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exercised unless by an Act of the Legislature or by the authority of such Act in the particular cases expressly provided by it."

Edwin L. Blewer, Jr.

TAXATION — MISTAKE OF FACT AS A BASIS
FOR REFUNDS OF LOUISIANA TAXES

In most states a person may obtain a refund of a tax paid under compulsion,¹ but he may not recover a tax which is "voluntarily" paid,² as that term is understood in the contemplation of law. A payment made through mistake or ignorance of law is considered as "voluntary" and no refund is permitted.³ When payment is made under a mistake of fact, however, the payment is said not to be "voluntary" and recovery is allowed unless the mistake is predicated on the taxpayer's own neglect.⁴ Although this appears to be a rather artificial division of non-compulsory payments into those which are "voluntary" and those which are not, it accomplishes a just result in allowing recovery of taxes erroneously paid under a mistake of fact.

The Louisiana Constitution of 1921 provides that the Legislature shall make available "a complete and adequate remedy for the prompt recovery by every taxpayer of any illegal tax paid by him."⁵ Acting under this provision, the Legislature passed an act in 1940 which authorized the refund of taxes erroneously paid under either mistake of fact or mistake of law.⁶ This broad authorization was contained in Section 17 of that act. Sections 15 and 16 dealt with the procedures for making claims for refunds and for processing those claims. In 1942, the act was amended so as to incorporate into Sections 15 and 16 all provisions pertaining to refunds and to utilize Section

1. 3 COOLEY, *THE LAW OF TAXATION* 2550, § 1276 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 13 (1924).

2. 3 COOLEY, *THE LAW OF TAXATION* 2561, § 1282 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 14 (1924).

3. 3 COOLEY, *THE LAW OF TAXATION* 2579, § 1294 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 33 (1924).

4. 3 COOLEY, *THE LAW OF TAXATION* 2582, § 1295 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 35 (1924).

5. LA. CONST. art. X, § 18: "The Legislature shall provide against the issuance of process to restrain the collection of any tax and for a complete and adequate remedy for the prompt recovery by every taxpayer of any illegal tax paid by him."

6. La. Acts 1940, No. 265, § 17, now LA. R.S. 47:1625 (1950).

17 for another matter.⁷ Section 15 as amended authorized refunds "when it is determined that there has been an overpayment or a payment where no tax was due," but neither Section 15 nor Section 16 specified whether the overpayment could result from either mistake of fact or mistake of law. In 1946, the Legislature repealed Sections 15 and 16,⁸ apparently feeling that the recently created Board of Tax Appeals⁹ could grant all refunds under its broad power to consider claims for money erroneously paid into the State Treasury.¹⁰ Two years later the power to grant refunds was returned to the Collector of Revenue by another amendment to the original act of 1940.¹¹ This amendment is presently found in R.S. 47:1621, and is the last expression of the Legislature on the subject of tax refunds. It defines an overpayment as either a payment when no tax was due or a payment in excess of the amount due, and contains the following provisions relating to overpayments:

"... the power of the Collector to refund overpayments shall be as prescribed and limited in this Section.

"The Collector shall make a refund of each overpayment where it is determined that:

- "(1) The tax was overpaid because of an error in mathematical computation; or
- "(2) The tax was overpaid because of a construction of the law contrary to the Collector's construction of the law at the time of payment.

"This section shall not be construed to authorize any refund of tax overpaid through a mistake of law arising from the misinterpretation by the Collector of the provisions of any law or of the rules and regulations promulgated thereunder."

An examination of the foregoing legislation discloses that Louisiana's tax refund policy has changed from a liberal approach, evidenced by the original act of 1940 which allowed refund of overpayments made under mistakes of either fact or law,¹² to the present restricted position which allows refunds

7. La. Acts 1942, No. 157, now LA. R.S. 47:1451, 47:1501 *et seq.*, 47:1562 *et seq.*, 47:1601 *et seq.* (1950).

8. La. Acts 1946, No. 182.

9. Created by La. Acts 1942, No. 120, now LA. R.S. 47:1481 *et seq.* (1950).

10. La. Acts 1942, No. 120, § 2, now LA. R.S. 47:1481 (1950).

11. La. Acts 1948, No. 324, now LA. R.S. 47:1579-1580, 47:1621-1623 (1950).

12. La. Acts 1940, No. 265, § 17, now LA. R.S. 47:1625 (1950).

only for mathematical errors and for certain mistakes of law. Mathematical error is the only type of mistake of fact which is mentioned in the present statute. No provision is made for the recovery of taxes in the variety of other circumstances in which payments are made through mistakes of fact, and under the restrictive language of the statute none can be permitted. Thus, it seems that the Louisiana Legislature has assumed the unusual position of denying recovery where recovery is usually permitted and permitting recovery in cases of mistake of law where recovery is usually denied. There seems to be no justification for assuming such a position, and it seems probable that the original provision authorizing refunds in all cases of mistake of fact was inadvertently omitted in the series of amendments to the original refund act of 1940.¹³ In any event, a statute which denies the Collector of Revenue the power to grant refunds of taxes paid through mistake of fact is subject to criticism. In the first place, the present statute may be attacked on the ground that it fails to comply with the mandate of the Louisiana Constitution that the Legislature shall provide a "complete and adequate remedy for the prompt recovery by every taxpayer of any illegal tax paid by him."¹⁴ Further, it violates one's basic sense of justice to deny recovery to a taxpayer who makes a simple mistake of fact. It is submitted that the statute should be amended to allow a taxpayer to recover all taxes paid through mistake of fact.¹⁵ Such an amendment would undoubtedly achieve a just result without appreciably increasing the administrative burden or decreasing state revenues.

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13. In the series of amendments the Legislature never evidenced an obvious intention to depart from the original provision in Act 265 of 1940 which allowed refunds of overpayments resulting from either mistakes of fact or of law. References to both types of mistakes were deleted at the same time and the reference to mistake of fact was omitted in the subsequent amendments.

14. See note 5 *supra*.

15. Under present law the only possibility of recovering a tax paid through a mistake of fact other than a mathematical error would lie in the argument that a tax paid under a mistake of fact constitutes money erroneously paid into the State Treasury and is recoverable by direct petition to the Board of Tax Appeals under provisions of LA. R.S. 47:1481 (1950). The principal weakness of this contention, however, is that the specific provision governing tax refunds, now LA. R.S. 47:1621 (1950), was passed during the period when all refunds were being granted by the Board of Tax Appeals under the general provision, now LA. R.S. 47:1481 (1950). The specific provision returned the power to grant refunds to the Collector of Revenue with definite restrictions. To say that the Board of Tax Appeals should refund all erroneous payments falling outside these restrictions would nullify the effect of LA. R.S. 47:1621 (1950).