

ST 05-8

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**

v.

**ABC'S RESTAURANT AND CATERING, INC.
Taxpayer**

**Docket # 04-ST-0000
IBT #**

Claim for Credit

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

ABC's Restaurant and Catering, Inc. (hereinafter the "Taxpayer") filed a claim for overpayment of Retailers' Occupation Tax in the amount of \$4,826.29. On March 3, 2004, the Illinois Department of Revenue (hereinafter the "Department") denied the claim because the statute of limitations prohibited it. Taxpayer timely protested the denial and requested a hearing. The hearing was held pursuant to the request. After a thorough review of the facts and law presented, it is my recommendation that the Department's denial be upheld. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The Department's *prima facie* case was established by admission into evidence of Department's Exhibit No. 1. (Tr. p. 6)

2. On January 1, 2004, the Department received a ST-6 Claim for Prior Overpayment/Request for Action on a Credit Memorandum from John Doe for ABC's Restaurant and Catering, Inc. in the amount of \$4,826.29. (Dept. Ex. No. 1)

3. On March 3, 2004, the Department issued an MTC-29 Notice of Tentative Denial of Claim for Sales Tax stating that the claim could not be honored because the statute of limitations prohibited it. A copy of the Notice was admitted into evidence under the certificate of the Director. (Dept. Ex. No. 1)

4. John Doe was advised that he could be represented by an attorney in the matter. (Tr. p. 7)

CONCLUSIONS OF LAW:

Section 6 of the Retailers' Occupation Tax Act (hereinafter the "ROTA") (35 ILCS 120/1 *et seq.*) provides in relevant part:

[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, 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. 35 ILCS 120/6.

Section 6(b) of the ROTA states:

As soon as practicable after a claim for credit or refund is filed, the Department shall examine the same and determine the amount of credit or refund to which the claimant or taxpayer's legal representative, * * * is entitled and shall, by its Notice of Tentative Determination of Claim, notify the claimant or his legal representative of such determination, which determination shall be prima facie correct. Proof of such determination by the Department, may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto, in the name of the Department under the certificate of the Director of Revenue. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or any legal proceeding and shall be prima facie proof of the correctness of the Department's determination, as shown therein. 35 ILCS 120/6(b).

Once the Department has established its *prima facie* case the burden shifts to the taxpayer to overcome the presumption of this 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 Department established the *prima facie* case by admitting into evidence the Notice of Tentative Denial of Claim. The Taxpayer offered no documentary evidence that the tentative denial was incorrect. Rather, Doe testified that five years ago he paid a lump sum of \$13,000 that he owed the Department. He felt he should have been informed that he had an overpayment. He was never notified that he had an overpayment. (Tr. pp. 7-8).

There is no duty in the statutes for the Department to notify a taxpayer that they have a refund due. Rather, a "taxpayer has an affirmative duty to file for a refund within a prescribed period of time. * * * [A]lthough there is no limitation on the Department's authority to make a refund or credit, there is a limit on the taxpayer's ability to file for one." Dow Chemical

Company v. Department of Revenue, 224 Ill.App.3d 263, 267 (1st Dist. 1991). Taxpayers are presumed to know the law and the Department is not responsible for telling a taxpayer when to file a claim.

In the present case, the Taxpayer had to take a timely affirmative step to preserve its right to a refund and it failed to do so by the deadline required by the ROTA. Even if the Taxpayer might otherwise be entitled to the refund, the statute prohibits the Department from issuing it because it 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. Dow Chemical Company v. Department of Revenue, *supra* at 269.

For the aforementioned reasons it is recommended that the Taxpayer's claim for refund be denied.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: April 8, 2005