

ST 04-19
Tax Type: Sales Tax
Issue: Statute of Limitations Application

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 04-ST-0000
v.)	IBT # 0000-0000
)	
ABC LAWN CARE, INC.)	Claim for Credit or Refund
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for ABC Lawn Care, Inc.

Synopsis:

On July 15, 2000, ABC Lawn Care, Inc. (“taxpayer”) overpaid its sales tax liability by \$818.02. In October 2003, the Department of Revenue (“Department”) sent the taxpayer a notice indicating that the taxpayer overpaid its liability by \$818.02. On March 9, 2004, the taxpayer filed a Form ST-6, “Claim for Prior Overpayment/Request for Action on Credit Memorandum” that requested a refund of the overpayment. On April 8, 2004, the Department issued a “Notice of Tentative Denial of Claim for Sales Tax” that denied the taxpayer’s request 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. On July 15, 2000, the taxpayer overpaid its sales tax liability by \$818.02. (Dept. Ex. #1)

2. On October 5, 2003, the Department sent the taxpayer a notice indicating that it had an overpayment in the amount of \$818.02. The Department sent similar notices to the taxpayer on December 7, 2003, January 3, 2004, February 1, 2004, February 29, 2004, and March 28, 2004. (Dept. Ex. #1; Taxpayer Ex. #1)

3. On March 9, 2004, the taxpayer filed Form ST-6, "Claim for Prior Overpayment/Request for Action on Credit Memorandum" that requested a refund of the overpayment. (Dept. Ex. #1; Tr. pp. 6-7)

4. On April 8, 2004, the Department issued MTC-29, "Notice of Tentative Denial of Claim for Sales Tax" that 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 * * * [A]s 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, * * *.” 35 ILCS 120/6.

Section 6b of the ROTA 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 its 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's claim for refund was filed on March 9, 2004. Under section 6 of the ROTA, when a claim is filed on March 9, 2004, it can only be granted if it concerns tax erroneously paid on or after January 1, 2001. The taxpayer's claim for a refund of money paid prior to January 1, 2001 must be denied because the statute prohibits granting the claim.

During the hearing, the taxpayer's representative, Mr. Doe, testified that on October 28, 2003, he called the Department and spoke with an employee concerning the overpayment. Mr. Doe stated that he told the employee that the taxpayer was closing its business, and she said that he should wait until the taxpayer's account was closed at the end of the year before filing a claim, and everything would be taken care of at that time. (Tr. p. 8). The taxpayer also referred to this conversation in its protest letter. (Dept. Ex.

#1). If the taxpayer had filed its claim at the time of that conversation or prior to January 1, 2004, the claim would have been granted pursuant to section 6 of the ROTA. Nevertheless, because the claim was filed after that time period, it must be denied pursuant to the statute. Although the Department may be accountable for erroneous written information or advice that it provides to a taxpayer,¹ the advice that the taxpayer allegedly received from the Department was oral. Because oral advice cannot be substantiated, the Department cannot be held accountable for actions taken by a taxpayer in reliance on oral advice.

The taxpayer argued during the hearing that the Department should have never sent out a notice in October 2003 because the statute of limitations had already expired at that time. (Tr. p. 10) The taxpayer contends that on October 28, 2003 the Department's employee should have told the taxpayer about the statute of limitations. The taxpayer asserts that until the claim was denied, no one mentioned the statute of limitations. The taxpayer argues that if it was not supposed to get the money because of the three-year limitation period, then the Department should not have sent the notices.

As previously mentioned, the statute of limitations had not expired at the time that the first notice was sent. Even when the second notice was sent, there was still sufficient time to file the claim. Taxpayers are presumed to know the law, and the Department is not responsible for telling a taxpayer when to file a claim. In addition, the only exception to the statute of limitations under the ROTA is when the parties have agreed to extend the time for issuing a notice of tax liability. See 35 ILCS 120/6. In Dow Chemical Co. v. Department of Revenue, 224 Ill.App.3d 263 (1st Dist. 1991), the court considered the

¹ Under the Taxpayer Bill of Rights, the Department has a duty "[t]o abate taxes and penalties assessed based upon erroneous written information or advice given by the Department." 20 ILCS 2520/4(c).

taxpayer's claim for refund under the Income Tax Act and determined that it was barred by the three-year statute of limitations. The court stated that the plain meaning of the statute is that the taxpayer has an affirmative duty to file for a tax refund within the appropriate time period. Dow Chemical at 267. In the present case, the taxpayer had to take an affirmative step to preserve its right to a refund, and it failed to do so by the deadline required under the ROTA. 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 seem, the law does not allow for a different conclusion.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's claim for refund be denied.

Linda Olivero
Administrative Law Judge

Enter: November 22, 2004