

IT 09-16
Tax Type: Income Tax
Issue: Statute of Limitations Application

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN AND JANE DOE,
Taxpayer

No. 00-IT-0000
SSN 000-00-0000
Tax Year 2002

Ted Sherrod
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Rick Walton, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (“Department”); John Doe, *pro se*, on behalf of John and Jane Doe.

Synopsis:

This matter comes on to be heard pursuant to a timely protest filed by John and Jane Doe (“taxpayer”) contesting the Department’s LTR-423 Notice of Claim Denial-Previous Refund issued on May 26, 2008. The matter at issue concerns the Department’s denial of the taxpayer’s claim for refund for the tax year 2002 by reason of the taxpayer’s purported failure to file this claim within the statutory limitations period. A hearing in this matter was held on August 19, 2009 during which the Department and the taxpayer presented testimony and documentary evidence in support of their respective claims.

Following an examination of the testimony and documents presented in this case, this matter is concluded in favor of the Department. In support of this recommendation, I make the following findings of fact and conclusions of law.

Findings of Fact:

1. On November 7, 2005, the Internal Revenue Service notified the taxpayer of a federal change to the taxpayer's form 1040A federal income tax return for 2002 which decreased the taxpayer's federal income tax for that year. Taxpayer's Exhibit ("Ex.")
3. The taxpayer received a refund as a result of this federal change on November 15, 2005. Transcript of Hearing Proceedings ("Tr.") p. 21.
2. On August 31, 2007, the taxpayer filed a form IL-1040 Individual Income Tax Return ("IL-1040") for the 2002 tax year. Department Ex. 2. This return showed a tax overpayment of \$1,389.05 primarily as a result of tax withheld in 2002. *Id.*
3. The Department's records do not indicate any filing by or on behalf of the taxpayer of any request for extension of the due date for filing the taxpayer's 2002 IL-1040. Tr. pp. 7, 15.
4. On January 1, 2008, the taxpayer filed a form IL-1040-X Amended Individual Income Tax Return for the 2002 tax year seeking a refund of \$1,389.05 shown as an overpayment on its 2002 IL-1040 filed on August 31, 2007. Department Ex. 3.
5. In response to the taxpayer's IL-1040-X for the 2002 tax year requesting a refund for overpayment of tax, the Department sent to the taxpayer an LTR-423 Notice of Claim Denial-Previous Refund on May 26, 2006 (Department Ex. 1) notifying the taxpayer as follows:

We reduced the amount of the refund you requested, because the “previous refunds” line of your Form IL-1040-X did not reflect the amounts previously refunded to you. We are refunding only the amount that remains, if any, after subtracting previously issued refunds. Therefore, we have **denied** the remainder of your claim.

6. The explanation given for denying the taxpayer’s refund claim, noted above, was the only basis indicated in the Department’s LTR-423 Notice of Claim Denial – Previous Refund for denying the taxpayer’s refund claim. *Id.*

Conclusions of Law:

On August 31, 2007, the taxpayer filed an IL-1040 for 2002 showing a refund due on its overpayment of income tax for 2002 resulting from a credit for withheld taxes exceeding the amount of tax due for that year and other credits. Department Ex. 2 (Taxpayer’s 2002 IL-1040, Step 7). Subsequently, on January 1, 2008, the taxpayer filed an IL-1040-X, Amended Return for its 2002 tax year seeking a refund of the amount shown as an overpayment on its 2002 IL-1040. Department Ex. 3. The Department issued an LTR-423 Notice of Claim Denial-Previous Refund denying this claim for refund on May 26, 2006. Department Ex. 1.

The Department contends that the denial of the taxpayer’s refund claim in this case was proper because the taxpayer failed to file its IL-1040-X seeking a refund within three years following the due date of its 2002 IL-1040 return. Tr. pp. 7, 30-32. At issue in this case is whether the taxpayer’s refund claim should be granted.

Section 911(f) of the Illinois Income Tax Act, 35 **ILCS** 5/911(f) provides as follows:

No claim for refund based on the taxpayer’s taking a credit for estimated tax payments as provided by Section 601(b)(2) or for any

amount paid by a taxpayer pursuant to Section 602(a) or for any amount of credit for tax withheld pursuant to Article 7 may be filed more than 3 years after the due date, as provided by section 505, of the return which was required to be filed relative to the taxable year for which the payments were made or for which the tax was withheld. The changes in this subsection (f) made by this amendatory Act of 1987 shall apply to all taxable years ending on or after December 31, 1969.
35 ILCS 5/911(f) (Emphasis added)

Section 505(a)(2) of the Illinois Income Tax Act, 35 ILCS 5/505(a)(2), provides as follows:

Individuals, partnerships and fiduciaries. Except as provided in paragraph (3), individual, partnership and fiduciary returns shall be filed on or before the 15th day of the fourth 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, except that a final return of a decedent shall be filed at the time (including extensions thereof) it would have been due if the decedent had not died.
35 ILCS 5/505(a)(2)

Pursuant to section 505(a)(2), the due date of the taxpayer's 2002 Illinois income tax return was April 15, 2003.

The record in this case clearly shows that the taxpayer's refund claim is based primarily upon taking a credit for withheld taxes for 2002 on its 2002 IL-1040. Department Ex. 2, (Taxpayer's 2002 IL-1040, Step 7). Documentation contained in the record in this case includes the taxpayer's 2002 IL-1040 filed August 31, 2007 which indicates withheld taxes for 2002 exceeding the taxpayer's 2002 tax liability. *Id.* The taxpayer's IL-1040-X for 2002 filed January 1, 2008 is based upon this overpayment. Department Ex. 3.

The foregoing documentation shows that the taxpayer filed an amended return for 2002 seeking a refund based upon excess withholding on January 1, 2008 which is more

than three years after the due date for its 2002 return (April 15, 2003). This documentation supports a determination that the taxpayer's refund claim for 2002 was filed more than three years after the due date of the taxpayer's 2002 return and was therefore prohibited by section 911(f). Accordingly, based upon the documentation contained in the record, because the taxpayer's refund is primarily based on its credit for withheld taxes in 2002, the taxpayer's refund rights are governed by section 911(f) of the Illinois Income Tax Act, noted above, which expressly prohibits refunds based upon credits for withheld taxes where claims for such refunds are filed more than three years after the due date of the return for the year for which the taxes were withheld. Applying the clear and unambiguous language of 35 **ILCS** 5/911(f) to the facts established by the record in this case, section 911(f) plainly bars the taxpayer's claim for refund.

During the hearing in this case, the taxpayer did not raise or dispute the applicability of section 911(f), but instead sought to rely upon the statute of limitations for refunds prescribed by section 911(a) of the Illinois Income Tax Act, 35 **ILCS** 5/911(a). Tr. pp. 17-19. Section 911(a) provides as follows:

In general. Except as otherwise provided by 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 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 the later; and
 - (2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period.
- 35 **ILCS** 5/911(a)

With respect to the applicability of section 911(a) in the instant case, the taxpayer makes the following contentions:

Now, Mr. Walton has already proved that the return was filed – well, the return was dated August 31, 2007. Their computer screen says they processed it September 15, 2007.

Their Exhibit 3, the 1040X, shows a date of January 22, 2008, certainly within three years of the 1040.

Furthermore, this was sent Certified Mail, and it was signed for by the Department shortly after the date on that return. And I have the green form with the signature of a Department employee for the Certified Mail.

So the 1040X is the claim for refund, and that was definitely filed within three years of the time the original Illinois 1040 was filed in 2007. So pursuant to 35 ILCS 5/911, that would be a timely filed claim for refund.

Tr. pp. 17, 18.

However, section 911(d) of the Illinois Income Tax Act, 35 **ILCS** 5/911(d), limits the amount of any refund recoverable pursuant to section 911(a) noted above, providing as follows:

Limit on amount of credit or refund.

- (1) Limit where claim filed within 3-year period. If the claim was filed by the claimant during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.¹
- (2) Limit where claim not filed within 3-year period. If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the one year immediately preceding the filing of the claim.

35 **ILCS** 5/911(d)

Pursuant to section 911(d)(1), where a taxpayer has not filed a request for extension of time to file a return, any refund recoverable where a refund claim is filed pursuant to section 911(a) is limited to the tax paid for the period to which the refund claim pertains

¹ The record in this case does not indicate that the taxpayer requested any extension of time to file its 2002 return.

within three years immediately prior to the date the refund claim was filed.² The taxpayer's return for 2002 is evidence that tax was withheld for which a credit was taken during 2002. Department Ex. 2. The taxpayer's refund claim was filed in 2008. Since the record clearly shows that the taxpayer paid no taxes within three years immediately prior to the filing of the taxpayer's claim, the limitation on refunds contained in section 911(d) precludes any refund in this case.

The taxpayer further avers that its refund claim filed on January 1, 2008 was timely since it was filed within two years after a notice of federal change was due to be reported to Illinois as a result of a final federal change to its 2002 federal income tax return dated November 7, 2005. Tr. pp. 20-28. Section 911(b)(1) of the Illinois Income Tax Act provides as follows:

In general. In any case where notification of an alternation is required by Section 506(b), a claim for refund may be filed within 2 years after the date on which such notification was due (regardless of whether such notice was given), but the amount recoverable pursuant to a claim filed under this Section shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported.

35 ILCS 5/911(b)³

With respect to a taxpayer's obligation to report federal changes, section 506(b)(1) of the Illinois Income Tax Act provides as follows:

Changes affecting federal income tax. In the event the taxable income, any item of income or deduction, the income tax liability, or any tax credit reported in a federal income tax return of any person for any year

² See also 86 Ill. Admin. Code, ch. I, section 100.9410(d).

³ Pursuant to section 911(b) of the Illinois Income Tax Act, 35 ILCS 5/911(b), refund claims based on federal changes may be filed within two years after a notice of federal change to the Department was due, whether or not such a notice was actually ever filed. See also 86 Ill. Admin. Code, ch. I, section 100.9410(b).

is altered by amendment of such return or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alteration reflects a change or settlement with respect to any item or items, affecting the computation of such person's net income, net loss, or of any credit provided by Article 2 of this Act for any year under this Act, or in the number of personal exemptions allowable to such person under Section 151 of the Internal Revenue Code, such person shall notify the Department of such alteration. Such notification shall be in the form of an amended return or such other form as the Department may by regulations prescribe, shall contain the person's name and address and such other information as the Department may by regulations prescribe, shall be signed by such person or his duly authorized representative, and shall be filed not later than 120 days after such alteration has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, tentative carryback adjustment, abatement or credit resulting therefrom has been assessed or paid, whichever shall first occur.

35 ILCS 5/506(b)(1)

The taxpayer contends that it was required to file a report of 2002 federal changes within 120 days of being notified of them by the Internal Revenue Service pursuant to section 506(b) and that its amended Illinois Income Tax return for 2002 was filed within two years of this 120 day period as required by section 911(b) of the Illinois Income Tax Act, 35 ILCS 5/911(b). While the taxpayer correctly asserts that its amended return was filed within two years after a notice of federal change was due pursuant to section 506(b)(1) of the Illinois Income Tax Act, this fact, in and of itself, provides no basis for a refund of its 2002 overpayment. This is true because, pursuant to section 911(b), a taxpayer is only entitled to a refund of overpayments that results from the recomputation of the taxpayer's net income, net loss, or Illinois credits due to a federal change for the tax year after giving effect to the item or items in the federal change required to be reported. 35 ILCS 5/911(b). In the instant case, the federal changes giving rise to the taxpayer's obligation to report federal changes had nothing to do with the taxpayer's right

to receive a refund based upon a credit taken for withheld taxes. Indeed, no federal change could have created a refundable overpayment based upon the taxpayer's 2002 credit for tax withholding since, for the reasons noted above, such refunds are expressly barred in this case by section 911(f), 35 ILCS 5/911(f). The taxpayer has also failed to show that any of the other credits upon which its refund claim is based were affected by the federal change the taxpayer was required to report. Consequently, the federal changes the taxpayer was required to report did not give rise to the refund of taxes the taxpayer seeks in this case and, therefore, the Department was not required to refund these taxes pursuant to section 911(b).

As noted above, the claim denial issued by the Department in this case states as follows:

We reduced the amount of the refund you requested because the "previous refunds" line of your Form IL-1040-X did not reflect amounts previously refunded to you. We are refunding only the amount that remains, if any, after subtracting previously issued refunds. Therefore, we have **denied** the remainder of your claim.
Department Ex. 1.

The foregoing explanation is the only reason given in the claim denial for denying the taxpayer's refund claim. As a consequence of the foregoing, the taxpayer argues that the issue presented in this case is limited to whether the reason given by the Department for denying the taxpayer's claim is proper. Tr. pp. 16, 17, 33, 34. Since the statute of limitations issue raised by the Department is not indicated in the claim denial, the taxpayer argues that it is not properly before this tribunal. *Id.*

The pre-trial order entered in this case, by agreement of both parties, enumerates the issue to be decided in this matter as follows:

The issue to be decided at trial is whether the Taxpayers are entitled to receive the refund they claimed on their IL-1040X for tax year ending December 31, 2002.

The enumeration of the issue to be decided in the pre-trial order is broad enough to encompass the statute of limitations issue the Department has raised during the hearing in this matter. The taxpayer did not object to the entry of this pre-trial order. By agreeing to this pre-trial order, the taxpayer implicitly agreed not to limit the issue to be determined in this matter to the accuracy of the rationale given for denying the taxpayer's refund claim stated in the Department's notice of claim denial form.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's denial of the taxpayer's refund claim for the tax year 2002 be upheld.

Ted Sherrod
Administrative Law Judge

Date: December 2, 2009