

IT 14-01

Tax Type: Income Tax

Tax Issue: Claim Issues-Properly and Timely Files

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

THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS	)	No.	XXXX
	)	Letter ID:	XXXX
	)	Claim Denial:	XXXX
v.	)	Letter ID:	XXXX
	)	Claim Denial:	XXXX
JOHN DOE &	)	Letter ID:	XXXX
JANE GREEN,	)	Claim Denial:	XXXX
)		
TAXPAYERS	)	Kenneth J. Galvin	
	)	Administrative Law Judge)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

On May 11, 2012, the Illinois Department of Revenue (hereinafter “the Department”) issued three “Notices of Claim Denial” to John Doe & Jane Green (hereinafter “taxpayers”). The basis of the denials was the Department’s determination that the taxpayers had failed to file refund claims for overpayment of income tax within three years after the date their original tax returns were filed. On June 14, 2012, taxpayers filed a timely protest and requested a hearing, which was held on June 11, 2013. Following a review of the evidence presented at the hearing, it is recommended that the Department’s three “Notices of Claim Denial” be affirmed.

Findings of Fact:

1. On May 11, 2012, the Department issued three “Notices of Claim Denial” to taxpayers that denied the taxpayers’ claims for refunds for overpayment of Illinois income taxes for years

2004, 2005 and 2006. The original returns were timely filed on February 10, 2005 for 2004, March 24, 2006 for 2005 and March 22, 2007 for 2006. Taxpayers filed Amended Illinois Income Tax Returns on March 9, 2012, more than three years after the original returns were filed. Tax returns for 2004, 2005 and 2006 have been destroyed by the Department. Tr. pp. 5-6; Dept. Ex. Nos. 1, 2 and 3.

2. Mr. John Doe testified that he received refunds from the Department for years 2009 and 2010 when he filed Amended Illinois Income Tax Returns and that the Amended Returns for 2009 and 2010 were filed within the 3-year Statute of Limitations period. Tr. pp. 7-9; Taxpayer's Ex. Nos. 2, 3, 5 and 6.

Conclusions of Law:

On May 11, 2012, the Department issued three "Notices of Claim Denial" to taxpayers that denied the taxpayers' claims for refunds for overpayment of Illinois income taxes for years 2004, 2005 and 2006. The original returns were timely filed on February 10, 2005 for 2004, March 24, 2006 for 2005 and March 22, 2007 for 2006. Taxpayers had filed Amended Illinois Income Tax Returns on March 9, 2012, which is more than three years after the original returns were filed. Tr. pp. 5-6; Dept. Ex. No. 1.

The Illinois Income Tax Act, Section 911, entitled "Limitations on Claims for Refunds" states that a claim for refund "shall be filed` not later than 3 years after the date the return was filed..." 35 ILCS 5/911(a)(1). The only way to extend the 3-year limitations period required by Section 911(a)(1) is by having the taxpayer and the Department agree, in writing, to such an extension. 35 ILCS 5/911(c). In the instant case, taxpayers have never asserted that such a written agreement was made.

On June 14, 2012, taxpayers filed a timely protest and requested a hearing, which was held on June 11, 2013. Mr. John Doe testified at the hearing that he failed to subtract federally taxed retirement income on line five of his returns. He testified that “1099-R Forms are the basis for line five subtractions.” He “can’t prove” that 1099-R Forms were attached to the original returns but he “suggests” that they were attached. Tr. pp. 9, 15-16. Tax returns for 2004, 2005 and 2006 have been destroyed by the Department and the Department is unable to say whether 1099-R Forms were attached to the original returns. Tr. pp. 5-6; Dept. Ex. Nos. 1, 2 and 3. The taxpayers did not offer into evidence copies of the 2004, 2005 and 2006 Returns, with or without 1099-R Forms. It is unclear from the record then whether taxpayers did, in fact, attach 1099-R Forms to their returns. The Department does not require that 1099-R Forms be attached to returns. Whether taxpayers attached 1099-R Forms to their returns was not the basis for the Department’s issuance of the Notices of Claim Denial, and the testimony on this point was collateral to the issue of why the Department denied the claims for refund.

Mr. John Doe also argued that the Department had an obligation to correct his return or advise him that the return was incorrect. He testified that the taxpayers’ income tax returns “should have generated or popped a miscalculation of some sort.” “Whether or not it’s a miscalculation on my part, it’s certainly a miscalculation on the Department’s part that they in fact don’t treat 1099-R Forms.” Tr. p. 8. “Mathematical errors” are defined in 35 ILCS 5/1501(12). Taxpayers’ failure to subtract federally taxed retirement income was not a “mathematical error” because it did not prevent acceptance of the return, as filed, for processing by the Department.

I will assume, for purposes of argument here, that taxpayers paid tax in error for 2004, 2005 and 2006. The Department’s Notices of Claim Denial were based on the fact that the amended

returns were filed after the statute of limitations had run. Department Ex. No. 1. The issue in this case was whether the 3-year statute of limitations required by section 911(a)(1) bars the Department from issuing any refund to taxpayers, or whether the limitations period can be extended for taxpayers' "miscalculation" or because taxpayers did or did not attach 1099-R Forms to their returns. This requested extension period cannot be granted. Section 911(a)(1) sets an express limit on a taxpayer's right to obtain a refund of Illinois income tax overpaid in error. 35 ILCS 5/911(a)(1). There is only one way to extend the statute of limitations expressed in section 911(a)(1) and taxpayers have never asserted that such an extension was executed here.

The only reason taxpayers have a duty to file an Illinois income tax return, or to pay Illinois income tax, is because of the Illinois Income Tax Act ("IITA"). 35 ILCS 5/201(a); 35 ILCS 5/502(a)(2); Jones v. Department of Revenue, 60 Ill. App. 3d 886, 889 (1st Dist. 1978) ("The obligation of a citizen to pay taxes is a purely statutory creation and, conversely, the right to a refund or credit can arise only from the acts of the legislature."). Similarly, the only reason taxpayers have a right to a refund of Illinois income tax paid in error is because of the IITA. 35 ILCS 5/909(d); Jones, 60 Ill. App. 3d at 889. It is improper to read a statutory provision to include exceptions that are not set forth within the provision's text. *E.g.*, Kraft v. Edgar, 138 Ill. 2d at 189. ("... where an enactment is clear and unambiguous a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express.").

In Dow Chemical Company v. The Department of Revenue, 224 Ill. App. 3d 263 (1st Dist 1991), Dow requested a refund for the overpayment of taxes in the amount of \$401,237. The Court noted that Section 911 of the Illinois Income Tax Act (now 37 ILCS 5/911) requires that claims for income tax refunds be filed not later than 3 years after the return is filed. The Court

denied Dow's claim for a refund finding that Dow's request, filed in 1983, for tax years 1975 through 1978, was filed after the statute of limitations had expired. In denying Dow's claim, the Court stated that the plain meaning of section 911 is that the taxpayer has an "affirmative duty" to file for a tax refund within the prescribed period of time. *Id.* At 267. In response to Dow's argument that the statute of limitations be tolled for equitable reasons, the Court stated:

Although it might seem reasonable to judicially toll the statute of limitations in order to fashion a remedy for Dow, such a decision is not supported by Illinois case law which holds that no exceptions which toll a statute of limitations or enlarge its scope will be implied. *Id.* at 268.

Accordingly, whereas I am sympathetic to the taxpayers' situation, Illinois law does not permit any discretion in the matter and requires that statutes of limitation be strictly construed. For the reasons stated above, it is my recommendation that the Notices of Claim Denial issued on May 11, 2012 for 2004, 2005 and 2006 be affirmed.

Ken Galvin
Administrative Law Judge

January 28, 2014