

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA TAX COMMISSION, STATE
OF NEVADA, DEPARTMENT OF
TAXATION,
Appellant,
vs.
FEDERAL INSURANCE COMPANY, A
NEVADA INSURANCE COMPANY,
Respondent.

No. 57256

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Thaler*
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a petition for judicial review in a tax action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

In 2005, respondent and four other companies requested from appellant a refund for overpayments of insurance premium taxes made between 2002 and 2005. Appellant granted the other four companies' requests for refunds. After receiving an advisory opinion from the Nevada Attorney General on NRS 680B.120's one-year time limit on refund requests, however, appellant only granted in part respondent's refund request for overpayments made in 2004 and 2005, but denied the request for overpayments made in 2002 and 2003. Respondent administratively appealed the decision, arguing that the denial of a full refund violated its equal protection rights under the Nevada and United States Constitutions, violated the Taxpayer's Bill of Rights, and was based on incorrect interpretations of the statutes governing insurance premium taxes. Appellant denied both appeals, and respondent filed a petition for judicial review in the district court. The district court granted the petition for judicial review and found that appellant's decision violated equal

protection and the Taxpayer's Bill of Rights because it lacked a rational basis for partially denying respondent's refund while permitting the refund for four similarly situated taxpayers, and that, because there was no statutory provision to the contrary, respondent was entitled to interest on the refund under NRS 360.2935. Appellant then filed the instant appeal. On appeal, appellant challenges only the portion of the district court order that awarded respondent interest on its insurance premium tax refund based on NRS 360.2935.

After appellant filed its notice of appeal, but before it filed its opening brief, respondent moved to consolidate the instant appeal with State Tax Commission v. American Home Shield, 127 Nev. ___, 254 P.3d 601 (2011). While this court denied the motion based on the fact that the two cases did not involve identical issues and were at different procedural stages of appeal, we nevertheless are guided by our holding in American Home Shield. In that case, this court addressed the specific issue raised by appellant in the instant appeal regarding interest on overpayments of insurance premium taxes. There we concluded that NRS 680B.120(1) governs all requests for refunds of insurance taxes mistakenly paid and collected, regardless of the reason for overpayment. American Home Shield, 127 Nev. at ___, 254 P.3d at 604-05 (applying NRS 680B.120 when American Home Shield erroneously "calculated, reported, and made overpayments of the insurance premium tax under NRS 680B.027"). We further held that NRS 680B.120 does not permit interest on refunds of overpayments of insurance premium taxes erroneously made, and NRS 360.2935 does not apply or confer a right to interest on such refunds. American Home Shield, 127 Nev. at ___, 254 P.3d at 605-06 (relying on the

principle of statutory construction that provides that a specific statute controls over a general statute).

Here, respondent sought a refund for overpayments of insurance premium taxes, which were paid pursuant to NRS 680B.027. Its refund for overpayments made during 2004 and 2005 was granted pursuant to statute, but its refund for overpayments made during 2002 and 2003 was based on an equal protection violation. Respondent argues that our holding in American Home Shield does not apply to interest on a refund granted on constitutional grounds. Respondent does not support this assertion with authority, and we find no merit in the argument.¹ In the underlying matter, respondent was seeking a refund of insurance premium tax overpayments made under NRS 680B.027, and requested interest on the overpayments pursuant to NRS 680B.120 and NRS 360.2935. We conclude that respondent is not entitled to the interest sought because these statutes do not provide for interest on this type of refund. American Home Shield, 127 Nev. at ___, 254 P.3d at 605-06.

Respondent also asserts that appellant should be judicially estopped from relying on American Home Shield, because appellant opposed consolidating the two cases. This argument also lacks merit. Judicial estoppel is an “extraordinary remedy” that is invoked to protect the integrity of the justice system when a party argues two conflicting positions wrongfully or in an attempt to obtain an unfair advantage. Delgado v. American Family Ins. Group, 125 Nev. 564, 570, 217 P.3d 563,

¹We note that the other four similarly situated companies did not receive interest on their refunds, and thus, respondent has no basis to claim the interest on equal protection grounds.

567 (2009). This court will apply judicial estoppel to prevent a party from raising an argument only when:

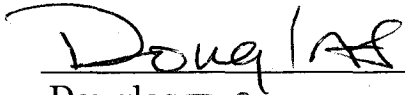
(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position . . . ; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.

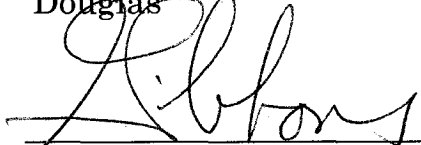
Id. at 570, 217 P.3d at 567 (internal quotation omitted). The circumstances of the instant matter do not meet this standard. Appellant's position here, on whether a taxpayer is entitled to interest on a refund of insurance premium tax overpayments, is not only consistent with, but virtually identical to, its position in American Home Shield. In addition, appellant's position in opposing consolidation, that the two cases involved different law and facts, is not "totally inconsistent" with their assertion that both cases raise the same specific issue of interest on refunds. Further, respondent has not cited any authority that would require this court to refrain from applying relevant precedent to the instant matter.²

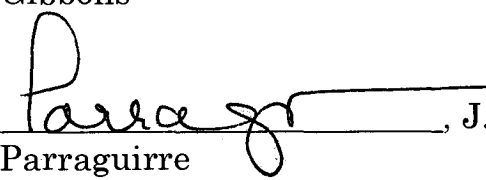
²Respondent also argues that American Home Shield is distinguishable from the instant matter because there, the tax error belonged to the taxpayer; whereas here, the error belonged to appellant, who "unlawfully retained monies that rightfully belonged to Federal and took from it the benefit of rightfully-earned interest on its funds." In its briefing before the district court, however, respondent admitted that it mistakenly did not apply certain tax credits, which resulted in the overpayments of insurance premium taxes. The underlying tax error here also belongs to the taxpayer.

Thus, we conclude that the district court erred when it granted respondent interest on its refund of insurance premium tax overpayments, and we reverse that portion of the district court's order.

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
James Georgeson, Settlement Judge
Attorney General/Carson City
Jones Vargas/Las Vegas
Washoe District Court Clerk