances.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief contains the information required by Rule 55.03, complies with the limitations in Rule 84.06(b), and it contains 1,714 words, excluding the parts of the brief exempted; has been prepared in proportionally spaced typeface using Microsoft Word 2003 in 13 point Times New Roman font; and includes a virus free 3.5" floppy disk in Microsoft Word 2003 format.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the foregoing and a virus-free diskette were mailed, first class postage prepaid this ___ day of November, 2007 to:

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