

IT 14-11
Tax Type: Income Tax
Tax Issue: Claim Issues – Properly and Timely Filed

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

ABC BUSINESS INC.,
Taxpayer

No. XXXX
Letter ID XXXX
Period 12/08

Ted Sherrod
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Daniel Edelstein on behalf of the Illinois Department of Revenue; Jane Doe on behalf of ABC Business Inc., *pro se*.

Synopsis:

This matter arose from a protest filed by ABC Business Inc. (the “taxpayer”) on February 4, 2013 in response to the Department’s Notice of Claim Status for Illinois Income Tax Withholding issued December 4, 2012 denying the taxpayer’s refund claim for overpaid withholding taxes for the period December, 2008. The issue presented is whether the taxpayer’s refund claim for overpayment of withholding tax is barred by the statute of limitations applicable to such claims.

An evidentiary hearing was held on October 10, 2014 regarding this matter during which the Department submitted documentary evidence and the taxpayer failed to present any evidence whatsoever. After reviewing the transcript of the hearing and documents presented at hearing, I

recommend that the Department's Notice of Claim Status for Illinois Income Tax Withholding denying the taxpayer's refund claim for the period December 2008 be made final.

Findings of Fact:

1. The taxpayer is a corporation doing business in Illinois and is required to file and files Illinois withholding tax returns, pursuant to 35 ILCS 5/701. Department Exhibit ("Ex.") 1.
2. The taxpayer filed a Form IL-941-X, Amended Illinois Quarterly Withholding Tax Return seeking a refund of overpaid withholding tax for the reporting period 12/08 which the Department denied on December 4, 2012. *Id.* In its refund claim denial, the Department states the following: "We cannot grant this claim because it was filed late[.] You must file Form IL-941-X within three years after the 15th day of the 4th month following the close of the calendar year in which the tax was withheld, or one year after the date the tax was paid, whichever is later." *Id.*
3. The taxpayer timely filed a protest and request for hearing contesting the Department's refund claim denial.¹

Conclusions of Law:

The issue presented in this case is whether the taxpayer's refund claim seeking a refund of overpaid withholding tax for the period December 2008 is barred by the statute of limitations applicable to withholding tax refund claims. Section 911(a) of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/911(a) requires that a claim for a refund of withholding tax be filed no later

¹ I take judicial notice of the Taxpayer's "EAR-14 Format for Filing a Protest of Income Tax" objecting to the Department's refund claim denial which was timely filed on February 4, 2013.

than three years after the 15th day of the fourth month following the close of the calendar year in which the withholding was made, or one year after the date the tax was paid, whichever is later.

Specifically, this measure provides, in relevant part, as follows:

(a) 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 (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), or one year after the date the tax was paid, whichever is later...[.]

35 ILCS 5/911(a)(1)

When a taxpayer seeks to take advantage of deductions, credits or other tax benefits allowed by statute, the burden of proof is on the taxpayer. Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1st Dist. 1981). Section 909 of the IITA, 35 ILCS 5/909, authorizes the payment of refunds to a taxpayer that has overpaid its Illinois income tax liabilities. 35 ILCS 5/909. Here, the taxpayer claims a refund of tax previous paid over to the Department. Department Ex. 1. Therefore, the taxpayer has the burden of proof. Balla, supra at 296.

Moreover, section 904(a) of the IITA provides that the admission into evidence of the Department's Notice of Claim Denial for Illinois Income Tax Withholding issued in this case, denying the refund the taxpayer claimed on its Amended Quarterly Withholding Tax Return for December 2008 establishes the Department's *prima facie* case and is *prima facie* correct. 35 ILCS 5/904(a). Once the Department's *prima facie* case is established, the burden of proof is shifted to the taxpayer to overcome the Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

A taxpayer's mere assertion that Department erred in computing the taxpayer's tax liability is not sufficient to rebut the statutory presumption of correctness that attaches to the

Department's *prima facie* correct determination. Central Furniture Mart, v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987); Quincy Trading Post v. Department of Revenue, 12 Ill. App. 3rd 725 (4th Dist. 1973). To rebut the Department's determination, the taxpayer must produce accounting books and records of business activities that demonstrate the amount of tax the taxpayer claims to be properly due. PPG Industries v. Department of Revenue, 328 Ill. App. 3rd 16, 33-35 (1st Dist. 2002).

At the hearing in this case, the Department established its *prima facie* case by introducing its refund claim denial (Notice of Claim Status), based upon its review of the taxpayer's amended withholding tax return, into evidence. 35 ILCS 5/904(a). The burden then shifted to the taxpayer to overcome the Department's *prima facie* case. Anderson v. Department of Finance, 370 Ill. 225 (1938); Masini v. Department of Revenue, 60 Ill. App. 3d 11, 15 (1st Dist. 1978).

In the instant case, the taxpayer's representative appeared at the hearing but did not offer any oral testimony or documentary evidence on behalf of the taxpayer. Accordingly, the taxpayer failed to produce any competent evidence identified with its books and records to overcome the Department's *prima facie* case and the Department's *prima facie* correct determination denying the taxpayer's refund claim must, therefore, be finalized and affirmed.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notice of Claim Status issued December 4, 2012 denying the taxpayer's refund claim for overpayment of withholding tax be finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: November 6, 2014