

IT 18-07
Tax Type: Income Tax
Tax Issue: Statute of Limitations Application

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN AND JANE DOE,
Taxpayer

No. XX-IT-XXX
Account ID XXXXX
Letter ID XXXXX
Tax Year 2011

Ted Sherrod
Administrative Law
Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Sean Cullinan, Special Assistant Attorney General on behalf of the Illinois Department of Revenue; *JOHN DOE, pro se.*

Synopsis:

On May 17, 2016, *JOHN AND JANE DOE* (“Taxpayer”) filed a Form IL-1040-X, Amended Individual Income Tax Return (“amended return”) for the year 2011 that requested a refund of an overpayment of taxes because the original return omitted a credit for taxes paid to California on gains from the sale of property located in that State. The Illinois Department of Revenue (“Department”) issued a Notice of Claim Denial (“Notice”) which denied the Taxpayer’s claim for a refund, and the Taxpayer timely protested the Notice. On September 13, 2018, an evidentiary hearing was held during which the Department argued that the Taxpayer’s claim for refund must be denied because the amended return was not timely filed. The Taxpayer argues that the overpayment should be refunded because California tax was withheld from the

Taxpayer's proceeds on the sale of property in that state, and Taxpayer did not become aware that California taxes had been paid because of this withholding until after the expiration of the statute of limitations for filing an Illinois amended return on which credit for this California tax payment could be taken. After reviewing the evidence submitted, it is recommended that the Department's Notice be upheld and that the Taxpayer's claim for refund be denied.

Findings of Fact:

1. On May 17, 2016, the Taxpayer filed a Form IL-1040-X, Amended Individual Income Tax Return ("amended return"), for the year 2011. Department Exhibit ("Ex.") 2 (Amended return and copy of envelope in which return was mailed postmarked May 17, 2016).
2. The amended return requested a refund because the Taxpayer mistakenly failed to include a credit for tax paid to California on gains arising from the Taxpayer's sale of property located in that State during 2011, the tax year in controversy. *Id.* The Department does not contest the legality or correctness of the credit for tax paid to California the Taxpayer reported on its amended return. (Recording).
3. On August 31, 2016, the Department issued a Notice of Claim Denial that denied the Taxpayer's claim for refund for the year 2011 on the basis that the amended return was not timely filed. Department Ex. 1.

Conclusions of Law:

The issue presented in this case is whether the Taxpayer's refund claim seeking a refund of overpaid Illinois income tax for the tax year 2011 is barred by the statute of limitations applicable to individual income tax refund claims. On August 31, 2016, the Department issued as Notice of Claim Denial denying the Taxpayer's refund claim for the tax year ended 12/31/11 on this ground. Section 904(a) of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*) provides

that the admission into evidence of the Department's Notice of Claim Denial issued in this case, denying the refund the taxpayer claimed on its amended return establishes the Department's *prima facie* case and is *prima facie* correct. 35 ILCS 5/904(a). Once the Department's *prima facie* case is established, the burden of proof shifts to the Taxpayer to overcome the Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

Section 909 of the Illinois Income Tax Act ("IITA") concerns credits and refunds and provides in relevant part, as follows:

Section 909. Credits and Refunds.

- (a) In general. In the case of any overpayment, the Department, *within the applicable period of limitations for a claim for refund*, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, ... and shall refund any balance to such person or credit any balance to that person ...[.]

(Emphasis added); 35 ILCS 5/909(a)

The applicable period of limitations for a claim for refund (i.e. an amended return) is found in section 911 of the IITA, which provides, in relevant part, as follows:

Sec. 911. Limitations on Claim for Refund.

- (a) In general. Except as otherwise provided by this Act:

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed ..., or one year after the date the tax was paid, whichever is later; and

(2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period.

35 ILCS 5/911(a)

Section 911(e) of the IITA provides that, “a tax return filed before the last day prescribed by law for the filing of such return (including any extensions thereof) shall be deemed to have been filed on such last day.” 35 ILCS 5/911(e).

Under these provisions, the Taxpayer’s original return for 2011 is deemed to have been filed on October 15, 2012, and, to be timely, the Taxpayer’s amended return for 2011 should have been filed within 3 years of that date, *i.e.*, by October 15, 2015. However, the Taxpayer’s amended return for 2011 was not filed until May 17, 2016.

Although the Department has not contested the Taxpayer’s claim that the correct calculation of tax due Illinois is reflected on the Taxpayer’s amended return showing a refund due to the Taxpayer, as noted above section 911 requires claims for refund to be filed within three years after the date the original return was filed or one year after the date the taxes were paid, whichever is later. The record in the instant case clearly shows that the Taxpayer’s claim was not filed within the statutorily prescribed period.

The Taxpayer contends that it did not become aware that California taxes had been withheld from its gain on the sale of property in that State until after the statute of limitations for filing a refund claim in Illinois had expired. However, the explanation given by the Taxpayer for filing its amended return contains in item “Step 2: Reason for filing” on its amended return states that the Taxpayer “(R)ECEIVED A LETTER DATED SEPTEMBER 1, 2015 FROM THE STATE OF CALIFORNIA INFORMING OF \$2,081.25 IN WITHHOLDING AND NO TAX RETURN FILED FOR TAX YEAR 2011.” See Department Ex. 2. A copy of this letter, dated September 1, 2015, is included in the record as Taxpayer’s exhibit 1, and the Taxpayer does not deny that it was promptly sent to the Taxpayer on or about that date. Since the statute of limitations for filing an amended return in Illinois did not expire until October 15, 2015, this

admission indicates that the Taxpayer did receive notice of its right to claim a credit for taxes paid to California in time to file a timely Illinois amended return before the statute of limitations for doing so expired on October 15, 2015. Moreover, even if the Taxpayer's allegation that it was not notified of the California tax payment in time to timely file an amended return in Illinois were true, this circumstance would still not afford a basis for relief because Illinois law does not provide any exceptions to the requirement that a refund claim be timely filed in order for a refund to be granted and paid. In Dow Chemical Co. v. Department of Revenue, 224 Ill. App. 3d 263 (1st Dist. 1991), the court considered the taxpayer's claim for refund under the IITA and determined that it was barred by the three-year statute of limitations. The court stated that the plain meaning of the statute is that the taxpayer has an affirmative duty to file for a tax refund within the statutorily prescribed period for doing so. *Id.* at 267. The present case is like the instant case in that the taxpayer had to take an affirmative step to preserve its right to a refund and failed to do so by the deadline required under the IITA. The case is also similar because, as here, in Dow Chemical, the taxpayer paid Illinois tax in error. The court did not deem the disallowance of the taxpayer's recovery to be barred because the taxes the taxpayer sought to recover were in fact not due and owing.

The statute of limitations provision has been in effect since 1969, when the IITA was first enacted. (See Ill. Rev. Stat. 1969, ch. 120, section 9-911). The purpose of the limitation period is to ensure that parties exercise reasonable diligence in asserting their claims. Even though the Taxpayer would otherwise be entitled to the refund it claims if its refund claim were timely filed, the statute of limitations prohibits the Department from issuing a refund that has not been properly requested within the appropriate period. As harsh as this result may be, the law does

not afford for any different conclusion. It is recommended that the Department's claim denial be finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: September 18, 2018