

IT 09-6

Tax Type: Income Tax

Issue: Statute of Limitations Application

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

JOHN & JANE DOE,)	Docket No.	08-IT-0000
)	Tax ID No.	000-00-0000
v.)	Tax Year:	2003
THE DEPARTMENT OF REVENUE)	John E. White,	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared, pro se, for Taxpayers; Jessica Arong O'Brien, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves an amended return/claim for refund that John and Jane S. Doe (Taxpayers) filed with the Illinois Department of Revenue (Department) to claim a refund for tax paid to Illinois regarding tax year ending December 31, 2003. The Department denied Taxpayers' amended return, based on the statute of limitations. The only issue is whether Taxpayers are entitled to the refund sought.

The hearing was held at the Department's offices in Chicago. John Doe appeared and testified at hearing, and he also offered into evidence documents regarding tax paid to New

Jersey. I am including in this recommendation findings of fact and conclusions of law. I recommend that the denial be finalized as issued.

Findings of Fact:

1. Taxpayers filed an Illinois Individual Income Tax Return for tax year ending December 31, 2003, as Illinois residents. *See* Department Ex. 1 (copy of Department's Denial, dated August 29, 2008).
2. In October 2007, Taxpayers received a letter from the New Jersey Department of the Treasury, Division of Taxation (NJ Tax Div.), notifying them that it received information that Taxpayers had sold property in New Jersey during 2003, but that it had not received from Taxpayers a Non-Resident New Jersey Gross Income tax return for that tax year. Taxpayers' Ex. 1, p. 2 (copy of NJ Tax Div. letter to Taxpayers, dated October 19, 2007).
3. Taxpayers subsequently paid tax to New Jersey regarding the income they realized from selling property situated in that state in 2003. Taxpayers' Ex. 1, p. 4 (copy of letter from NJ Tax Div. to Taxpayers, dated December 24, 2008).
4. Taxpayers had previously paid Illinois income tax on the income they realized from the sale of the New Jersey property in 2003, at or about the time they filed their 2003 Illinois income tax return. Hearing Transcript (Tr.), p. 13 (testimony of John Doe (Doe)); *see also* Taxpayers' Ex. 1, p. 3 (copy of letter from Taxpayers to NJ Tax Div., dated October 25, 2007).
5. Taxpayers filed a form IL-1040-X, Amended Individual Income Tax Return, for tax year ending December 31, 2003, which return bore a date of March 24, 2008. Department Ex. 1. That amended return was filed on March 28, 2008. Tr. p. 9 (testimony of Department employee James Barborka (Barborka)).

6. In their amended 2003 Illinois return, Taxpayer sought to claim a refund of Illinois income tax paid regarding the income derived from their sale of the New Jersey property for which they also owed New Jersey gross income tax. Tr. pp. 12-14 (Doe).
7. On August 29, 2008, the Department denied the refund sought in Taxpayers' amended return, because that return was filed "after the last date for filing a refund claim." Department Ex. 1.

Conclusions of Law:

Here, the Department denied Taxpayers' refund claim because it was filed beyond the three year statute of limitations period prescribed by § 911(a) of the Illinois Income Tax Act (IITA). Department Ex. 1; 35 ILCS 5/911(a). That section provides, in pertinent part:

§ 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.

35 ILCS 5/911(a).

Ordinarily, to see if a taxpayer's amended return has been timely filed, as per § 911(a)(1), one would first determine when the taxpayer filed his original Illinois return. On this point, the Department offered the testimony of Department employee James Barborka, who testified that Taxpayers original Illinois return for 2003 was filed on April 15, 2004. Tr. pp. 9-10 (Barborka). Notwithstanding that Taxpayers' 2003 Illinois return was filed on April 15, 2004, an applicable Department regulation provides that, "The Department will grant an automatic extension of 6 months (7 months for corporations) to file any Illinois income tax return except Form IL-941. No application form need be filed by a taxpayer to obtain this extension." 86 Ill. Admin. Code §

100.5020(b). Section 911(e) of the IITA further provides that, “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.” 35 **ILCS** 5/911(e); 86 Ill. Admin. Code § 100.9410(e). Thus, while Taxpayers’ original return was filed “before the last day prescribed by law for the filing of such return (including any extensions thereof)”, by operation of law, I must deem that Taxpayers’ original Illinois return was filed on the last date on which it could be filed timely, which was on October 15, 2004. 35 **ILCS** 5/911(e); 86 Ill. Admin. Code § 100.5020(b). Under the plain text of IITA § 911(a)(1) then, the last date for Taxpayers timely to have filed an amended return to claim a refund regarding 2003 would have been October 15, 2007. 35 **ILCS** 5/911(a)(1), (e); *see also* Tr. p. 9 (Barborka). Here, however, Taxpayers filed their amended return on March 28, 2008. Tr. pp. 9-10 (Barborka); *see also* Department Ex. 1.

At hearing, Taxpayers bore the burden to show that the Department’s determination — that Taxpayers filed their amended return beyond the statute of limitations prescribed by IITA § 911(a) — was incorrect. Balla, 96 Ill. App. 3d at 296, 421 N.E.2d at 238. But since the evidence establishes that Taxpayers did not file their amended return within the statutory period, Taxpayers have not rebutted the correctness of the Department’s denial. Section 911(a)(2) provides that: “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.” Under the plain text of this applicable section, therefore, there is no statutory authority to issue Taxpayers any refund for 2003.

Conclusion:

I recommend that the Director finalize the Department's prior denial.

June 17, 2009
Date

John E. White, Administrative Law Judge