

IT 16-03

Tax Type: Income Tax

**Tax Issue: Claim Issues – Properly and Timely Filed
Statute of Limitations Application**

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

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

v.

**JOHN DOE,
Taxpayer**

**No. XXXX
Account ID XXXX
Letter ID XXXX
XXXX
Tax Years 2009, 2010**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Jennifer Kieffer, Special Assistant Attorney General on behalf of the Illinois Department of Revenue; John Doe, *pro se*.

Synopsis:

On March 17, 2015, the Illinois Department of Revenue (“Department”) issued Notices of Claim Denial to John Doe (“taxpayer”) denying the taxpayer’s refund claims for the tax years ended 12/31/09 and 12/31/10. The basis for these denials was the Department’s determination that the taxpayer had failed to file his refund claims for overpayment of income tax due for these tax years within three years after the date his original tax returns for these years were filed. On April 5, 2015, the taxpayer filed a timely protest and requested a hearing, which was held on December 21, 2015. Following a review of the evidence and arguments presented at the hearing, it is recommended that the Department’s Notices of Claim Denial at issue in this case be affirmed. In support of this determination, the following “Findings of Fact” and “Conclusions of Law” are made.

Findings of Fact:

1. Since January 2009, John Doe (“taxpayer”) has been a resident of Iowa and an Illinois non-resident. Taxpayer’s Exhibit (“Ex.”) 4.
2. During the period 2009 through 2013, the taxpayer worked from his home in Iowa for a computer distribution company based in Illinois. Tr. pp. 17, 22; Taxpayer’s Ex. 4. During the aforementioned period, the taxpayer’s employer erroneously withheld Illinois income taxes from the taxpayer’s income. Tr. p. 17. The taxpayer erroneously assumed his employer’s withholding compliance was correct and filed Illinois Individual Income Tax returns and paid Illinois income taxes. *Id.*
3. The taxpayer timely filed an Illinois IL-1040 for 2009 reporting taxes due Illinois in the amount of \$XXXX and timely paid the taxes shown to be due on this return. Tr. pp. 10, 14; Taxpayer’s Ex. 1; Department’s Ex. 4. The taxpayer also timely filed an Illinois IL-1040 for 2010 reporting taxes due Illinois in the amount of \$XXXX and timely paid the tax shown to be due on this return. Tr. p. 10; Taxpayer’s Ex. 1; Department’s Ex. 3, 5.
4. During 2014, the state of Iowa audited the taxpayer and determined that the taxpayer owed Iowa income taxes on income earned from his Illinois employer for the tax years ended 12/31/09 through 12/31/13 including for the tax years 2009 and 2010 because the taxpayer was an Iowa resident during each of these years. Tr. p. 17, 18; Taxpayer’s Ex. 2, 3. Iowa refused to allow the taxpayer any credit for income taxes paid to Illinois having determined that these taxes were paid to Illinois in error. Tr. p. 19; Taxpayer’s Ex. 3, 5. The taxpayer’s appeal of the State of Iowa’s denial of a tax credit for taxes paid in Illinois was unsuccessful, and the taxpayer paid Iowa income tax on all income previously taxed in Illinois during those tax years including the tax years ended 12/31/09 and 12/31/10. Tr. p. 21; Taxpayer’s Ex. 2, 3.

5. The taxpayer filed amended Illinois income tax returns for 2009, 2010, 2011, 2012 and 2013. Tr. p. 19. Taxpayer's refund claims for the tax years 2011, 2012 and 2013 were granted and the taxpayer was refunded tax erroneously paid to Illinois for each of these years. *Id.*
6. On February 24, 2015, the taxpayer filed an Illinois 2009 Form IL-1040-X, Amended Individual Income Tax Return. Taxpayer's Ex. 4. Attached to this form was a 2009 Schedule NR Nonresident and Part-Year Resident Computation of Income Tax showing an overpayment of Illinois income taxes for that year in the amount of \$XXXX. *Id.*
7. On February 24, 2015, the taxpayer filed an Illinois 2010 Form IL-1040-X, Amended Individual Income Tax Return showing an overpayment of Illinois income tax for that year in the amount of \$1,076. *Id.*
8. The reason given by the taxpayer for filing amended Illinois income tax returns for 2009 and 2010 was explained by the taxpayer as follows:

Employer is withholding the incorrect state taxes. State of residence has been Iowa since 2009. Iowa claims all wages are taxable to Iowa, not to Illinois. This was discovered during Iowa state audit of the years 2009, 2010, 2011, 2012 and 2013. Audit results from the state of Iowa are included.

For [years 2009, 2010] Form IL 1040 lines 12, 13, 15, 16 and 24 contain incorrect amounts and should have been "\$0.00". Enclosed is Form IL-1040-X with correct amounts ... [.]

For year [2009, 2010], Form IL Schedule NR no wages or other income should have been considered Illinois income, lines 5, 19, 20, 21, 38, 41, 46 contain incorrect amounts and should have been "\$0.00". Lines 47-51 should have been skipped and Line 52 amount should be \$0.0. ...

There was no tax liability to the state of Illinois for the [years 2009 and 2010] and full refund of amount withheld ...plus the amount overpaid...should be refunded.

Id.

9. On March 17, 2015, the Department issued Notices of Claim Denial for Form IL-1040-X, Amended Individual Income Tax Return for the tax years ended 12/31/09 and 12/31/10 stating,

on each refund claim denial that the Department had received the taxpayer's "Form IL-1040-X on March 1, 2015, which is after the last date for filing a refund claim." Department's Ex. 1, 2.

Conclusions of Law:

John Doe ("taxpayer") contests the Department's denial of his refund claims for the tax years ended 12/31/09 and 12/31/10 filed by the taxpayer on February 24, 2015. Taxpayer's Ex. 4. The Department denied these refund claims because they were filed "after the last date for filing a refund claim." Department's Ex. 1, 2. More specifically, the Department determined that the taxpayer filed his Form IL-1040-X Amended Returns seeking refunds for these years more than three years after the extended due date of these returns, more than three years after the date each of the original returns for these years were filed, or more than one year after the date the tax due for each of these years was paid. Department Ex. 1, 2.

The Department's determination was based upon section 911(a) of the Illinois Income Tax Act ("IITA"). Section 911(a) of the IITA provides, in pertinent part:

Sec. 911. Limitations on Claim for Refund.

(a) In general. Except as otherwise provided by 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 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)

Section 911(e) of the IITA provides that, "a tax return filed before the last day prescribed by law for the filing of such return (including extensions thereof) shall be deemed to have been filed on such last day." 35 ILCS 5/911(e); 86 Ill. Admin. Code, ch. I, section 100.9410(e). The parties do not dispute that the taxpayer timely filed its original returns for 2009 and 2010. Thus, I must deem

that the taxpayer's original Illinois returns for 2009 and 2010 were filed on the last date on which they could be filed timely, that is, October 15, 2010 in the case of the taxpayer's return for 2009, and October 17, 2011 in the case of the taxpayer's return for 2010. 35 ILCS 5/911(e); 86 Ill. Admin. Code, ch. I, section 100.5000(b). Under the plain text of IITA section 911(a), the last date for the taxpayer to timely have filed an amended return to claim a refund regarding 2009 would have been October 15, 2013, and the last date for the taxpayer to timely have filed an amended return for 2010 would have been October 17, 2014. *Id.* Here, however, the taxpayer filed his amended returns at issue for 2009 and 2010 on February 24, 2015. Taxpayer's Ex. 4.

The aforementioned evidence and law supports the Department's determination that the taxpayer filed its amended returns for 2009 and 2010 after the last date allowed for filing a claim for refund. Department Ex. 1, 2; Taxpayer's Ex. 4; 35 ILCS 911(a); Dow Chemical Co. v. Department of Revenue, 224 Ill. App.3d 263, 268-69 (1st Dist. 1991). Under the plain text of the applicable statute, the Department lacks the authority to issue the taxpayer any refunds for 2009 and 2010. 35 ILCS 5/911(a)(2); Dow Chemical Co., *supra* at 268-69.

The taxpayer argues that the statute of limitations should not prevent the State from returning money that was obviously paid to the State in error. Tr. pp. 26, 27. The taxpayer is correct in concluding that Illinois income tax for the tax years ended 12/31/09 and 12/31/10 was paid to the state of Illinois in error. The record indicates that the taxpayer is an Iowa resident. The instructions to Form IL-1040 for these tax years state the following:

[A]n Iowa, Kentucky, Michigan, or Wisconsin resident ...
If you received wages, salaries, tips, and commissions from Illinois employers, you are not required to pay Illinois Income Tax on this income. This is based on reciprocal agreements between Illinois and these states.
2009, 2010 Form IL-1040 Instructions – Individual Income Tax Return

In denying the taxpayer any credit for taxes paid Illinois for the tax years ended 12/31/09 and 12/31/10, the Iowa Department of Revenue indicated as follows:

The Iowa Department of Revenue (Department) has reviewed your protest, the facts and evidence presented, and the laws which apply to your protest. This letter states the Department's position in this matter.

The primary issue in this protest is whether Iowa should allow the out-of-state credits for taxes paid to Illinois in 2009 and 2010 because those two years were out-of-statute and are not eligible for a refund from Illinois. Under Iowa Code §§422.8(1) and (2) and the reciprocal agreement, you are not entitled to an out-of-state credit for the taxes paid to Illinois. Your income should not have been taxed by Illinois and you cannot receive a credit in Iowa for tax you did not owe Illinois and were not required to pay. The tax owed to Iowa cannot be reduced and Iowa should not be held accountable for errors committed by others. The Department correctly disallowed the out-of-state credits for income erroneously withheld by an Illinois employer.

Taxpayer's Ex. 5 (Letter from Iowa Department of Revenue dated October 16, 2015)

Because the taxpayer did in fact pay taxes to Illinois in error, the Iowa Department of Revenue properly concluded that the taxpayer was not entitled to a credit for taxes paid Illinois against his Iowa income tax liability for the tax years ended 12/31/09 and 12/31/10, and the taxpayer paid this tax liability to Iowa. Tr. p. 21. As a consequence of the taxpayer's erroneous payment of taxes to Illinois for the tax years ended 12/31/09 and 12/31/10, and the taxpayer's payment of taxes to Iowa, the state to which taxes for these years was properly due and owing, the taxpayer has paid tax to both Illinois and Iowa on the same income for the tax years 2009 and 2010.

As previously noted, the taxpayer argues that the statute of limitations should not prevent the State from returning payments made to the State that are obviously in error. Tr. pp. 26, 27. The taxpayer further contends that the Department should have been aware of the taxpayer's mistake because the taxpayer's original returns showed that the taxpayer was not a resident of Illinois, and that he resided in Iowa. Tr. pp. 17, 18. The taxpayer states that, because the State of Illinois did not determine that taxes were being paid to Illinois erroneously, and the State of Iowa did not

apprise him of this error until October 30, 2014, it was impossible for the taxpayer to timely file refund claims before the statute of limitations for filing such claims expired. Tr. pp. 17-22.

With respect to the taxpayer's contention that the Department erred in failing to alert the taxpayer that his returns were not being properly filed, the taxpayer's argument assumes that the Department was obligated to find that the taxpayer erred in filing his returns and paying taxes. However, with the exception of formal notifications of tax liability (e.g. notices of deficiency), nowhere in the Illinois IITA is the Department tasked with the duty to notify individual taxpayers of any errors on their returns or pertaining to their income tax compliance. Accordingly, the Department's alleged failure to detect the taxpayer's erroneous tax payments provides no basis for relief in this case.

As indicated above, the taxpayer paid \$XXXX of income tax to Illinois that was not owed to the State. In essence, the taxpayer's argument is that it is unfair to apply the statute of limitations to prevent refunds that, but for the statute of limitations, the taxpayer would be entitled to.

Although the correct calculation of tax due Illinois is reflected on the taxpayer's amended returns showing refunds due to the taxpayer, as noted above, section 911 requires claims for refund 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. The record in the instant case clearly shows that the taxpayer's claims were not filed within the appropriate time period.

While I strongly sympathize with the taxpayer, unfortunately Illinois law does not provide any exceptions to the requirement that a refund claim be timely filed in order for a refund to be granted and paid. In Dow Chemical Co., *supra*, the court considered the taxpayer's claim for refund under the IITA 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 taxpayer had to take an affirmative step to preserve its right to a refund, and failed to do so by the deadline required under the IITA. The case is also similar to the instant case because, as here, in Dow Chemical, the taxpayer clearly paid Illinois tax in error. The court did not deem the disallowance of the taxpayer's recovery to be barred because the taxes the taxpayer sought to recover were in fact not due and owing.

The statute of limitations provision has been in effect since 1969, when the IITA was first enacted. (See Ill. Rev. Stat. 1969, ch. 120, section 9-911). The purpose of the limitation period is to ensure that parties exercise reasonable diligence in asserting their claims. Even though the taxpayer would otherwise be entitled to refunds if the claims were timely filed, the statute of limitations prohibits the Department from issuing a refund that has not been properly requested within the appropriate time period. As harsh as this result may be, the law does not afford for any different conclusion.

Ted Sherrod
Administrative Law Judge

Date: February 8, 2016