

**IT 05-6**  
**Tax Type**      **Income Tax**  
**Issue:**        **Federal Change (Individual)**

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

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**THE DEPARTMENT OF REVENUE**  
**OF THE STATE OF ILLINOIS**

v.

**JOHN DOE,**  
**Taxpayer**

**No. 04-IT-0000**  
**SSN: 000-00-0000**  
**Tax yr.: 12/31/97**

**Charles E. McClellan**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DECISION**

**Appearances:** Rickey A. Walton, Special Assistant Attorney General for the Department; John Doe appearing *pro se*.

**Synopsis:**

This matter arose from a protest Taxpayer filed to a LTR-405 Amended Tax Letter denying a refund claim for the calendar year 1997. The claim was based on federal changes made by the Internal Revenue Service to Taxpayer's federal income tax liability for 1997 as the result of an amended federal income tax return Taxpayer filed. The Department denied Taxpayer's claim because it was filed after the time period in which such changes are required by statute to be reported and claims filed.

An evidentiary hearing was set for March 2, 2005. As a result of discussion with Taxpayer, no formal hearing was convened. The Department introduced the records to

establish its *prima facie* case, and Taxpayer offered documents that were not admitted because they are not relevant to the late filing issue.

I recommend that the claim denial be made final.

**Findings of Fact:**

1. On August 18, 2004, the Department issued a LTR-405 Amended Tax Letter denying a refund claim filed by Taxpayer for the calendar year 1997 Dept. Ex. No. 1.
2. The LTR-405 was issued in response to a claim for refund filed by Taxpayer that the Department received on February 6, 2004. *Id.*
3. Taxpayer's claim was based on a change to Taxpayer's federal income tax liability for 1997 that resulted from a claim he filed that was granted by the Internal Revenue Service. Dept. Ex. No. 4.
4. The Internal Revenue Service notified Taxpayer of the acceptance of his claim in a document dated March 22, 1999. *Id.*

**Conclusions of Law:**

This matter involves a claim for refund that was not timely filed by Taxpayer, so the Department denied it. The Department's *prima facie* case is established by the introduction into evidence of copies of its records under the certificate of the Director. 35 ILCS 5/914, *Balla v. Dept. of Revenue*, 96 Ill. App.3d 293 (1st Dist. 1981). In this case the Department's *prima facie* case was established when it introduced the LTR-405 Amended Tax Letter denying Taxpayer's claim for refund.

Section 506(b) of the Illinois Income Tax Act<sup>1</sup> requires taxpayers to notify the Department of changes affecting federal income tax within 120 days of their final determination by the Internal Revenue Service. In this case, the final determination by the Internal Revenue Service occurred on May 22, 1999 when it notified Taxpayer of the decrease in his federal income tax for 1997.

IITA § 911(b)(1) requires that taxpayers file claims based on federal changes within two years after the changes become final. Thus, Taxpayer in this case had until May 22, 2001 to file his claim for the Illinois income tax overpayment that resulted from the federal change. However, the Department did not receive his claim until February 6, 2004, and Taxpayer failed to introduce any evidence to show that he filed his claim within the allowable time period. Therefore, I conclude that Taxpayer's claim was filed beyond the two-year period allowed for filing claims for refund resulting from federal changes. Therefore, it is barred.

**Recommendation:**

For the reasons set forth above, I recommend that the LTR-405 Amended Tax Letter denying Taxpayer's claim for refund be made final.

ENTER: July 8, 2005

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**Charles E. McClellan**  
**Administrative Law Judge**

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<sup>1</sup> Unless otherwise noted, all statutory references are to 35 ILCS 5/101, *et seq.*, the Illinois Income Tax Act ("IITA" or the "Act").