IT 12-06
Tax Type: Income Tax
Issue: Claim Issues-Properly and Timely Filed

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	
v.	**Docket # XXXXX**
	Acct ID: XXXXX
JOHN and JUDY DOE,	**Reporting Periods: 12/01 to 12/06**
Taxpayers	**Claims for Credit or Refund**

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*

Synopsis:

On March 15, 2011, John and Judy Doe ("taxpayers") filed Amended Individual Income Tax Returns ("amended returns") for the years 2001 through 2006. The returns requested refunds of overpayments of taxes for those years. The Department of Revenue ("Department") denied the claims for refunds, and the taxpayers timely protested the denials. An evidentiary hearing was held during which the taxpayers argued that the refunds should be granted because the taxpayers inadvertently showed their retirement income as taxable on their original returns for the years at issue. The Department argued that the taxpayers' requests for refunds be denied because the amended returns were filed after the time period required to file them, and the claims for refund are barred by the statute of limitations. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On March 15, 2011, the taxpayers filed Amended Individual Income Tax Returns, Forms IL-1040-X, for the years 2001 through 2006. The amended returns requested refunds for each year. (Dept. Ex. #1; Tr. p. 5)
2. On September 15, 2011, September 21, 2011, and October 31, 2011, the Department issued Notices of Claim Denials that denied the taxpayers' claims for refunds for the years 2001 through 2006. Copies of the Notices were admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Section 904 of the Illinois Income Tax Act ("Act") (35 ILCS 5/101 *et seq.*) concerns overpayments and provides, in relevant part, as follows:

> Sec. 904. Deficiencies and Overpayments.
>
> (a) Examination of return. As soon as practicable after a return is filed, the Department shall examine it to determine the correct amount of tax. … If the Department finds that the tax paid is more than the correct amount, it shall credit or refund the overpayment as provided by Section 909. The findings of the Department under this subsection shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a).

Section 909 of the Act concerns credits and refunds and provides, in relevant part, as follows:

> Sec. 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. 35 ILCS 5/909(a).

The applicable period of limitations for a claim for refund is found in section 911 of the Act, which provides, in relevant part, as follows:

> 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 … 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)(1), (2).

As it is stated in section 904, the findings of the Department are *prima facie* correct, and the Department's certified record relating to the tax is proof of such determination. 35 ILCS 5/904, 914; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981). The Department's *prima facie* case was established in this matter when its certified record concerning the denials of the claims was admitted into evidence. The Department denied the claims on the basis that they are barred by the statute of limitations.

The taxpayers argue that the statute of limitations should not prevent the State from returning money that was given to the State in error. The taxpayers do not understand why the Department will not pay a refund that is owed to a taxpayer. The taxpayers believe that whoever checked their returns for the Department was aware of the taxpayers' mistake. The mistake continued for 8 years until the taxpayers became aware of it. The taxpayers paid a lot of income tax that was not owed to the State. The taxpayers believe that it would be unfair to apply the statute of limitations to prevent the refunds that they are entitled to receive.

Although the correct method of calculating the tax would result in a refund for the taxpayers, section 911 requires the claims to be filed within three years after the date the original returns were filed or one year after the date the taxes were paid, whichever is later. Although the record does not specifically include information concerning when the taxpayers' original returns were filed or when the taxes were paid, the taxpayers did not present documentation to show that their claims were filed within the appropriate time period.

The Act does not provide any exceptions to this rule in order to allow a refund for a claim that was not timely filed. 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 Act 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 appropriate time period. *Id*. at 267. The present case is similar in that the taxpayers had to take an affirmative step to preserve their right to a refund, and they failed to do so by the deadline required under the Act.

The statute of limitations provision has been in effect since 1969, when the Income Tax Act was first enacted. (See Ill.Rev.Stat. 1969, ch. 120, §9-911). The purpose of the limitations period is to ensure that parties exercise reasonable diligence in asserting their claims. Even though the taxpayers would otherwise be entitled to the refunds if the claims were timely filed, the statute of limitations prohibits the Department from issuing a refund that was not properly requested within the appropriate time period. In addition, the Department does not have a duty to notify the taxpayers of any errors on their returns. As unfortunate as this result may be, the law does not allow for a different conclusion.

Recommendation:

For the foregoing reasons, it is recommended that the Department's denial of the claims be upheld.

Linda Olivero
Administrative Law Judge

Enter: July 30, 2012