

IT 12-07

Tax Type: Income Tax

Tax Issue: Statute of Limitations Application

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

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<b>THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS</b>	)	Docket No.:	XXXXX
	)	Letter ID Nos.:	XXXXX
	)		XXXXX
	)	Account ID No.:	XXXXX
	)	Tax Years:	2005 and 2006
v.	)	Refund Claim	
	)		
<b>ESTATE OF JANE DOE, Claimant.</b>	)	Julie-April Montgomery	
	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mary Black, Executor, for the Estate of Jane Doe; Rickey Walton, Special Assistant Attorney General, for the Illinois Department of Revenue.

**Synopsis:**

On October 30, 2010 Mary Black (“Executor”) filed Forms IL-1040-X (“Amended Returns”) for Jane Doe (“Taxpayer”), claiming refunds for the tax years 2005 and 2006. The Illinois Department of Revenue (“Department”) issued Notices of Denial (“Notices”) for both refund claims sought because the statute of limitations for the filing of the Amended Returns had expired. The Executor protested the Notices and requested a hearing.

The parties agreed that the determinative issue is the applicability of the statute of limitations to the Amended Returns filed. February 8, 2012 Pre-Trial Order (“Order”). A hearing was held on May 10, 2012 at which the Executor and Department presented testimonial

and documentary evidence in support of their respective positions.<sup>1</sup> Upon examination and review of the evidence and record, it is recommended that the Department's Notices denying the refund claims be affirmed. In support thereof, are the following findings of fact and conclusions of law.

**Findings of Fact:**

1. Taxpayer's income tax return for the 2005 tax year was received by the Department on April 1, 2006 and calculated on September 25, 2006. Tr. p. 28; Department Ex. No. 3.
2. The Department, in correspondence dated September 11, 2006, issued Taxpayer an "ITR-76" seeking payment of \$XXXXXX for the 2005 tax year. Tr. p. 70; Taxpayer Ex. No. 1.
3. Taxpayer paid the requested \$XXXXXX. Tr. pp. 31, 34; Department Ex. No. 4.
4. Taxpayer's income tax return for the 2006 tax year was received by the Department on March 29, 2007 and calculated on July 26, 2007. Tr. p. 28; Department Ex. No. 3.
5. The Department, in correspondence dated July 9, 2007, issued Taxpayer an "ITR-76" seeking payment of \$271.12 for the 2006 tax year. Tr. p. 70; Taxpayer Ex. No. 2.
6. Taxpayer paid the requested \$XXXX. Department Ex. No. 5.
7. The Department received Amended Returns for the tax years 2005 and 2006 on October 30, 2010 from the Executor of Taxpayer's estate seeking refunds. Department Ex. Nos. 1 and 2.
8. In 2011, the Department issued Notices, for both the 2005 and 2006 tax years, denying Taxpayer's 2005 and 2006 tax year claims for refund. Tr. p. 14-15; Department Ex. No. 1.

**Conclusions of Law:**

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<sup>1</sup> Administrative Law Judge John White heard this matter. Due to his unavailability, Administrative Law Judge Julie-April Montgomery authored this recommendation following a thorough review of the record. There were no issues of credibility to be determined.

Section 904(a) of the Illinois Income Tax Act (“IITA”) provides that the admission into evidence of the Notices 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 is shifted to the taxpayer to overcome the Department’s *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1<sup>st</sup> Dist. 1987).

In order to overcome the presumption of validity attached to the Department’s *prima facie* case, taxpayer must produce competent evidence, identified with their books and records that show the Department’s determination is incorrect. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1<sup>st</sup> Dist. 1988). Testimony alone is insufficient to overcome the Department’s *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1<sup>st</sup> Dist. 1991). Rather, documentary proof is required to prevail against a Department determination of the amount of the refund due. Sprague v. Johnson, 195 Ill. App. 3d 789 (4<sup>th</sup> Dist. 1990).

Section 911(a) of IITA provides, in pertinent part:

Section 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).

The Executor admits that she filed Taxpayer’s Amended Returns, requesting refunds, for the tax years 2005 and 2006, after their due dates. Tr. pp. 12, 90. However, the Executor posits various reasons why IITA’s three year statute of limitations should be tolled so as to permit the refund claims.

The Executor believes that Taxpayer's death tolled the statute of limitations but cites no statute or case law in support of this belief. Tr. p. 90; Order.

The Executor also argues that Taxpayer's medical condition warrants tolling IITA's statute of limitations because the Internal Revenue Service, in 26 USC 655(A)(h), provides for the suspension of a statute of limitations where it is determined that one suffers a financial disability by reason of a determined medical impairment. Tr. pp. 60, 61-62, 90; Order. Whether the Internal Revenue Service provides for suspension of a statute of limitations, based upon a party's determined medical condition, is irrelevant to the instant matter for two reasons. First, the ITTA has no comparable provision. Second, the record reflects that no determination was made that established Taxpayer had a medical disability. Tr. p. 65.

The Executor further alleges that it would be contrary to the Illinois Constitution to deny the refund claims based upon a statute of limitations because the Department failed to consider all of Taxpayer's retirement/pension income, as identified in alleged 1099 forms attached to the 2005 and 2006 returns at issue, when it issued the ITR-76's to Taxpayer. Tr. pp. 70, 77, 90; Order. But the Executor was unable to testify, based upon her own personal knowledge, that 1099 forms reflecting exempt income were in fact attached to, and therefore part and parcel of, Taxpayer's 2005 and 2006 tax return filings. Tr. pp. 93-95. In addition, there is no evidence in the record to support the Executor's belief that 1099 forms were filed with Taxpayer's returns.

Executor argues the Department was in receipt of 1099 forms, and as such, in a position to correct Taxpayer's returns so as to ensure that all of Taxpayer's non-taxable income was deducted, not just the amounts Taxpayer stated on her returns (which were less than the amounts reflected in the allegedly filed 1099 forms). Tr. pp. 70, 77, 90, 94, 108. Executor therefore concludes that the Department failure to amend Taxpayer's returns, to increase the social

security and retirement deductions, based on the allegedly filed 1099 forms, when the ITR-76's were issued, meant Taxpayer paid monies that were not due, and as such, unjustly enriched the Department. Tr. pp. 69-71, 101-102. Executor admits Taxpayer failed to "properly deduct...[all of her] retirement and social security money" for the years in question. Tr. p. 75. But, the Executor claims Taxpayer stated that 1099 forms would be attached to the 2005 and 2006 returns which would have reflected all of Taxpayer's social security and retirement income (which was in excess of what Taxpayer actually reported). Tr. 67, 94. However, the record is absent evidence that the Department received 1099 forms with Taxpayer's 2005 and 2006 returns, and the Executor failed to establish that Taxpayer did file 1099 forms with her returns. Inasmuch as the Executor cannot establish that 1099 forms were in fact filed with the tax returns at issue, no basis exists upon which the merits of the Executor's argument can be based.

In addition, the Executor asserts the Department's issuance of the ITR-76's to Taxpayer constituted erroneous written advice upon which Taxpayer relied and as a consequence erroneously paid taxes upon exempt income. The Executor argues that pursuant to Section 4(c) of Illinois' Taxpayer Bill of Rights the Department must abate any taxes and penalties assessed a taxpayer when the Department gives erroneous written advice. 20 ILCS 2520(4)(c); Tr. pp. 82-85. As previously stated, the basis of this assertion is predicated upon establishing that Taxpayer actually filed 1099 forms with her tax returns so that the Department was in fact aware that there was more social security and retirement income that was to be deducted than had been stated by Taxpayer on her 2005 and 2006 returns. The record is absent evidence the Department received 1099 forms with Taxpayer's returns. The record reflects the Department was aware only of the retirement and social security income Taxpayer stated on her returns. Tr. pp. 55-57; Department Ex. No. 3. The Department did not consider the information contained in the allegedly filed

1099 forms because the Department was not in receipt of such forms. The record shows that the Department did not correct Taxpayer's returns to provide larger deductions for social security and retirement income than Taxpayer had stated herself on the returns because the Department had no basis upon which to give Taxpayer additional deductions. The absence of 1099 forms not only meant the Department could not alter Taxpayer's returns to provide for greater deductions than that taken by Taxpayer but also makes clear that the Department did not give advice based upon such forms.

Lastly, the Executor cites Samuel T. Evans v. Ernest H. Moore, 247 Ill. 60 (1910) to support her claim that there should be an equitable tolling of the three year statute of limitations. However, the Executor fails to realize that the case cited recognized equitable tolling of a statute of limitations provision only "where the jurisdiction of courts of equity is exclusive it is not bound by the limitations applicable to actions at law." Evans at 72. *Accord* A.M. McDiarmid v. Bertha McDiarmid, 368 Ill. 638 (1938) finding equity not bound by statutory periods of limitations; Victoria C. Stenwall v. Ralph W. Bergstrom, 398 Ill. 377 (1947) (reaffirming the holdings of Evans, *supra* and McDiarmid, *supra*). The current case is not one involving exclusive equitable jurisdiction. Moreover, and as previously stated, no basis for relief exists because the Executor's argument is predicated upon an alleged unauthorized taxing/taking of Taxpayer's exempt retirement income as might be proven if it could be established that 1099 forms were filed along with the 2005 and 2006 tax returns showing the improper taxation by Illinois of such income.

The IITA does not provide any exceptions that would allow a refund claim that is not filed timely. In fact, in Dow Chemical Co. v. Department of Revenue, 224 Ill. App. 3d 263 (1<sup>st</sup> Dist. 1991), the court considered Dow's refund claim, under IITA, and determined that it was

barred by the three year statute of limitations. The court recognized that in upholding the Department's denial based upon the statute of limitations, the Department would "receive a windfall at [taxpayer's] expense [but], this fact alone does not provide justification for rendering a contrary judgment. Although it might seem reasonable to judicially toll the statute of limitations in order to fashion a remedy for Dow, such a decision is not supported by Illinois case law which holds that no exceptions which toll a statute of limitations or enlarge its scope will be implied. (*See Severe v. Miller* (1983), 120 Ill. App. 3d 550,555, 458 N.E. 2d 173,176. *See also Morgan v. People* (1959), 16 Ill. 2d 374, 158 N.E. 2d 24.)" Dow Chemical at 268-269. The court stated that the plain meaning of the statute is that the taxpayer has an affirmative duty to file for a refund within the appropriate time period. Id. at 267. The court further stated that "there is a limit on the taxpayer's ability to file for" a refund or credit. Id. The present case is similar in that Taxpayer/Executor had to take an affirmative action to preserve the right to a refund and failed to do so as required by IITA. Like Dow Chemical, *supra*, failure of Taxpayer/Executor to meet the statute of limitations prohibits the Department from issuing of a refund (which taxpayer established entitlement to in Dow Chemical but our Taxpayer/Executor has not) that was not properly requested within the appropriate time period.

In light of the above, it is evident that the Executor did not present evidence that was legally sufficient to overcome the Department's *prima facie* case or establish a basis upon which the statute of limitations should be tolled.

**Recommendation:**

It is therefore recommended that the Department's Notices denying the claims for refunds for the tax years 2005 and 2006 be affirmed.

September 20, 2012

Julie-April Montgomery  
Administrative Law Judge