

**ST 08-1**  
**Tax Type: Sales Tax**  
**Issue: Statute of Limitations Application**

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

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**THE DEPARTMENT OF REVENUE**  
**OF THE STATE OF ILLINOIS**

v.

**ABC, INC.**

**Taxpayer**

**Docket # 07-ST-0000**  
**IBT # 0000-0000**  
**Claim for Credit or Refund**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jane Doe, *pro se*, for ABC, Inc.

Synopsis:

In March 2007, ABC, Inc. (“taxpayer”) filed an ST-6, Claim for Prior Overpayment/Request for Action on a Credit Memorandum, which requested a refund of taxes that it overpaid in April 2001. The Department of Revenue (“Department”) denied the claim on the basis that the statute of limitations barred the Department from refunding the money. The taxpayer timely protested the Department’s decision, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. In January 2001, the taxpayer filed an ST-1, Sales and Use Tax Return, for the sales it made during the year 2000 showing a total liability of \$51.15. The taxpayer, however, inadvertently put the amount of its deductions on the line for taxable receipts, which resulted in the Department determining that the tax liability should be increased. (Dept. Ex. #2; Taxpayer Ex. #1; Tr. pp. 9-10)
2. On April 12, 2001, the Department sent the taxpayer a Ten-Day Demand for the additional tax, interest, and penalty in the amount of \$365. The taxpayer paid this amount on April 17, 2001. (Taxpayer Ex. #1; Tr. p. 8)
3. When the taxpayer's error was subsequently noticed, the Department credited the taxpayer's account in August 2001 for \$365. (Dept. Ex. #3; Tr. p. 11)
4. The \$365 credit was applied to the taxpayer's sales tax liabilities for the subsequent years as follows:

<u>Year</u>	<u>Amount</u>
2001	\$21
2002	2
2003	5
2004	29
2005	8
2006	7 (Dept. Ex. #3; Tr. pp. 11-12)

5. In 2006, the taxpayer closed its business.<sup>1</sup> After the last return was filed, the amounts that had been applied towards the credit totaled \$72, and the credit had been reduced to \$293. (Dept. Ex. #3)

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<sup>1</sup> The taxpayer's representative testified that the business closed in December 2005 (Tr. p. 12), but the Department's records indicate that it received a payment in January 2007 for the 2006 tax liability. (Dept. Ex. #3)

6. On March 21, 2007, the taxpayer filed Form ST-6, Claim for Prior Overpayment/Request for Action on a Credit Memorandum, which requested a refund of \$293. (Dept. Ex. #1)
7. On April 19, 2007, the Department issued Form MTC-29, Notice of Tentative Denial of Claim for Sales Tax, which denied the taxpayer's request 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)

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 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. 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.*

The taxpayer filed its Form ST-6, Claim for Prior Overpayment/Request for Action on a Credit Memorandum, on March 21, 2007. Under section 6 of the ROTA, when a claim is filed on March 21, 2007, it can only be granted if it concerns tax erroneously paid on or after January 1, 2004. Because the taxpayer's claim requests a refund of money paid in April 2001, the statute prohibits granting the claim.

The taxpayer's representative contends that when she realized there was an overpayment, she called the Department and was told that in order to get the money back, either the credit had to be applied to future tax liabilities or the business had to be closed. (Tr. p. 7) She maintains that she called every few months to ask how to get the money back and was told the same thing. (Tr. p. 16) She said she was never told that there was a time limit for asking for a refund.

Unfortunately, because oral advice cannot be substantiated, the Department cannot be held accountable for actions taken by a taxpayer in reliance on oral advice. In order to receive a refund, the taxpayer must file a claim for refund on the form provided by the Department within the time period for filing claims. See W. L. Miller Company v. Zehnder, 315 Ill. App. 3d 799, 806 (4<sup>th</sup> Dist. 2000). Although the taxpayer was unaware of the time limitation for filing a claim, the statute does not allow an exception under these circumstances. Even though the taxpayer would otherwise be entitled to the refund, the statute prohibits the Department from issuing a refund that was not properly requested within the appropriate time period. As harsh as this result may be, the law does not allow for a different conclusion.

Recommendation:

For the foregoing reasons, it is recommended that the Department's denial of the claim be upheld.

Linda Olivero  
Administrative Law Judge

Enter: January 7, 2008