

IT 19-01

Tax Type: Income Tax

Tax Issue: Statute of Limitations Application; Books and Records Insufficient

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

ABC ORGANIZATION)	Docket No.	XX-IT-XXX
)	Tax Years:	2010-2011
Taxpayer)		
v.)		
THE DEPARTMENT OF REVENUE)	John E. White,	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Rev. *JOHN DOE*, appeared *pro se*; for *ABC ORGANIZATION*; Sean Cullinan, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves two amended Illinois withholding income tax returns *ABC ORGANIZATION* (Taxpayer) filed with the Illinois Department of Revenue (Department) to request refunds of taxes claimed to have been paid in error regarding tax years ending (TYE) December 31, 2010 and December 31, 2011. The Department denied the refunds, after which Taxpayer protested the denials and asked for a hearing.

The hearing was held at the Department's offices in Chicago. Taxpayer's clergy member appeared and testified at hearing, and he also offered into evidence certain books and records. After considering the evidence, I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director finalize the denials as issued.

Findings of Fact:

1. On or about September 9, 2014, Taxpayer completed, signed and filed a form IL-941-A-X, Amended Illinois Yearly Withholding Tax Return, for each of TYE 2010 and 2011. Department Ex. 3 (copies of Taxpayer's amended returns).
2. After reviewing Taxpayer's amended returns, the Department denied the refunds sought in them. Department Ex. 1 (copies of Denials).
3. The Department denied the refund claimed in Taxpayer's amended return for TYE 2010 after the Department determined that it was filed late, that is, after the last date set by the statute of limitations prescribed by § 911(a) of the Illinois Income Tax Act (IITA). Department Ex. 1, p. 1; 35 ILCS 5/911(a).
4. The Department denied the refund claimed in Taxpayer's amended return for TYE 2011 after the Department determined that Taxpayer had not established the amount of tax overpaid in error. Department Ex. 1, p. 2.
5. At hearing, Taxpayer had, and offered into evidence, copies of the W-2 forms it caused to have issued to its employees regarding TYE 2010. Taxpayer Ex. 1.
6. At hearing, Taxpayer did not have copies of the W-2 forms it caused to have issued to its employees regarding TYE 2011. Hearing Transcript (Tr.).¹

Conclusions of Law:

When a taxpayer seeks to take advantage of deductions, credits or other tax benefits allowed by statute, the burden of proof is on the taxpayer. Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981). Section 909 of the IITA authorizes the payment of refunds to a taxpayer that has overpaid its Illinois income tax liabilities. 35 ILCS 5/909. Here, Taxpayer claims refunds of tax previously

¹ The hearing was recorded using a digital sound recorder, and, as of this writing, no page numbers are available.

paid over to the Department. Department Exs. 1-19; 35 ILCS 5/909(a). Therefore, Taxpayer has the burden of proof. Balla, 96 Ill. App. 3d at 296, 421 N.E.2d at 238.

This case involves two different bases for denial: whether Taxpayer timely filed an amended return/claim for refund of tax claimed to have been overpaid in error regarding TYE 2010; and whether Taxpayer provided documentary evidence which shows the amount of tax overpaid in error regarding TYE 2011. I address each in turn.

Whether Taxpayer is Entitled to A Refund for TYE 2010

The Department's denial regarding Taxpayer's refund claim for TYE 2010 provides, in pertinent part, as follows:

We reviewed your amended return.

We have reviewed Form IL-941-A-X, amended Illinois Annual Withholding Tax Return for each year listed above. We cannot grant this claim because it was filed late. You must file Form IL-941-A-X within three years after the 15th day of the 4th month following the close of the calendar year in which the tax was withheld, or one year after the date the tax was paid, whichever is later.

Department Ex. 1, p. 1.

The section of the IITA which sets the limitations period described in this denial is § 911(a), which provides, in pertinent part:

Sec. 911. Limitations on Claims for Refund.

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

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), or one year after the date the tax was paid, whichever is the 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(a)(1) compares two prescribed periods, the first set by reference to the date a required return was filed, and the second by reference to the date tax was paid. *Id.* For withholding tax purposes, returns are required to be filed based on when withholding was made, that is, when taxes were withheld from employees' compensation, and based on the amount of tax withheld. 35 ILCS 5/704. For Taxpayer, who has an annual reporting obligation (*see* Department Exs. 1, 3), the tax withheld in 2010 was required to have been paid when its return for 2010 was due, that is, on January 31, 2011. 35 ILCS 5/704(d)-(e); 86 Ill. Admin. Code §§ 100.7300(b)(1), 100.7325(d). So here, the two dates set by IITA § 911(a)(1) are either: three years after the 15th day of the 4th month following the close of 2010 (i.e., April 15, 2014); or one year after January 31, 2011 (i.e., January 31, 2012). After considering Illinois law, the last date for Taxpayer timely to file an amended return to claim a refund for taxes withheld and paid for calendar year 2010 was April 15, 2014. 35 ILCS 5/911(e).

There is no dispute that Taxpayer's Form IL-941-A-X was dated September 9, 2014. Department Ex. 3, p. 1. As a result, that return could only have been filed on or after that date. The evidence and law support the Department's determination that Taxpayer filed its amended return for TYE 2010 after the last date allowed for filing a claim for refund for Illinois withholding tax. Department Exs. 1, 3; 35 ILCS 5/911(a); Dow Chemical Co. v. Department of Revenue, 224 Ill. App. 3d 263, 268-69, 586 N.E.2d 516, 520 (1st Dist. 1991). Under the plain text of the applicable statute, the Department lacks the authority to issue Taxpayer any refund for TYE 2010. 35 ILCS 5/911(a)(2); Dow Chemical Co., 224 Ill. App. 3d at 268-69, 586 N.E.2d at 520. Therefore, I recommend that the Director finalize the Department's denial for TYE 2010 as issued.

Whether Taxpayer is Entitled to A Refund for TYE 2011

The next issue is whether Taxpayer is entitled to a refund for TYE 2011. The Department's denial regarding Taxpayer's refund claim for TYE 2011 provides, in pertinent part, as follows:

We reviewed your amended return.

We cannot process your request until we receive additional information.

You did not provide support for your overpayment, such as Form W-2-Cs showing you have refunded the money to your employee. If Form W-2-Cs were not issued or required, please send a copy of the Form W-2 with the correct amount of withholding of the employee affected.

Department Ex. 1, p. 2.

This matter has spent considerable amount of time docketed within the Department's Office of Administrative Hearings, thereby providing Taxpayer with considerable time to produce the W-2s for TYE 2011. In its denial, the Department notified Taxpayer that it needed those W-2s to process Taxpayer's amended return for that year. *See* Department Ex. 1, p. 2. Taxpayer was able to produce W-2s for TYE 2010, but not for TYE 2011. At hearing, Department counsel noted that the W-2s Taxpayer produced for 2010 "seemed to substantiate" the entries on Taxpayer's amended return for 2011. Tr. Notwithstanding the Department's concession, however, the Department was not willing to revise its prior denial to Taxpayer's claim for refund.

As an aside, I note that what Taxpayer's 2010 W-2s substantiate is that Taxpayer overstated the amount of tax reported having been withheld on its original 2010 return, as well as the actual amount of tax that it overpaid in error. Taxpayer Ex. 1; Department Ex. 3, p. 1. More specifically, they reflect that Taxpayer withheld tax from only two of the four employees named on its W-2s for 2010. Taxpayer Ex. 1. The W-2s also clearly show the amounts of Illinois tax withheld. Taxpayer Ex. 1; Department Ex. 3, p. 2. So, here, *if* there were evidence that Taxpayer used the same withholding practices in 2011 that it did in 2010, and *if* Taxpayer's employees in 2011 were the same as in 2010, those additional

facts would tend to make it more likely than not that Taxpayer also overstated the amount of its Illinois withholding on its original 2011 return. But the essential question would still remain — by how much? Taxpayer’s 2011 W-2s would certainly answer this question, but they were not admitted.

In addition to offering Taxpayer’s 2010 W-2s into evidence, Reverend *DOE* explained that Taxpayer did not have copies of the W-2s it issued to its employees for 2011. Tr. *DOE* said that he was uncertain of the specific facts regarding the salaries and withholding amounts of Taxpayer’s employees during 2010 and 2011, because of his physical condition at that time. *Id.* Notwithstanding his uncertainty, he said the same employees named on the W-2s for 2010 worked for Taxpayer in 2011, except than one of them left during 2011. *Id.* He did not know when, in 2011, that employee left Taxpayer’s employ. *Id.* He believed Taxpayer’s employees’ compensation during 2011 was the same or slightly less than it was in 2010. *Id.* He believed his salary in 2011 was the same as it was in 2010. *Id.* *DOE* was never asked, and never offered any testimony regarding, whether Taxpayer withheld Illinois tax from its employees during 2011 in the same manner it did in 2010. *Id.* Most importantly, he did not know how much tax Taxpayer withheld from employees’ compensation during 2011. *Id.*

What Taxpayer was required to present at hearing was documentary evidence which supported its claim that its original report — that it withheld tax in the amount of \$3,524.37 from its employees’ compensation — was a mistake, and that, in fact, it withheld only \$658.61 in tax from compensation paid to employees. Taxpayer Ex. 3, p. 2. This record fails to disclose how much tax Taxpayer withheld during 2011.

Taxpayer’s 2011 W-2s are essential to its claim for refund. Without having them in evidence, the best that I, the Director, or any downstream reader of this record might be able to do is merely to guess at how much of the tax Taxpayer originally reported as having withheld was overpaid in error. Illinois law does not permit such estimates to

substitute for the type of evidence required to rebut the Department's prima facie case. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002) (agreeing that "[taxpayer] had the burden of overcoming [the Department's] ... *prima facie* case through documentary evidence, meaning books and records, and not mere testimony."). Because this record does not establish the amount of tax Taxpayer overpaid in error, the Department's denial was correct, and should be upheld.

Conclusion:

I respectfully recommend that the Director finalize the Department's prior denials for TYE 2010 and 2011, and that no refunds or credits be given for those years.

Date: April 1, 2019

John E. White, Administrative Law Judge