

**IT 15-06**

**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.

**JOHN & JANE DOE**

**Taxpayers**

**Docket # XXXX  
Letter ID: XXXX  
Letter ID: XXXX  
Claim Denials**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN & JANE DOE, *pro se*

Synopsis:

On July 29, 2014, JOHN & JANE DOE (“taxpayers”) filed two Forms IL-1040-X, Amended Individual Income Tax Returns (“amended returns”), for the years 2008 and 2009 that requested refunds of an overpayment of taxes because the original returns mistakenly included pension income as taxable income. The Department of Revenue (“Department”) issued two Notices of Claim Denial (“Notices”), which denied the taxpayers’ claims for a refund, and the taxpayers timely protested the Notices. An evidentiary hearing was held during which the Department argued that the taxpayers’ claims for refund must be denied because the amended returns were not timely filed. The taxpayers argued that the overpayment should be refunded because they received incorrect advice from a Department employee regarding whether the pension income was taxable, and the Department should have notified the taxpayers that the

pension income was not taxable. After reviewing the evidence submitted, it is recommended that the Department's Notices be upheld and the taxpayers' claims for refund be denied.

FINDINGS OF FACT:

1. On July 29, 2014, the taxpayers filed two Forms IL-1040-X, Amended Individual Income Tax Returns, for the years 2008 and 2009. (Dept. Ex. #1, #2)
2. The amended returns requested refunds because the taxpayers mistakenly included pension income on their original returns. (Dept. Ex. #1, #2)
3. On September 10, 2014, the Department issued two Notices of Claim Denial that denied the taxpayers' claims for refund for the years 2008 and 2009 on the basis that the amended returns were not timely filed. (Dept. Ex. #1, #2)

CONCLUSIONS OF LAW:

Section 909 of the Illinois Income Tax Act ("Act") (35 ILCS 5/101 *et seq.*) 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 or credit any balance to that person... Emphasis added; 35 ILCS 5/909(a).

The applicable period of limitations for a claim for refund (*i.e.*, amended return) 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.*

...

**(e) Time return deemed filed.** For purposes of this section a tax return filed before the last day prescribed by law for the filing of such return (including any extensions thereof) shall be deemed to have been filed on such last day.<sup>1</sup>

...

Emphasis added; 35 ILCS 5/911(a)(1), (2); (e).

Under these provisions, because the taxpayers' original return for 2008 is deemed to have been filed on October 15, 2009, the amended return for 2008 should have been filed within 3 years, *i.e.*, by October 15, 2012. The amended return for 2009 should have been filed by October 15, 2013.

According to the taxpayers, it was unclear in the instructions for the Form IL-1040 whether their pension income was taxable. Mr. DOE called the Department to find out whether the pension income was taxable, and he was told by a Department representative that it was taxable unless it was a pension from the State of Illinois or a railroad pension. (Tr. pp. 8-9) The taxpayers believe that they should receive the refund because the Department's employee gave the wrong advice. In addition, they contend that the Department reviewed the original returns for other reasons, and there were documents with the original returns that showed that the income was pension income. The taxpayers contend that the Department should have advised the taxpayers earlier that the pension income was not taxable. (Tr. pp. 10-12)

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<sup>1</sup> Under Section 505(a)(2), the taxpayers' original individual income tax returns were due by April 15, 2009 and 2010 (35 ILCS 5/505(a)(2)), but one of the Department's regulations grants an automatic extension of 6 months (86 Ill. Admin. Code §100.5020(b)). Therefore, under Section 911(e), the taxpayers' original 2008 return is deemed to have been filed on October 15, 2009, and the taxpayers' original 2009 return is deemed to have been filed on October 15, 2010.

The taxpayers' circumstances are very unfortunate, but the law requires the refunds to be denied. Section 4(c) of the Illinois Taxpayers' Bill of Rights Act (20 ILCS 2520/1 *et seq.*) provides that "... to protect the rights of taxpayers ..." the Department has the power and duty: "[t]o abate taxes and penalties assessed based upon erroneous *written* information or advice given by the Department." Emphasis added; 20 ILCS 2520/4(c). Because the erroneous advice that the taxpayers received was oral and not written, they are not entitled to refunds under the Bill of Rights Act. In addition, the Department does not have a duty to notify the taxpayers of any errors on their returns. The taxpayers, however, have an affirmative duty and responsibility to file for a tax refund within the appropriate time period. Dow Chemical Co. v. Department of Revenue, 224 Ill. App. 3d 263, 267 (1<sup>st</sup> Dist. 1991),

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 requested within the appropriate time period. As harsh 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 Notices of Claim Denial be upheld.

Linda Olivero  
Administrative Law Judge

Enter: September 9, 2015