ILLINOIS INDEPENDENT

TAX TRIBUNAL

REDBOX AUTOMATED RETAIL LLC, Petitioner,	)	
v.	)	17TT45
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

ORDER ON PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND DEPARTMENT'S CROSS-MOTION FOR SUMMARY JUDGMENT

The Illinois Department of Revenue conducted a sales and use tax audit of Redbox Automated Retail LLC for tax periods beginning in January of 2007 and ending in June 2010. During the audit, the parties executed multiple statute of limitations waivers, that ultimately extended the statute of limitations date to June 30, 2013. The audit resulted in Redbox being assessed use tax in the amount of $233,307. Redbox agreed to pay the proposed tax liability on February 28, 2013 and that liability was satisfied by September 10, 2013. The basis for the audit adjustment and the assessment and collection of the resulting use tax are not particularly relevant to the issues presented in the pending summary judgment motions, but they help set certain timelines that are relevant to the arguments presented by both parties.

After the first audit was concluded, a second audit of Redbox was initiated by the Department in October 2013 that eventually covered successive tax periods beginning in July 2010 and ending in June 2014. During the second audit, Redbox raised the issue of whether certain use tax that Redbox had been continuously paying and which related to certain licensing agreement transactions, was

appropriate and required. In 2016, while the second audit was still being conducted, the Department agreed with Redbox that no use tax was required to be paid on those licensing agreement transactions and, in July 2016, the Department agreed to refund $4,802,844 to Redbox for use tax related to those licensing agreements paid during the tax periods being covered by the second audit.

On February 17, 2016, Redbox filed a Claim for Credit with the Department for $1,622,820 for use tax payments it made during the tax periods January 2007 through June 2010, which tax periods had been covered by the first audit. The claim was premised on the fact that Redbox paid use tax on licensing agreement transactions during those earlier tax periods just like it did during the later tax periods covered by the second audit and for which transactions Redbox successfully convinced the Department that it did not owe use tax.

The Department agreed, and still agrees, with Redbox that the licensing agreement transactions did not generate a use tax liability during the first audit period. However, the Department denied the entire Claim for Credit of $1,622,820. Instead, the Department allowed a limited claim in the amount of $233,307, which was equal to the amount of tax paid by Redbox based on the first audit and which was paid within three years of when the Claim for Credit at issue was made. The premise for the Department's denial of the entire claim is that it was made after the applicable statute of limitations period for making such a claim expired. The Department limited the entire claim to the amount of tax paid pursuant to the first audit as it deemed the statute of limitations period to be open, but limited to, the actual amount of tax paid in the three-year period preceding the filing of the claim.

In its Summary Judgment Motion, Redbox argues that applicable statute of limitations period for all tax periods covered under the first audit was extended and should be calculated from three years after the conclusion of the first audit. According to Redbox, because it filed the claim at issue within 3 years from the end of the audit, its claim was timely filed and should be paid in its entirety.

Redbox further argues that if the Department can assess taxes during an audit process but can ignore the correct tax that was actually due from the taxpayer, that process creates two separate taxpayer classifications which violates the uniformity clause of article IX of the Illinois Constitution.

The Department counters that the multiple statute of limitations waivers the parties executed during the first audit extended and set the final date for which a claim could be filed, that being June 30, 2013. Because Redbox's claim of February 17, 2016 was filed past the extended statute of limitations date, it was properly

denied by the Department save for the discrete amount of use tax paid by Redbox for the first audit tax periods within the proper claim period. The Department further argues that because the statute of limitations period for the Department to assess taxes and for the taxpayer to file a claim was the same, there is no uniformity issue.

1. Background

A. Statute of Limitations

Claims for use tax paid in error are governed by the Illinois Use Tax Act (UTA), 35 ILCS 105. The UTA sets out a three-year statute of limitations period for use tax claims to be filed:

> As to any claim for credit or refund filed with the Department on and after January 1 but on or before June 30 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or interest under this Act) more than 3 years prior to such January 1 shall be credited or refunded, and as to any such claim filed on and after July 1 but on or before December 31 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or interest under this Act) more than 3 years prior to such July 1 shall be credited or refunded. No claim shall be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment or order of court.

35 ILCS 105/21.

The UTA directs a claimant to follow the procedures for filing a claim that are found under the Illinois Retailers' Occupation Tax Act (ROTA). 35 ILCS 105/19 states, in part:

> Sec. 19. If it shall appear that an amount of tax or penalty or interest has been paid in error hereunder to the Department by a purchaser, as distinguished from the retailer, whether such amount be paid through a mistake of fact or an error of law, such purchaser may file a claim for credit or refund with the Department in accordance with Sections 6, 6a, 6b, 6c, and 6d of the Retailers'

> Occupation Tax Act. If it shall appear that an amount of tax or penalty or interest has been paid in error to the Department hereunder by a retailer who is required or authorized to collect and remit the use tax, whether such amount be paid through a mistake of fact or an error of law, such retailer may file a claim for credit or refund with the Department in accordance with Sections 6, 6a, 6b, 6c, and 6d of the Retailers' Occupation Tax Act,…

35 ILCS 105/19.

ROTA, in turn, also sets a general three-year statute of limitations for a claim to be filed and provides a mechanism to extend a statute of limitations period. 35 ILCS 120/6 provides, in part:

> 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.

35 ILCS 120/6.

B. Redbox and the Audits

Redbox rents out movies and video games through self-serve kiosks located throughout Illinois.

The Department initiated a sales and use tax audit of Redbox in December 2009 for the tax periods beginning January 2007 through June 2009. The audit was later expanded to include an additional year for review up to June 2010. Stipulation of Facts ("Stip.") ¶¶ 1-3. While the audit was being conducted, Redbox filed its sales tax returns reflecting use tax due as required to the Department. Throughout the course of the audit, the parties executed seven successive Statute of Limitations Waiver forms (Department Form IDR-191). Those forms, all properly executed by authorized representatives of both the taxpayer and the Department, contain the following language:

> I, the taxpayer, agree to waive the benefit of the statute of limitations and permit the Illinois Department of Revenue (IDOR) to issue a notice of tax liability on or before [a certain date],…As a result of this agreement, I understand the time I have to file a claim for credit will be extended until the date cited above….I understand I am waiving the benefit of the statute of limitations that would otherwise prevent the IDOR from issuing a notice of tax liability (including penalty and interest) after [the current statute of limitations date]…

The last statute of limitations waiver, executed in January 2013, extended the statute of limitations date to June 30, 2013 for all taxes, penalties and interest incurred from January 1, 2007 through June 30, 2010. Stip. Ex. B7.

The first audit finally concluded in February 2013 with Redbox agreeing to pay a proposed assessment of $233,307. Stip. Ex. C1. The adjustments made to the corrected overall tax liability of Redbox had to do with use tax due and owing on certain purchases of equipment and fixed assets not at issue in this case. The tax liability was paid by Redbox by an unrelated credit due Redbox being applied to that liability by the Department at Redbox's request in August 2013, and a payment of approximately $193,800 made by Redbox to the Department on September 10, 2013.

Over seven months later, in October 2013, the Department initiated another sales and use tax audit of Redbox. The tax periods for the second audit ran successively to the tax periods for the first audit, those being from July 2010 and ultimately concluding in June 2014. Stip. ¶ 11. Like the first audit period, multiple waivers of the applicable statute of limitations covering the second audit period were executed by the parties. Stip. ¶ 12.

During the second audit, Redbox raised, for the first time, the issue of whether use tax relating to certain licensing agreements that Redbox had been paying to the Department was required. Stip. ¶ 14. The licensing agreements issue had not been brought up or reviewed by either party during the first audit. The Department ultimately concluded that Redbox was correct and agreed that Redbox did not need to pay use tax based on those licensing agreement transactions. Because Redbox had been continuously paying use tax pertaining to those licensing agreements during the second audit period, it was entitled to a refund of those taxes. At the end of the second audit in July 2016, the Department gave Redbox a refund in the approximate amount of $4,5000,000 to account for the overpaid use tax. Stip. ¶¶ 16-19.

In February 2016, after Redbox raised the issue of the licensing agreements, but before the second audit was concluded, Redbox filed a form EDA-98 (Claim for Credit (audited periods only)) and requested a refund of use tax paid to Department in the amount of $1,622,820. The refund claim related to use tax payments made to the Department on the licensing agreement transactions during the first audit period. Stip. ¶ 20.

The February 2016 Claim for Credit of $1,622,820 was rejected for the entire amount by the Department, which, instead, agreed to the claim up to only $233,307, the amount of use tax paid by Redbox following the first audit and paid in August/September 2013. Stip. ¶ 28; Stip. Ex. F. The Department's contention as to why it did not have to pay the full amount is that the only amount of use tax paid in by Redbox in the three years preceding its February 2016 claim was the $233,307 and that the remainder of the claim was foreclosed by the statute of limitations date, extended by waivers during the first audit cycle, or June 30, 2013.

2. Analysis

Summary judgment is proper when "the pleadings, depositions and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Performance Marketing Assoc., Inc. v. Hamer*, 2013 IL 11496, ¶12 (2013) (quoting 735 ILCS 5/2-1005(c) (2010)). In the present case, Redbox filed a Motion for Summary Judgment, the Department filed a Motion for Summary Judgment and Response to Petitioner's Motion for Summary Judgment, and Redbox filed a Reply to Department's Response to Motion for Summary Judgment and a Response to the Department's Motion for Summary Judgment ("Pet'r Reply Br."). When both parties file motions for summary judgment, they agree that no material facts are in dispute and invite a decision as a matter of law. *Irwin Indus. Tool Co. v. Ill. Dep't. of Revenue*, 238 Ill. 2d 332, 340 (2010).

At this juncture, the findings contained in the tentative denial of the claim issued by the Department are considered to *prima facie* correct and are *prima facie* evidence that the denial of the claim is correct. 35 ILCS 505/21; 35 ILCS 120/6b. *See Copilevitz v. Dep't of Revenue*, 41 Ill. 2d. 154, 156-157 (1968).

A. Statute of Limitations

Under Illinois law, it is well settled that there is a three-year statute of limitations from the time a use tax is paid for use tax refund claims to be filed with the Department. 35 ILCS 105/19 and 35 ILCS 105/21. Illinois courts have acknowledged that time restriction found in those applicable statutes. In *American Airlines, Inc. v. Dep't of Revenue*, 402 Ill. App. 3d 579 (1st Dist. 2009), the Appellate Court stated:

> Under the UTA all refund claims must be filed by the taxpayer within the three-year statute of limitations set forth in section 21 of the UTA, which states in pertinent part: "As to any claim for credit or refund filed with the Department on and after January 1 but on or before June 30 of any given year, no amount of tax * * * erroneously paid * * * more than 3 years prior to such January 1 shall be credited or refunded, and as to any such claim filed on and after July 1 but on or before December 31 of any given year, no amount of tax * * * erroneously paid * * * more than 3 years prior to such July 1 shall be credited or refunded." 35 ILCS 105/21 (West 2006).
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> As we discussed above, the plain language of sections 19 and 21 of the UTA (35 ILCS 105/19, 21 (West 2006)) as well as the plain language of sections 4, 6, and 6a of the ROTA (35 ILCS 120/4, 6, 6a (West 2006)), makes clear that: (1) a tax refund can only be obtained by filing a refund claim within the prescribed period of time; (2) that such a claim is comprised of the exact amount of the refund sought; and (3) that any extension of that time to amend or otherwise would require a written waiver tolling the statute of limitations so as to permit amending the amount sought.
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> *Id.* at 591, 602.

The only authorized way to extend a statute of limitations date is for the taxpayer and Department to extend the date by written agreement. "Section 6 of the ROTA prohibits the refund of any amount sought by a taxpayer outside of the statute of limitations absent an agreement between the parties to extend the limitations period… Section 4 of ROTA provides that such an agreement extend the limitations period must be made in writing…" *Id.* at 596-597.

In the present case, the parties extended the statute of limitations period that related to tax periods January of 2007 and ending in June 2010 (the first audit period) through multiple waivers. The final properly-executed written waiver of the statute of limitations fixed the final date for the statute of limitations period to be June 30, 2013. Redbox had until that date to file a refund claim for use taxes paid during the first audit period pursuant to that waiver.

Redbox did not file its refund claim with the Department for use taxes paid throughout the first audit period until February 2016, two and a half years after the expiration of the waiver-extended statute of limitations date of June 30, 2013.

To support its argument that its February 17, 2016 refund claim should be recognized and paid by the Department, Redbox argues that the operative statute of limitations date for use taxes paid during the first audit period should be extended to three years past February 28, 2013, the date the first audit was concluded by an authorized representative of Redbox agreeing to and signing a Form EDA-105-R ROT Audit Report.

Redbox said it best in its Memorandum of Law in Support of Motion for Summary Judgment: "There are, to the best of Redbox's knowledge, no Illinois cases exactly on point with the issues raised in this case." *Id*. at 9. That's because Redbox's argument runs contrary to Illinois' statutes and case law.[1] [2] For Redbox's argument that an audit automatically extends a statute of limitations date to be accepted, one would have to ignore the explicit language of both the ROTA and the UTA statutes (that's why it is called a statute of limitations -its codified in a statute(s)). One would also have to refuse to recognize the body of Illinois case law that acknowledges strict statute of limitations periods which can only be extended by agreement by the parties. *See*, *e.g.*, *American Airlines, Inc.*, 402 Ill. App. 3d at 579; *Dow Chemical v. Dep't of Revenue*, 224 Ill. App. 3d 263, 268-269 (1st Dist. 1991) ("[s]uch a decision is not supported by Illinois case law which holds that no

[1] Redbox does cite to a non-precedential and non-binding state of Washington case-*NorPac Enterprises, Inc. v. Department of Licensing*, 129 Wash. App. 556 (2005), which dealt with Washington's Special Fuels Tax Act which is obviously not implicated in the present case and does not need to be addressed.

[2] The Department cites to cases that discuss that tax payments voluntarily made cannot be recovered absent a statutory procedure. Dep't Mot. for Summ. J. at 4-5. Redbox is correct that the procedural methodology used by Redbox to actually file its claim is not at issue, so those cases are irrelevant. Pet'r Reply Br. at 1. However, Redbox, in turn, cites to 35 ILCS 105/22 which provides a procedural mechanism to withhold credits or refunds if a taxpayer has other sales tax liabilities including if proceedings are pending to determine if any use tax is due under the Use Tax Act. Pet'r Reply Br. at 3. Naturally, that process is only available if the statute of limitations period hasn't expired, a prerequisite that Redbox ignores.

exceptions which toll a statute of limitations or enlarge its scope will be implied.") (citing cases).

Despite acknowledging there is no Illinois case law to support its position, Redbox belatedly cites to *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178 (1990) in its reply brief. Pet'r Reply Br. at 4-6. *Kraft* is a franchise tax case that did not involve the operative use tax statute of limitations that applies in this case.

In 1980, Kraft entered into a merger agreement with Dart Industries, and consequently was required to file an "Application for Certificate of Authority of Foreign Corporation" with the Illinois Secretary of State. On that form, Kraft mistakenly supplied erroneous figures regarding its valuation of property and business activity within and outside Illinois. *Id*. at 181-182. The merger, and a subsequent unrelated issuance of stock shares in the same year, resulted in huge increases in Kraft's capital and paid-in surplus. *Id*. Those increases were reportable to the Illinois Secretary of State 60 days after they occurred, but none were reported until 1985. Because the 1980 erroneous figures were used for certain allocation factor formulas by the Secretary of State in determining how much franchise tax was due based on the 1985 report, the overall franchise tax assessment was erroneously calculated to be $1,331,119.84 when it should have been only $166.66. *Id*. at 185.

Kraft filed a petition for review and refund with the Illinois Secretary of State pursuant to section 1.17 of the Business Corporation Act of 1983 as well as filing a "statement of correction" pursuant to section 1.15 of the 1983 Act. *Id*. The Secretary of State denied Kraft's petition on statute of limitation grounds and refused to accept Kraft's statement of correction. Following that agency decision being reversed by the circuit court, and then the circuit court decision being reversed by the appellate court, the Illinois Supreme Court took up the case and ultimately found for Kraft. *Id*. at 185-186.

The Supreme Court first reviewed Section 1.15 of the 1983 Business Corporation Act that was in effect in 1985, since amended, and determined that section 1.15 did afford Kraft the opportunity to file a statement of correction and quoted the operative language of Section 1.15:

> "Whenever any instrument authorized to be filed with the Secretary of State under any provision of this Act has been so filed and * * * contains any misstatement of fact, typographical error, error of transcription or any other error or defect or was defectively

> or erroneously executed, such instrument may be corrected by filing * * * a statement of correction."

Id. at 188.

The Supreme Court next looked to the statute of limitations provision found in section 1.17 of the 1983 Act in conjunction with the overall Act to determine whether that section's three-year limitation on adjustment of assessments ran from the initial and erroneous 1980 filing or the correct 1985 filing. *Id*. at 188. The Supreme Court stated:

> The limitations provision of section 1.17(a)(2) of the 1983 Act commenced running when the taxes or fees "should have been paid." (Ill.Rev.Stat.1985, ch. 32, par. 1.17(a)(2).) The Act provides that additional franchise taxes are payable "*at the time of filing*" a report of increase in capital or paid-in surplus. (Emphasis added.) (*190 Ill.Rev.Stat.1985, ch. 32, par. 15.65(b).) The Act similarly provides that the Secretary shall "charge and collect" an additional license fee *at the time of filing* such a report by a foreign corporation. (Ill.Rev.Stat.1985, ch. 32, par. 15.50(b).) By its terms, section 1.17 provides corporate taxpayers an opportunity to challenge franchise taxes, license fees or penalties allegedly erroneously "assessed or paid." **The statute of limitations of section 1.17(a)(2), however, is tied directly to the time when payment is actually due rather than when the report on which an assessment is made should have been filed**. Additional franchise taxes, by the language of the statute, are due at the time of filing the report of increase. Additional license fees are due at the time an assessment is made at the time of filing of the report. The legislature has provided for the eventuality of late filings by a corporation in section 16.05. That section provides for the imposition of penalties on corporations for failure to file a report within the prescribed period. (Ill.Rev.Stat.1985, ch. 32, par. 16.05.)

Id. at 189. (emphasis added.)

By analyzing the various sections of the 1983 Business Corporation Act, the Supreme Court held that because the statute of limitations on the franchise tax in question is calculated from the time a tax payment is actually due as opposed to from when a report of the issuance of additional stock shares or an increase in capital or paid-in surplus is due but not filed, Kraft was entitled to file for a refund: "We therefore find that the plaintiff was not barred from filing its petition for review and for refund by the three-year statute of limitation period of section

1.17(a)(2), because the limitation period did not begin to run until the filing of the report of the 1980 increase on August 15, 1985." *Id*. at 190.

Redbox argues that based on *Kraft*, "[t]he court should interpret the Use Tax Act to allow the Petitioner a three-year limitation period to file a claim for refund from the time the Department actually assessed a payment due at the end of the first audit." Pet'r Reply Br. at 8. *Kraft* is simply inapplicable as it does not address the relevant and explicit statute of limitations provisions for taxes under the UTA and the ROTA.

"The fundamental rule of statutory interpretation is to determine and give effect to the intent of the legislature, and the statutory language is the best indicator of the legislature's intent." *Quality Saw & Seal, Inc. v. Ill. Commerce Comm'n,* 374 Ill. App. 3d 776, 781 (2nd Dist. 2007). "The best indication of legislative intent is the statutory language, given its plain and ordinary meaning." *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101,106 (2005). "Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction." *Id*.

Redbox ignores the explicit language of the statute of limitations that govern use tax claims for refunds which provides:

> As to any claim for credit or refund filed with the Department on and after January 1 but on or before June 30 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or interest under this Act) more than 3 years prior to such January 1 shall be credited or refunded, and as to any such claim filed on and after July 1 but on or before December 31 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or interest under this Act) more than 3 years prior to such July 1 shall be credited or refunded.

35 ILCS 105/19.

The Use Tax Act's statute of limitations is clear and unambiguous. There is no need to resort external guidance to determine the legislative intent behind the statute to properly interpret the statute.

Moreover, Redbox erroneously concludes that because the 1983 Business Corporation Act, which was analyzed in *Kraft,* states that additional corporate franchise taxes are due and payable at the time of filing a report of increase in capital or paid-in surplus that the unrelated use tax statute of limitations period is

triggered either initially or anew simply by an audit report, even though the use tax statute of limitations period runs from the payment of tax without any reference to any report, much less an audit report.[3]

Tax audits, in and of themselves, have absolutely no bearing on the calculation of the appropriate statute of limitations period to file for refund claims and do not trigger new limitations periods. That obvious proposition was acknowledged as much by the Illinois Appellate Court in *American Airlines*: "What American refuses to acknowledge, however, is that all of these things occurred after the statute of limitations for timely filing refund claims expired...Thus, regardless of the errors or confusion that occurred within the Department during its audit, American's second refund claim had become time barred prior to the audit itself." *American Airlines, Inc.*, 402 Ill. App. 3d at 608.

Redbox's core argument also ignores the fact that it voluntarily chose to extend and, more importantly, conclude the operative statute of limitations date, June 30, 2013, by entering into the seven successive written statute of limitation waivers. It gives no weight to its own conduct although 35 ILCS 120/6 explicitly states that that the parties may enter into a written agreement to extend a statute of limitations period to an exact date and that claims must be filed before the expiration of the extended time period. Statute of limitations waivers are common, that is why taxpayers and the Department routinely enter into such waiver agreements on the form template provided by the Department (Department Form IDR-191). This is true in many audit situations where the timing of the resolution of issues may become protracted, the parties recognize that the statute of limitations may expire before that, and the parties wish to extend the statute of limitations period to keep their options open as to potential courses of action that are only viable before a statute of limitations period expires. That is exactly what Redbox and the Department did in this case resulting in the statute of limitations period expiring on June 30, 2013.

[3] Redbox also claims that an audit report constitutes a tax return under 34 ILCS 120/4. Pet'r Reply at 4. It does not. Section 120/4 states that if the Department determines that a tax return contains a mathematical or other error, the Department may correct the error itself and notify the taxpayer of the change. "Instead of requiring the person filing such return to file an amended return, the Department may simply notify him of the correction or corrections it has made." *Id.* Other than cases of mathematical errors, the Department's notice to the taxpayer is considered a notice of tax liability. *Id.*

Redbox's novel theory that any audit examination of a taxpayer extends a statute of limitations date, just because an audit took place, and for three years after the conclusion of the audit, no less, is rejected.

B.

The Illinois Constitution's Uniformity Clause

Redbox argues that the Department's audit procedures violates the Illinois Constitution which states, in part: "In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly." Ill. Const. art. IX, § 2.

Redbox contends that "the Department has created two classes of audited taxpayers who may have similar claims for refund at the same time: (I) those taxpayers who discover, on their own, that they voluntarily and erroneously overpaid use taxes and yet cannot benefit from a claim for refund or credit; and (2) those taxpayers who the Department decided by audit owed additional tax and who paid that tax determined by audit, and who then can benefit from a claim." Pet'r Mem. in Supp. of Mot. for Summ. J. at 11.

The Department does no such thing. All taxpayers can file a claim for refund prior to the expiration of an applicable statute of limitations period. All taxpayers cannot file a claim for refund if the statute of limitations period has expired. Regardless of whether a taxpayer is under audit or not, it is incumbent upon a taxpayer to be mindful of applicable statute of limitations periods to protect its interests.[4] Audit proceedings, in and of themselves, have no bearing on any statute of limitations period for taxes paid prior to or during the audit.

In this case, no one, including Redbox or anyone at the Department, foresaw the licensing agreement transactions issue until well after the statute of limitations period lapsed, thereby barring any refund attempt. Had Redbox determined it was entitled to a refund prior to the expiration of the statute of limitations period, it was Redbox's right to file a claim within that period and the Department would have recognized and granted the claim.

[4] This isn't a case where a party was aware of a tax issue but nevertheless let an impending statute of limitations period expire. This is a case where an unlucky party did not realize a beneficial tax issue until the limitations period expired.

As the Department points out, a statute of limitations period is not a one-way street that only binds taxpayers. Dep't Mot. for Summ. J. at 8-9. The Department is time-barred after an applicable statute of limitation period expires from issuing a notice of tax liability and collecting a tax.

Both parties obtain reciprocal benefits within a statute of limitations period or within a properly extended statute of limitations period as the Department can issue a notice of tax liability and the taxpayer can file a claim. *American Airlines, Inc. v. Dep't of Revenue*, 402 Ill. App. 3d at 599. Both parties also suffer reciprocal adverse consequences if an applicable statute of limitations period expires prior to a taxpayer filing a claim or the Department issuing a notice of liability. Had the shoe been on the other foot in this case, and the Department determined after the statute of limitations expired that Redbox owed an additional $4 million dollars in use taxes, it would be prevented from collecting that amount.

Finally, even if this court were to accept Redbox's argument, it would be without authority to declare any statute or regulation[5] unconstitutional under the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 *et seq*.). Section 45(f) of the Tax Tribunal Act allows the Tax Tribunal to decide questions of constitutionality for statutes and rules adopted by the Department as applied to an individual taxpayer, but the Tax Tribunal cannot declare a statute or rule unconstitutional.

3. Conclusion

It is very unfortunate that Redbox determined it overpaid its use taxes during the first audit period years after the applicable statute of limitations period, a three-year period extended further by valid waivers, expired. Redbox is left in the unenviable position that it cannot obtain a refund.

For the reasons stated above, the Petitioner's Motion for Summary Judgment is DENIED, and the Department's Motion for Summary Judgment is GRANTED.

This is a final order subject to appeal under section 3-113 of the

[5] Redbox did not set out any specific statute or regulation that it finds to be unconstitutional in its argument that the Department's audit procedures are unconstitutional. Pet'r Mem. in Supp. of Mot. for Summ. J. at 11-12.

Administrative Review Law, and service by email is service under section 3-113(a). See 35 ILCS 1010/1-90; 86 Ill. Adm. Code 5000.330. The Tribunal is a necessary party to any appeal.

_/s/ *James Conway*_____
JAMES M. CONWAY
Chief Administrative
Law Judge

Date: September 18, 2018