

**IT 14-09**

**Tax Type: Income Tax**

**Tax Issue: Statute of Limitations Application**

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

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

v.

**JANE DOE**

**Taxpayer**

**Docket # XXXX  
Letter ID: XXXX  
Claim for Credit or Refund**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Ralph Bassett, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jane Doe, *pro se*

Synopsis:

On September 1, 2012, Jane Doe (“taxpayer”) filed a Form IL-1040-X, Amended Individual Income Tax Return (“amended return”) for the year 2007 that requested a refund of an overpayment of taxes. The 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. Both parties filed Motions for Summary Judgment with attached exhibits, and at the hearing on the Motions, both parties agreed that the matter should be resolved based on the documents submitted. The Department contends that the taxpayer’s claim for refund must be denied because it was not timely filed. The taxpayer contends that she filed the amended return as soon as she was aware that her income was not taxable. After reviewing the Motions

and documents, it is recommended that the Department's Motion for Summary Judgment be granted and the taxpayer's claim for refund be denied.

FINDINGS OF FACT:

1. The taxpayer was previously employed by the State of Illinois. (Dept. Ex. #5; Taxpayer's Motion pp. 1-4)
2. From July 26, 2007 through February 29, 2012, the State Employees' Retirement System ("SERS") paid the taxpayer temporary disability benefits in the total amount of \$XXXX. Temporary disability benefits are fully taxable by the IRS. (Dept. Ex. #5, p. 2; Taxpayer's Motion p. 3)
3. On May 29, 2012, SERS sent a letter to the taxpayer stating that the temporary disability benefits that were paid to her were now being considered to be occupational disability benefits, which are excludable from gross income pursuant to Section 104(a)(1) of the Internal Revenue Code. (Dept. Ex. #5, p. 1; Taxpayer's Motion p. 2)
4. On June 28, 2012, SERS sent a letter to the taxpayer stating that the taxpayer's temporary disability benefits for the year 2007 totaled \$XXXX. The letter also stated that the determination that the temporary disability benefits should be considered to be occupational disability benefits was based on the lump sum settlement that the taxpayer received from the Illinois Workers' Compensation Commission. (Dept. Ex. #5, p. 2; Taxpayer's Motion p. 3)
5. On July 11, 2012, the taxpayer filed a federal Form 1040X, Amended U.S. Individual Income Tax Return with the IRS for the year 2007 showing a decrease in her adjusted

gross income (“AGI”) of \$9,423 and requesting a refund in the amount of \$XXXX.  
(Taxpayer’s Motion p. 10)

6. On August 21, 2012, the IRS sent a letter to the taxpayer stating that her claim for a refund for the year 2007 was denied because it was filed more than 3 years after the due date for the tax return. (Dept. Ex. #3; Taxpayer’s Motion pp. 11-12)
7. On September 1, 2012, the taxpayer filed a Form IL-1040-X, Amended Individual Income Tax Return for the year 2007 that requested a refund in the amount of \$XXX based on the decrease of AGI of \$XXXX. (Dept. Ex. #2; Taxpayer’s Motion pp. 7-8)
8. On March 8, 2013, the Department issued a Notice of Claim Denial that denied the taxpayer’s claim for refund for the year 2007 on the basis that her federal AGI had not changed. (Dept. Ex. #1; Taxpayer’s Motion p. 9)

CONCLUSIONS OF LAW:

Section 911 of the Illinois Income Tax Act (“Act”) (35 ILCS 5/101 *et seq.*) includes the time period for filing a claim for refund (*i.e.*, amended return) and 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.

(b) Federal changes.

(1) In general. In any case where notification of an alteration is required by Section 506(b), a claim for refund may be filed within 2 years after the date on which such notification was due (regardless of whether such notice was given), but the amount recoverable pursuant to a claim filed under this Section shall be

limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported.

...  
35 ILCS 5/911(a)(1), (2); (b)(1).

Under Section 506(b), a taxpayer must file an amended return with the Department within 120 days after an alteration to his or her federal income tax return "has been agreed to or finally determined for federal income tax purposes..." 35 ILCS 5/506(b).

The Department argues that the taxpayer's claim for refund was properly denied because it was filed more than 3 years after the date the original return was filed. The taxpayer's amended return was filed with the Department on September 1, 2012, and her original 2007 return was filed on February 11, 2008. (Dept. Ex. #2, p. 2) The Department states that an exception to the 3 year rule is found in Section 911(b)(1) when the IRS either agrees to or finalizes an alteration to the taxpayer's federal return. In the present case, however, the IRS did not allow the taxpayer to change her 2007 federal return. The Department, therefore, contends that the taxpayer's amended return was not timely filed, and her claim for refund must be denied on that basis.

The taxpayer argues that her claim for a refund of \$XXX should be honored because she filed her amended return the same year that she received the information that her benefits were not taxable. She believes that the Department should also pay her federal claim of \$XXXX because the State of Illinois is at fault for not notifying her earlier that her benefits were not taxable. She states that she should not be penalized because the State has a backlog.

Although the taxpayer believes that the State of Illinois is at fault for not notifying her earlier that her benefits were not taxable, the June 28, 2012 letter from SERS states the

determination that the benefits were not taxable was “Based on the lump sum settlement you received from the Illinois Workers’ Compensation Commission...” (Dept. Ex. #5, p. 2; Taxpayer’s Motion p. 3) The taxpayer’s workers’ compensation claim or when that claim was settled is not within the control of the Department.

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). Even though the taxpayer would otherwise be entitled to the refund if the claim was timely filed, the statute of limitations prohibits the Department from issuing a refund that was not requested within the appropriate time period. 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 Motion for Summary Judgment be granted, the taxpayer’s Motion for Summary Judgment be denied, and the Notice of Claim Denial should be upheld.

Enter: August 25, 2014

Linda Olivero  
Administrative Law Judge