

ST 18-03
Tax Type: Sales Tax
Tax Issue: Statute of Limitations application

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JANE DOE

Taxpayer

Docket # XX-ST-XXX
Acct ID: XXXX-XXXX
Letter ID: XXXXXXXXXXXXXXXXXXXX

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

In 2008, JANE DOE (“taxpayer”) paid retailers' occupation taxes (“ROT”) related to the business ABC PLACE in ANYWHERE, Illinois. In 2016, the taxpayer filed a Claim for Refund that requested a refund of some of the ROT taxes that she overpaid in 2008. The Department of Revenue (“Department”) denied the claim on the basis that the statute of limitations barred the Department from refunding the money. The taxpayer timely protested the Department’s decision, and an evidentiary hearing was held. After

reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. In 2008, the taxpayer overpaid ROT in the amount of \$1,961.62 for her business known as ABC PLACE. (Recording¹)
2. In 2016, the taxpayer filed a form requesting a refund in the amount of \$1,961.62 for the taxes that were paid in 2008. (Dept. Ex. #1; Recording)
3. On August 17, 2016, the Department issued a Notice of Tentative Denial of Claim, which denied the taxpayer's request on the basis that the statute of limitations prohibited the Department from honoring the claim. A copy of the Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Section 6 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) provides in relevant part as follows:

Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment . . . If it is determined that the Department should issue a credit memorandum or refund, the Department may first apply the amount thereof against any tax or penalty or interest due or to become due under this Act . . ., from the person who made the erroneous payment. . . . If no tax or penalty or interest is due and no proceeding is pending to determine whether such person is indebted to the Department for tax or penalty or interest, the credit memorandum or refund shall be issued to the claimant; or (in the case of a credit memorandum) the credit memorandum may be assigned and set over by the lawful holder thereof, subject to

¹ The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

reasonable rules of the Department, to any other person who is subject to this Act, [and various other Acts administered by the Department] . . . , and the amount thereof applied by the Department against any tax or penalty or interest due or to become due under this Act or [various other Acts administered by the Department] . . . from such assignee. **However, as to any claim for credit or refund filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded,** except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of this Act, such claim may be filed at any time prior to the expiration of the period agreed upon. . . . (emphasis added; 35 ILCS 120/6).

Section 6b of the ROTA provides that the Department's Notice of Tentative Denial of Claim constitutes *prima facie* proof of the correctness of the Department's determination, as shown therein. 35 ILCS 120/6b. Once the Department has established its *prima facie* case by submitting a certified copy of the Notice of Tentative Denial of Claim into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1st Dist. 1987). To prove her case, a taxpayer must present more than testimony denying the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support her claim. *Id.*

The parties did not provide specific dates as to when the tax was initially paid and when the claim for the refund was filed, but both parties agreed that the tax was paid sometime in 2008 and the claim was filed sometime in 2016. Under section 6 of the ROTA, if the claim was filed in the beginning of 2016, the refund can only be granted if it concerns a tax that was erroneously paid on or after January 1, 2013. (See also 86 Ill.

Admin. Code §130.1501.) Because the taxpayer's claim requests a refund of taxes paid in 2008, the statute prohibits granting the claim.

The taxpayer said that in 2008 she worked with a Department employee in Marion, Illinois, Becky Robinson, who told the taxpayer that she should be getting a refund. The taxpayer said she never followed up on this information because she thought that Ms. Robinson could have made a mistake. In 2016, the taxpayer called the Marion office and asked for Ms. Robinson, who was no longer working there. The taxpayer spoke with John Day, who gave her the paperwork to file a claim. The taxpayer stated that she did not know that there was a statute of limitations. She thought that if she was entitled to a refund then the Department should send her the refund.

Unfortunately, even though the taxpayer was unaware of the time limitation for filing a claim, the statute does not allow an exception for the late filing of the taxpayer's claim. Although the taxpayer would otherwise be entitled to the refund, the statute prohibits the Department from issuing a refund that was not properly 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 denial of the claim be upheld.

Linda Olivero
Administrative Law Judge

Enter: June 12, 2017