

ST 18 – 06
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.

ABC, INC. f/k/a
XYZ, INC.

Taxpayer

Docket # [REDACTED]
Acct ID: XXXX-XXXX
Acct ID: XXXX-XXXX
Letter ID: XXXXXXXXXXXXX
Letter ID: XXXXXXXXXXXXX1
Letter ID: XXXXXXXXXXXXX2

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jane Doe, *pro se*, for ABC, Inc. f/k/a XYZ, Inc.

Synopsis:

On December 28, 2016, ABC, Inc. f/k/a XYZ Inc. (“taxpayer”) filed 4 Forms ST-6, Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum (“claims”), which requested refunds of overpayments of taxes that were due and paid between July 1, 2013 and December 31, 2013.¹ The Department of Revenue (“Department”) granted one of the claims (for Hotel Operators’ Occupation Tax) and issued three Notices of Tentative Denial of Claims for the remaining three

claims. The taxpayer timely protested the three Notices denying the claims. An evidentiary hearing was held during which the Department argued that the taxpayer's claims must be denied because they are barred by the statute of limitations. The taxpayer argued that the claims were timely filed. After reviewing the evidence submitted, it is recommended that the three claims be granted.

FINDINGS OF FACT:

1. On December 28, 2016, the taxpayer filed Form ST-6, Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum, for Sales & Use Tax concerning the following Forms ST-1:

<u>Return Period</u>	<u>Date Return Due</u>	<u>Amount of Claim</u>
8/31/13	9/20/13	\$x,xxx.xx
9/30/13	10/21/13	\$x,xxx.xx
10/31/13	11/20/13	\$xxx.xx
	Total	\$x,xxx.xx

(Taxpayer Ex. #1.4, 6.1-6.4)

On January 19, 2017, the Department issued a Notice of Tentative Denial of Claim for Sales Tax, Letter ID: XXXXXXXXXXXXX, which denied the taxpayer's request for the claim amount of \$ x,xxx.xx 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)

¹ At the time the taxes were paid, the taxpayer was known as Lincoln Land FS, Inc. On December 1, 2013, Lincoln Land FS, Inc. merged into Two Rivers FS, Inc., and on the same day, Two Rivers FS, Inc. changed its name to Prairieland FS, Inc. (Taxpayer Ex. #2.1-3.2)

2. On December 28, 2016, the taxpayer filed Form ST-6, Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum, for Prepaid Sales Tax concerning the following Forms PST-1:

<u>Return Period</u>	<u>Date Return Due</u>	<u>Amount of Claim</u>
6/30/13	7/22/13	\$ xx.xx
7/31/13	8/20/13	\$ x,xxx.xx
11/30/13	12/20/13	\$ <u>x,xxx.xx</u>
	Total	\$ x,xxx.xx

(Taxpayer Ex. #1.4, 5.1-5.5)

3. On January 19, 2017, the Department issued a Notice of Tentative Denial of Claim for Prepaid Sales Tax, Letter ID: XXXXXXXXXXXXX1, which denied the taxpayer's request for the claim amount of \$ x,xxx.xx 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)
4. On December 28, 2016, the taxpayer filed Form ST-6, Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum, for Tire User Fee, Form ST-8, for the return period of 9/30/13 for which the return was due on 10/21/13. The amount of the claim is \$xxx.xx. (Taxpayer Ex. #1.4, 4.1-4.4)
5. On January 19, 2017, the Department issued a Notice of Tentative Denial of Claim for Tire User Fee, Letter ID: XXXXXXXXXXXXX2, which denied the taxpayer's request for the claim amount of \$xxx.xx on the basis that the statute of

limitations prohibited the Department from honoring the claim.² (Taxpayer Ex. #1, p. 4.2, 4.3)

6. On December 28, 2016, the taxpayer filed Form ST-6, Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum, for Hotel Operators' Occupation Tax for the return period of 9/30/13 for which the return was due on 10/31/13. The amount of the claim was \$xx.xx. The Department granted this claim. (Taxpayer Ex. #7.2, 7.3)

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 reasonable rules of the Department, to any other person who is subject to this Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, and the amount thereof applied by the Department against any tax or penalty or interest due or to become due under this Act or under

² A copy of this Notice was not offered into evidence under the certificate of the Director of the Department because it was inadvertently initially omitted from the Department's case. The taxpayer provided a copy of the Notice, and the Department agreed that the taxpayer had timely protested the Notice. (Dept. Ex. #1, p. 2)

the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act, 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 6a of the ROTA states that claims for credit or refund shall be prepared and filed upon forms provided by the Department. 35 ILCS 120/6a. Section 6b 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.

The Tire User Fee is imposed pursuant to the Environmental Protection Act (see 415 ILCS 5/55.8), which incorporates by reference sections 6, 6a, and 6b of the ROTA. See 415 ICLS 5/55.11. The Hotel Operators' Occupation Tax Act also incorporates by reference sections 6, 6a, and 6b of the ROTA. See 35 ILCS 145/7. Therefore, the time periods for filing claims for these taxes and fees are the same.

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 its 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 its claim. *Id.*

It is undisputed that the taxpayer filed all of its Forms ST-6, Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum, on December 28, 2016. Under section 6 of the ROTA, when a claim is filed on December 28, 2016, it can be granted if it concerns tax erroneously paid on or after July 1, 2013. The Department has already granted the claim related to the Hotel Operators' Occupation Tax that was for a return due on 10/31/13. All of the remaining claims are for taxes that were erroneously paid on or after July 1, 2013. Because the taxpayer's claims request refunds of money paid in after July 1, 2013, the statute allows granting the claims.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's three claims for \$ x,xxx.xx, \$ x,xxx.xx, and \$xxx.xx be granted.

Linda Olivero
Administrative Law Judge

Enter: March 20, 2018