

IT 13-02

Tax Type: Income Tax

Tax Issue: Statute of Limitations Application

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

THE DEPARTMENT OF REVENUE)	Docket No.	XXXXXX
OF THE STATE OF ILLINOIS)	Account ID	XXXXXX
v.)	Tax Years	XXXXXX
ABC BUSINESS,)	John E. White,	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Vasili Russis, Kelleher & Buckley, LLC, appeared for ABC Business; Rickey Walton, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis: This matter arose after ABC Business (ABC Business or Taxpayer) protested five Notices of Deficiency (NODs) the Illinois Department of Revenue (Department) issued to it regarding tax years ending (TYE) December 31, 2001 through December 31, 2004, and December 31, 2008. The NODs proposed to assess tax, and interest, and for some years, penalties, based on the Department's determination to disallow all or some of the Illinois net loss deduction (INLD) that ABC Business claimed on each of the Illinois returns it filed for those tax years.

At hearing, the only issue was whether the NODs issued for TYE 2001 through 2004 were barred by the Illinois Income Tax Act's (IITA) statute of limitations. After considering the evidence admitted at hearing, I am including in this recommendation findings of fact and conclusions of law. I recommend that the NODs be finalized as issued.

Findings of Fact:

1. ABC Business filed an Illinois Form IL-1120, Corporate Income and Replacement Tax Return (Illinois return) with the Department regarding each of its TYE December 31, 2001 through December 31, 2004 (hereafter, TYE [year]), and for TYE 2008. Department Exs. 3-7 (copies of, respectively, ABC Business's filed Illinois return for TYE 2001- 2004, and 2008, with attachments).¹
2. The copies of ABC Business's filed Illinois returns for TYE 2001-2004, which were admitted as Department Exs. 3-6, are not dated. Department Exs. 3-6, p. 1 (of each return). That is, those returns do not have a date entered on the appropriate lines in the section designated for a taxpayer's authorized officer, and the return preparer, to sign and date the return. Department Exs. 3-6, p. 1 (of each return).
3. The Department kept the actual returns that it received from ABC Business for TYE 2001-2004 and 2008. *See* Department Exs. 3-7.
4. In addition to keeping the actual returns it received from ABC Business for TYE 2001-2004 and 2008, the Department also made and kept computer records that contain information reflecting, among other things, the dates on which the Department received ABC Business's returns for such years. Department Ex. 8 (copies of printed page views from the Department's computer records reflecting ABC Business's filing history for TYE 2001-2004 and 2008); Tr. pp. 17-21 (testimony of Department employee Kevin Anguish (Anguish)).
5. Once the Department receives an Illinois return that is filed by a taxpayer, it stamps a

¹ Each Department exhibit was admitted under the Director's certificate of records. When referring to specific page numbers of a Department exhibit, this recommendation does not count the Director's certificate as page one.

unique bar-code and series of numbers on the first page of the return. *See* Department Exs. 3-7, p. 1 (of each return); Tr. pp. 31-32 (Anguish). The Department refers to the unique number it stamps on a filed return as a batch number. *Compare* Department Exs. 3-7, p. 1 (of each return) *and* Department Ex. 8 *with* Tr. pp. 31-32 (Anguish).

6. The first five digits of the batch number identify the date, under a Julian calendar, the Department receives the return. Tr. pp. 31-38 (Anguish); *compare also* Department Exs. 3-6, p. 1 (of each return) *with* Department Ex. 8, pp. 1-4 (page views of the Department's computer records of ABC Business's filing history for TYE 2001-2004). The first two digits of the batch number correspond to the last two digits of the year in which the return was received, and the next three digits roughly correspond to the day of the year in it was received. Tr. pp. 31-38 (Anguish); *see* Department Exs. 3-6, p. 1 (of each return); Department Ex. 8, pp. 1-4.
7. The series of numbers that the Department stamped on each of ABC Business's Illinois returns for TYE 2001-2004 begin with the following identical digits: XXXX Department Exs. 3-6, p. 1 (of each return); Department Ex. 8, pp. 1-4.
8. Taking into account the batch numbers stamped on ABC Business's filed Illinois returns for TYE 2001-2004, and the corrections identified within the Department's computer records of ABC Business's filing history for those years, the Department received ABC Business's Illinois returns for TYE 2001-2004 on or about January 24, 2008. Department Exs. 3-6, p. 1 (of each return); Department Ex. 8, pp. 1-4; Tr. pp. 31-38 (Anguish).
9. ABC Business's Illinois return for TYE 2008 is dated March 20, 2009 on the appropriate lines (Department Ex. 7, p. 3 (step 9)), and the Department received that

filed return in March 2009. Department Ex. 8, p. 5 (page view of the Department's computer records of ABC Business's filing history for TYE 2008).

10. The Department made, kept, and offered into evidence copies of its computer records regarding information reported on the Illinois returns ABC Business filed for TYE prior to the years at issue. Department Ex. 2 (copies of page views of the Department's computer records of information reported on ABC Business's Illinois returns for TYE 1995-1996); Department Ex. 11 (copies of page views of the Department's computer records of information reported on ABC Business's Illinois returns for TYE 1992-1993); Tr. pp. 12-24 (Anguish). Such computer records also contain information regarding, among other things, the dates on which the Department received such returns. Department Exs. 2, 11.
11. ABC Business reported a net loss on each of the Illinois returns it filed for TYE 1995 and 1996. Department Ex. 2, pp. 1-2; Tr. pp. 14-16 (Anguish); *see also* 35 ILCS 5/207 (1996); 86 Ill. Admin. Code § 100.2330(b) (1996). ABC Business reported a net loss of (\$9,849) for TYE 1995 (Department Ex. 2, p. 1; Tr. pp. 14-15 (Anguish)), and a net loss of (\$57,482) for TYE 1996. Department Ex. 2, p. 2; Tr. p. 16 (Anguish).
12. The net losses ABC Business reported on its Illinois returns for TYE 1995-1996 (*see* Department Ex. 2, pp. 1-2; Tr. pp. 14-16 (Anguish)) were required to be carried back to offset the amounts of Illinois base income reported on prior years returns. 35 ILCS 5/207 (1996); 86 Ill. Admin. Code § 100.2330(b) (1996).²

² Since 2005, § 100.2330(b) has been fully retained but re-sectioned as 86 Ill. Admin. Code § 100.2330(c) (2005). 29 Ill. Reg. 20516 (issue 51, December 16, 2005) (amendment effective December 2, 2005).

13. After reviewing ABC Business's filed Illinois returns for TYE 2001-2004 and 2008, the Department issued NODs to ABC Business regarding each of those tax years. Department Ex. 1 (copies of NODs, supporting statements and corrected Schedules NLD, for each tax year).
14. All of the NODs the Department issued to ABC Business are dated September 15, 2010. Department Ex. 1, pp. 2, 8, 14, 20, 26 (first page of each NOD).
15. The NOD for TYE 2001 notified ABC Business that the Department was proposing to assess Illinois income and replacement income tax against it, after determining that the INLD reported on ABC Business's Illinois return for TYE 2001 should be adjusted (that is, decreased from \$18,337 to \$0) to coincide with the Department's records. Department Ex. 1, pp. 2-3 (copy of NOD for TYE 2001 & supporting (explanatory) statement), 6 (copy of corrected Schedule NLD for TYE 2001). Based on that decrease, the Department determined that ABC Business's correct net income for TYE 2001 was \$17,337, and it proposed to assess tax in the amount of \$1,244. Department Ex. 1, p. 3. The Department further proposed to assess a late-filing or non-filing penalty in the amount of \$24.88, plus interest. *Id.*
16. The NOD for TYE 2002 notified ABC Business that the Department was proposing to assess Illinois income and replacement income tax against it, after determining that the INLD reported on ABC Business's Illinois return for TYE 2002 should be adjusted (decreased from \$3,408 to \$0) to coincide with the Department's records. Department Ex. 1, pp. 8-9 (copy of NOD for TYE 2002 & supporting statement), 12 (copy of corrected Schedule NLD for TYE 2002). Based on that decrease, the Department determined that ABC Business's correct net income for TYE 2002 was

\$2,408, and it proposed to assess tax in the amount of \$173. Department Ex. 1, p. 9. The Department further proposed to assess a late-filing or non-filing penalty in the amount of \$3.46, plus interest. *Id.*

17. The NOD for TYE 2003 notified ABC Business that the Department was proposing to assess Illinois income and replacement income tax against it, after determining that the INLD reported on ABC Business's Illinois return for TYE 2003 should be adjusted (decreased from \$11,182 to \$0) to coincide with the Department's records. Department Ex. 1, pp. 14-15 (copy of NOD for TYE 2003 & supporting statement), 18 (copy of corrected Schedule NLD for TYE 2003). Based on that decrease, the Department determined that ABC Business's correct net income for TYE 2003 was \$11,182, and it proposed to assess tax in the amount of \$817. Department Ex. 1, p. 15. The Department further proposed to assess a late-filing or non-filing penalty in the amount of \$16.34, plus interest. *Id.*
18. The NOD for TYE 2004 notified ABC Business that the Department was proposing to assess Illinois income and replacement income tax against it, after determining that the INLD reported on ABC Business's Illinois return for TYE 2004 should be adjusted (decreased from \$28,226 to \$0) to coincide with the Department's records. Department Ex. 1, pp. 20-21 (copy of NOD for TYE 2004 & supporting statement), 24 (copy of corrected Schedule NLD for TYE 2004). Based on that decrease, the Department determined that ABC Business's correct net income for TYE 2004 was \$36,608. Department Ex. 1, p. 15. After taking into account the tax ABC Business previously paid for TYE 2004, the Department proposed to assess additional tax in the amount of \$2,060. *Id.* It also proposed to assess a late-filing or non-filing penalty

in the amount of \$41.20, plus interest. *Id.*

19. The NOD for TYE 2008 notified ABC Business that the Department was proposing to assess Illinois income and replacement income tax against it, after determining that the INLD reported on ABC Business's Illinois return for TYE 2008 should be adjusted (decreased from \$33,682 to \$28,637) to coincide with the Department's records. Department Ex. 1, pp. 26-27 (copy of NOD for TYE 2008 & supporting statement), 30 (copy of corrected Schedule NLD for TYE 2008). Based on that decrease, the Department determined that ABC Business's correct net income for TYE 2008 was \$5,045, and it proposed to assess tax in the amount of \$368, plus interest. Department Ex. 1, p. 27.

Conclusions of Law:

The Department offered the NODs into evidence under the Director's certificate of records. Department Ex. 1. Under § 904 of the IITA, those NODs are "prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due." 35 ILCS 5/904(a)-(b); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97, 421 N.E.2d 236, 238-39 (1st Dist. 1981). The Department's prima facie case is a rebuttable presumption. Branson v. Department of Revenue, 168 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995). A taxpayer bears the burden to rebut the presumptive correctness of the Department's determinations. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002). The presumption of correctness that attaches to the Department's prima facie case extends to all elements of taxability. See Branson, 168 Ill. 2d at 258, 659 N.E.2d at 966-67 (Department's

introduction of Notice of Penalty Liability establishes prima facie proof that taxpayer acted with the required mental state); Soho Club, Inc. v. Department of Revenue, 269 Ill. App. 3d 220, 232, 645 N.E.2d 1060, 1068 (1st Dist. 1995) (Department's introduction of Notice of Tax Liability establishes prima facie proof that taxpayer is engaged in the occupation that is subject to taxation).

Issue and Arguments

ABC Business made no arguments regarding the Department's substantive determinations that ABC Business's net losses for TYE 1995-1995 had to be carried back to prior years. *See* Tr. pp. 5 (opening statement), 63-67 (closing argument). Rather, all of ABC Business's arguments concern the timeliness of the NODs the Department issued regarding TYE 2001-2004. *Id.* ABC Business concedes that the NOD for 2008 was timely, but contends that the NODs issued for TYE 2001-2004 were barred by the IITA's statute of limitations. *Id.* The Department asserts that the NODs were timely, because they were issued within three years from the date ABC Business filed its Illinois returns for those years. Tr. pp. 4 (opening statement), 60 (closing argument).

Section 905(a) of the IITA provides:

Sec. 905. Limitations on Notices of Deficiency.

(a) In general. Except as otherwise provided in this Act:

(1) A notice of deficiency shall be issued not later than 3 years after the date the return was filed, and

(2) No deficiency shall be assessed or collected with respect to the year for which the return was filed unless such notice is issued within such period.

35 ILCS 5/905(a). Under the plain text of § 905(a), the time period within which the Department must file an NOD does not begin until the date the return has been filed.

A statute of limitations is an affirmative defense. Hood v. Commonwealth Trust & Savings Bank, 376 Ill. 413, 420, 34 N.E.2d 414, 419 (1941). A party who claims the

benefit of a statute of limitations has the burden of proving that the action is barred by the limitations period set by statute. *Id.*; 25 Ill. Law and Prac. *Limitations of Actions* § 136 (2012). Most statute of limitations challenges involve a process of measuring (that is, counting) the number of days from one critical event to another. The period set by § 905(a)(1) requires one to count the number of days between the date on which a taxpayer files a required return for a certain tax year, and the date on which the Department issues an NOD for that year. 35 ILCS 5/905(a)(1). For counting purposes, the date on which a taxpayer files a return constitutes zero — or the starting point from which the count would begin. Here, to meet its burden to show that the NODs issued for TYE 2001-2004 were issued beyond the statute of limitations, ABC Business had to offer credible, documentary evidence of the dates on which it filed each of its Illinois returns for those years. 35 ILCS 5/905(a)(1). As ABC Business’s counsel acknowledged at hearing, “the issue come down to when were these returns filed.” Tr. pp. 63-64.

Moreover, when considering whether a required return has been filed, the text of the IITA, and related regulations, reflect that a return is “filed” once it is actually received by the Department at the place prescribed by regulation for such returns. 35 ILCS 5/502(a); 35 ILCS 5/505(a); 35 ILCS 5/905(h); 86 Ill. Admin. Code § 100.5010; *see also* 86 Ill. Admin. Code § 760.240. Each of ABC Business’s return forms identify the address of the place where the return must be mailed. Department Exs. 3-7, p. 1 (of each return). In short, a return that is not received by the Department has not been filed. *See* 86 Ill. Admin. Code § 760.240.

Notwithstanding the plain text of § 905(a)(1), at hearing, ABC Business did not attempt to identify the dates on which it filed each of its Illinois returns for TYE 2001-

2004. Rather than offering any such credible, documentary evidence, ABC Business offered the conclusory testimony of its president, Jack Black, who said that he timely filed ABC Business's Illinois returns for those years. Tr. pp. 43, 45, 47, 50 (Jack Black). In essence, ABC Business's argument is that, based strictly on Jack Black's testimony, I should make findings of fact that each of ABC Business's Illinois return was filed prior to the last due date set by law for each such tax year, and without bothering to determine the date on which each such return might have been filed. ABC Business's position, thereby, implies that I need not address what the statute requires — an identification of the dates on which its Illinois returns were actually received by the Department. 35 ILCS 5/905(a)(1).

In addition to ignoring the plain text of § 905(a)(1), ABC Business also fails to appreciate black letter Illinois law holding that mere testimony is insufficient to rebut the Department's prima facie case. PPG Industries, Inc., 328 Ill. App. 3d at 33, 765 N.E.2d at 48 (“the Department claims that the testimony of [two witnesses] is insufficient to overcome its *prima facie* case that the reversionary sales were properly computed based on the formula. We agree.”); Balla, 96 Ill. App. 3d at 297, 421 N.E.2d at 239 (uncontroverted testimony that divorced mother was the sole source of her children's support, but which testimony was not corroborated with documentary evidence, was insufficient to support claim for exemptions for those children).

Here, each of the NODs issued for TYE 2001-2004 proposed to assess a late filing penalty. Department Ex. 1, pp. 2-3, 8-9, 14-15, 20-21. That means that the Department's prima facie case is based, at least in part, on its determination that ABC Business did not timely file its Illinois returns for those years. *Id.*; 35 ILCS 5/1001; 35

ILCS 735/3-3(a-10). As a matter of Illinois law, a taxpayer may not rebut the Department's prima facie case with mere testimony that the Department's determinations were wrong. PPG Industries, Inc., 328 Ill. App. 3d at 33, 765 N.E.2d at 48; Balla, 96 Ill. App. 3d at 297, 421 N.E.2d at 239. Yet that is precisely what ABC Business attempts to do here. Tr. p. 55 (Jack Black).

Moreover, Jack Black's testimony was not corroborated by, or closely identified with, any regularly kept documentary evidence. Specifically, during cross-examination, counsel asked Jack Black the following questions, to which he gave the following answers:

Q: And when you say timely filed, what do you mean by that?

A: Within the taxpayer's obligation period or extension period.

Q: And as we sit here today, do you have any documentary evidence to indicate that ABC Business ... filed its IL-1120s for tax years 2001 through 2004 within the allotted statutory time period?

A: I would have nothing here today.

Tr. p. 55 (Jack Black). Thus, ABC Business's president and owner concedes that ABC Business has no documentary evidence that might corroborate his conclusory testimony that ABC Business timely filed its returns for TYE 2001-2004.

If the record contained only Jack Black's conclusory testimony that the Department's determinations were wrong, it might have been possible to treat that testimony as having been offered in good faith, but simply insufficient to rebut the Department's prima facie case. *E.g.*, Balla, 96 Ill. App. 3d at 297, 421 N.E.2d at 239. But this record also contains documentary evidence of the date on which the Department actually received each of ABC Business's Illinois returns for TYE 2001-2004. That evidence includes accurate copies of ABC Business's Illinois returns for TYE 2001-2004 (Department Exs. 3-6, p. 1 (of each return)), as well as copies of the Department's

computer records. Department Ex. 8, pp. 1-4. It also includes a copy of the envelopes in which two of ABC Business's Illinois returns for TYE 2001 and 2002 were mailed to the Department. Department Ex. 3, p. 9; Department Ex. 4, p. 10.

The Department's computer records identify the date on which each of ABC Business's Illinois returns for TYE 2001-2004 was actually received by the Department. Department Ex. 8, pp. 1-4. The batch number that the Department entered on its computer records of ABC Business's filing history for each such tax year is the same as the batch number that the Department stamped on each separate Illinois return that the Department received from ABC Business for TYE 2001-2004. *Compare* Department Exs. 3-6, p. 1 (of each return) *with* Department Ex. 8, pp. 1-4. Taking into account the corrections identified within the Department's computer records, and the batch numbers the Department stamped on ABC Business's Illinois returns, those items of documentary evidence show that the Department received ABC Business's Illinois returns for TYE 2001-2004 on or about January 24, 2008. Department Exs. 3-6, p. 1 (of each return); Department Ex. 8, pp. 1-4; *see also* Tr. pp. 31-38 (Anguish).

Finally, the copy of the envelope attached as part of Department Exhibit 3 shows a partial postmark date of January 18, but does not show the year. Department Ex. 3, p. 9. This appears to have been caused by the envelope not being completely placed on the copier, as opposed to the postmark date being marred or otherwise made illegible. *See id.* The copy of the envelope attached as part of Department Exhibit 4, however, was completely copied, and shows that that envelope bore a postmark date of January 18, 2008. Department Ex. 4, p. 10. When viewing these two exhibits together, it is certainly possible to infer that ABC Business's Illinois returns for TYE 2001 and 2002 were both

mailed to the Department on the same date in January 2008. *Id.*; Department Ex. 3, p. 9. That same inference would also readily explain why the Department's computer records show that ABC Business's Illinois returns for TYE 2001-2002 (as well as those for TYE 2003-2004) were received by the Department on the same date in January 2008. Department Ex. 8, pp. 1-4. But even if I ignore any inferences that might reasonably be drawn from the similar postmark date stamped on the two different envelopes in which ABC Business mailed its Illinois returns for TYE 2001 and 2002, Department Exhibit 4 clearly establishes that ABC Business's Illinois return for TYE 2002 was placed in the mail on January 18, 2008. Department Ex. 4, p. 10.

Since the record contains documentary evidence showing the date when each of ABC Business's Illinois for TYE 2001-2004 was received by the Department, it is possible to test the correctness of Jack Black's testimony that he timely filed each of ABC Business's Illinois returns for TYE 2001-2004.

Section 505 of the IITA provides, in pertinent part:

§ 505. Time and Place for Filing Returns. (a) In general. Returns required by this Act shall be filed at such place as the Department may by regulations prescribe.

(1) Corporations. Except as provided in paragraph (3), corporate returns shall be filed on or before the 15th day of the third month following the close of the taxable year, unless, subject to the provisions of Section 602, the Director grants an extension or extensions of time (not to exceed 6 months in the aggregate) for such filing, or unless the income or loss of a taxpayer is reported for federal purposes on a return with a due date later than the 15th day of the third month following the close of the taxable year, in which case the same due date shall apply to the corresponding Illinois return.

(3) Certain Exempt Organizations. Organizations which are exempt from the Federal income tax by reason of Section 501(a) of the Internal Revenue Code [FN1] who determine base income for a taxable year under subsection (a) of Section 205 (other than an

employees' trust described in Section 401(a) of the Internal Revenue Code), [FN2] shall file returns required by this Act on or before the 15th day of the 5th month following the close of the taxable year, unless, subject to the provisions of Section 602, the Director grants an extension or extensions of time (not to exceed 6 months in the aggregate) for such filing.

(b) Extension of time for filing federal return. When the taxpayer has been granted an extension or extensions of time within which to file his federal income tax return for any taxable year, the filing of a copy of such extension or extensions with the Department shall automatically extend the due date of the return with respect to the tax imposed by this Act for an equivalent period (plus an additional month beyond the federal extension in the case of corporations) if the requirements of Section 602 are met.

35 ILCS 5/505(a)-(b).

ABC Business has never asserted, or produced evidence, that it sought or was granted an extension to file its federal income tax returns for TYE 2001-2004. *See* 35 ILCS 5/505(b). Nor has it ever asserted, or produced evidence, that it is exempt from federal income tax. *See* 35 ILCS 5/505(a)(3). Thus, I presume that the exceptions covered by § 505(a)(3) or (b) do not apply to ABC Business. Without an automatic extension, ABC Business's Illinois return for TYE 2001 was due on March 15, 2002. 35 ILCS 5/505(a)(1). But even if ABC Business were entitled to an extension for filing its federal and Illinois tax returns, and taking into account weekends (*see* 5 ILCS 70/1.11), its Illinois return for TYE 2001 would have been due on September 16, 2002 (since September 15, 2002 was a Sunday). 35 ILCS 5/505(a)-(b). Under similar circumstances, ABC Business's Illinois return for TYE 2002 would have been due on either March 17 (March 15, 2003 was a Saturday) or September 15, 2003; its return for TYE 2003 would have been due on either March 15 or September 15, 2004; and its return for TYE 2004 would have been due on either March 15 or September 15, 2005. 35 ILCS 5/505(a)-(b); 5 ILCS 70/1.11.

The credible, documentary evidence admitted at hearing shows that the Department did not receive ABC Business's Illinois returns for TYE 2001-2004 until January 24, 2008, which was after even the extended due dates for corporate Illinois returns for those tax years. Department Exs. 3-6; 35 ILCS 5/505(a)-(b). Finally, the NODs the Department issued for TYE 2001-2004 were issued on September 15, 2010 (Department Exs. 3-6, p. 1 (of each return)), which was within three years from the date ABC Business's Illinois returns for TYE 2001-2004 were filed. Department Ex. 8, pp. 1-4; 35 ILCS 5/905(a)(1).

After considering all of the documentary evidence in this record, I do not consider Jack Black's conclusory testimony, that he timely filed each of ABC Business's Illinois returns for TYE 2001-2004 (Tr. pp. 43, 45, 47, 50 (Jack Black)), as having been offered in good faith. First, it is beyond belief that anyone could deposit four separate envelopes into the mail, each one approximately one year after the other, and that all four envelopes would thereafter be received by the addressee on the same date. Department Exs. 3-6, p. 1 (of each return); Department Ex. 8, pp. 1-4. Second, since the postmark date stamped on the envelope in which Jack Black said he mailed ABC Business's 2002 Illinois return (Tr. pp. 44-45, 53-55 (Jack Black)) is January 18, 2008 (Department Ex. 4, p. 10), I do not believe that even Jack Black believed that he had mailed that envelope, with the enclosed return, almost five years earlier. Department Ex. 4, p. 10. Given this record, I consider Jack Black's testimony to have been wholly incredible, and unworthy of belief.

Conclusion:

Based on the evidence, I conclude that ABC Business has not met its burden to show that the NODs issued for TYE 2001-2004 were barred by IITA § 905(a)(1)'s statute

of limitations. I recommend, therefore, that the Director finalize the NODs as issued, and that the tax proposed be assessed, with penalties and interest to accrue pursuant to statute.

March 20, 2013

John E. White
Administrative Law Judge

