

IT 14-08

Tax Type: Income Tax

**Tax Issue: Statute of Limitations Application
Claim For Refund On Retirement Income**

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

JOHN DOE,)	Docket No.	XXXX
Taxpayer)	Tax ID No.	XXXX
v.)	Tax Years:	1991-2009
THE DEPARTMENT OF REVENUE)	John E. White,	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: JOHN DOE appeared *pro se*; Ralph Bassett, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves amended returns that JOHN DOE (Taxpayer) filed with the Illinois Department of Revenue (Department) to claim refunds of taxes and penalties claimed to have been paid in error regarding tax years ending (TYE) December 31, 1991 through and including December 31, 2009. The Department denied Taxpayer's amended returns for TYE 1991 through 2006, based on the statute of limitations. The Department partially granted and partially denied Taxpayer's claims for refunds for TYE 2007 through 2009, by issuing refunds to Taxpayer for amounts of tax he overpaid in error, but denying Taxpayer's request for refunds for some portion of the penalty Taxpayer previously paid regarding each of those tax years.

The hearing was held at the Department's offices in Chicago. Taxpayer appeared and testified at hearing, and he also offered into evidence documents showing his filing history

regarding the years at issue. After considering the evidence, I am including in this recommendation findings of fact and conclusions of law. I recommend that the Department's Denials for TYE 1991 through 2006 be finalized as issued. I recommend that the Department's partial Denials for TYE 2007 through 2009 be revised to allow a credit or refund for the portion of the penalty Taxpayer overpaid in error for each of those years.

Findings of Fact:

1. Taxpayer timely filed a form IL-1040, Illinois Individual Income Tax Return, for each of TYE 1991 through 2009, as an Illinois resident. *See* Department Exs. 1-19 (copies of Department's Denials, with attachments).
2. In July 2011, Taxpayer filed a form IL-1040-X, Amended Illinois Individual Income Tax Return, for each of TYE 1991 through 2006. Department Exs. 1-16.
3. The Department received Taxpayer's amended returns for TYE 1991, 1993, and 1997 on July 18, 2011. Department Exs. 1, 3, 7. It received Taxpayer's amended returns for TYE 1992, 1994-1996, and 1998-2006 on July 20, 2011. Department Exs. 2, 4-6, 8-19.
4. Taxpayer timely filed a form IL-1040-X, Amended Illinois Individual Income Tax Return, for each of TYE 2007 through 2009. Department Exs. 17-19.
5. Taxpayer filed his amended returns to claim a refund of tax claimed to have been overpaid in error because he mistakenly failed to report an Illinois subtraction modification (that is, a deduction when calculating Illinois base and net income) for certain retirement income during each tax year. Department Exs. 1-19; 35 ILCS 5/203(a)(2)(F).
6. The Department denied all of the refunds sought in the amended returns Taxpayer filed for TYE 1991 through 2006, because his amended returns/claims for refund were filed after the

statute of limitations set by § 911(a) of the Illinois Income Tax Act (IITA). Department Exs. 1-16; 35 ILCS 5/911(a).

7. The Department partially granted and partially denied the claims for refund Taxpayer filed regarding TYE 2007 through 2009. Department Exs. 17-19.
8. The Department denied Taxpayer a refund for any portion of the penalty the Department assessed, and which Taxpayer paid, for failing to make estimated payments of income tax due for TYE 2007 through 2009. Department Exs. 17-19; Hearing Transcript (Tr.), pp. 37-38; *see also* 35 ILCS 5/804(a); 35 ILCS 735/3-3(b-20)(1).
9. Taxpayer did not make any estimated tax payments during TYE 2007 through 2009. Department Exs. 17-19 (p. 2 of each exhibit).
10. Taxpayer did not have any Illinois income tax withheld during TYE 2007 through 2009. Department Exs. 17-19 (p. 2 of each exhibit).
11. After giving account to the retirement income reported on Taxpayer's amended returns for TYE 2007 through 2009, Taxpayer's Illinois income tax liability for each of TYE 2007 through 2009 was in excess of \$XXX. Department Exs. 17-19 (p. 2 of each exhibit); *see also* 35 ILCS 5/803(a).
12. Following notice and demand by the Department shortly after Taxpayer filed his original return for TYE 2007, Taxpayer paid a penalty, in the amount of \$XXX, for failing to make estimated tax payments regarding that year. Department Ex. 17, p. 2. That penalty is 10% of 90% of Taxpayer's originally reported Illinois income tax liability (\$XXX) for TYE 2007. *Id.*; Department Ex. 17, p. 2; Taxpayer Ex. 1 (packet for TYE 2007), p. 4 (copy of form ITR-85, Individual Income Tax Return First and Final Bill) ($XXX * .9 = XXX$); *see also* 35 ILCS 735/3-3(b-20)(1).

13. Following notice and demand by the Department shortly after Taxpayer filed his original return for TYE 2008, Taxpayer paid a penalty, in the amount of \$XXX, for failing to make estimated tax payments regarding that year. Department Ex. 18, p. 2. That penalty is 10% of 90% of Taxpayer's originally reported Illinois income tax liability (\$XXX) for TYE 2008. *Id.*, pp. 2, 5 (copy of Department computer records showing Taxpayer's tax payment for TYE 2008) ($XXX * .9 = XXX$); *see also* 35 ILCS 735/3-3(b-20)(1).
14. Following notice and demand by the Department shortly after Taxpayer filed his original return for TYE 2009, Taxpayer paid a penalty, in the amount of \$XXX, for failing to make estimated tax payments regarding that year. Department Ex. 19, p. 2. That penalty is 10% of 90% of Taxpayer's originally reported Illinois income tax liability (\$XXX) for TYE 2009. *Id.*; Taxpayer Ex. 1 (packet for TYE 2009), p. 5 (copy of Taxpayer Statement) ($XXX * .9 = XXX$); *see also* 35 ILCS 735/3-3(b-20)(1).
15. After reviewing Taxpayer's amended returns for TYE 2007, the Department determined that the correct amount of Illinois income tax Taxpayer owed for that year was \$XXX. Department Ex. 17, p. 2. Taxpayer had previously paid tax in the amount of \$XXX for that year, and a penalty in the amount of \$XXX. *Id.*; Taxpayer Ex. 1 (packet for TYE 2007), p. 4.
16. After reviewing Taxpayer's amended returns for TYE 2008, the Department determined that the correct amount of Illinois income tax Taxpayer owed for that year was \$XXX. Department Ex. 18, p. 2. Taxpayer had previously paid tax in the amount of \$XXX for that year, and a penalty in the amount of \$XXX. *Id.*
17. After reviewing Taxpayer's amended returns for TYE 2009, the Department determined that the correct amount of Illinois income tax Taxpayer owed for that year was \$XXX. Department Ex. 18, p. 2. Taxpayer had previously paid tax in the amount of \$XXX for that

year, and a penalty in the amount of \$XXX. *Id.*

Conclusions of Law:

When a taxpayer seeks to take advantage of deductions, credits or other tax benefits allowed by statute, the burden of proof is on the taxpayer. Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981). Section 909 of the IITA authorizes the payment of refunds to a taxpayer that has overpaid its Illinois income tax liabilities. 35 ILCS 5/909. Here, Taxpayer claims refunds of tax and penalties previously paid over to the Department. Department Exs. 1-19; 35 ILCS 5/909(a). Therefore, Taxpayer has the burden of proof. Balla, 96 Ill. App. 3d at 296, 421 N.E.2d at 238.

This case involves two issues: whether Taxpayer is entitled to any refund of or credit for tax claimed to have been overpaid in error during TYE 1991 through 2006; and whether Taxpayer is entitled to any refund of or credit for a portion of the penalty previously paid for failing to make estimated tax payments for TYE 2007-2009. I address each in turn.

Issue 1: Whether Taxpayer is Entitled To A Refund for TYE 1991-2006 Regarding Amended Returns Filed in July 2011

The Department denied Taxpayer's refund claims for TYE 1991 through 2006 because they were filed "after the last date for filing a refund claim." Department Exs. 1-16. More specifically, the Department determined that Taxpayer "filed your ... form IL-1040-X more than three years after the extended due date, three years from the date the original return was filed, or one year from the date the tax was paid." Department Exs. 1-16; 35 ILCS 5/911(a).

Section 911(a) of the IITA provides, in pertinent part:

Sec. 911. Limitations on Claims for Refund.

(a) In general. Except as otherwise provided in this Act:

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed ..., 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.

Section 911(e) of the IITA provides that, “a tax return filed before the last day prescribed by law for the filing of such return (including any extensions thereof) shall be deemed to have been filed on such last day.” 35 ILCS 5/911(e); 86 Ill. Admin. Code § 100.9410(e). The parties do not dispute that Taxpayer timely filed his original returns for TYE 1991 through 2009. Thus, I must deem that Taxpayer’s original Illinois returns for TYE 1991 through 2006 were filed on the last dates on which they could be filed timely, that is, respectively, on October 15, 1992 through October 15, 2007. 35 ILCS 5/911(e); 86 Ill. Admin. Code § 100.5020(b). Under the plain text of IITA § 911(a)(1), the last date for Taxpayer timely to have filed an amended return to claim a refund regarding TYE 1991 would have been on October 15, 1995. 35 ILCS 5/911(a)(1), (e). Skipping ahead, the last date for an individual to timely file an amended return to claim a refund regarding TYE 2006 would have been on October 15, 2010. *Id.* Here, however, Taxpayer filed his amended returns for TYE 1991 through 2006 on either July 18 or 20, 2011. Department Exs. 1-16.

The evidence and law support the Department’s determination that Taxpayer filed his amended returns for TYE 1991 through 2006 after the last date allowed for filing a claim for refund. Department Exs. 1-16; 35 ILCS 5/911(a); Dow Chemical Co. v. Department of Revenue, 224 Ill. App. 3d 263, 268-69, 586 N.E.2d 516, 520 (1st Dist. 1991). Under the plain text of the applicable statute, the Department lacks the authority to issue Taxpayer any refund for TYE 1991 through 2006. 35 ILCS 5/911(a)(2); Dow Chemical Co., 224 Ill. App. 3d at 268-69, 586 N.E.2d at 520.

Issue 2: Whether Taxpayer is Entitled To A Refund of the Some of the Penalties Paid for Failure to Make Estimated Tax Payments for TYE 2007-2009

The next issue is whether Taxpayer is entitled to a refund for the difference between the amount of the penalty Taxpayer paid at or about the time he filed each of his original returns for TYE 2007 through 2009, and the amount of the penalty that was properly due, based on the reduced amount of tax the Department now concedes was due for each of those years. *See* Department Exs. 17-19.

Section 803 of the IITA requires certain taxpayers, including individuals, “to pay estimated tax for the taxable year, in such amount and with such forms as the Department shall prescribe, if the amount payable as estimated tax can reasonably be expected to be more than (i) \$250 for taxable years ending before December 31, 2001 and \$500 for taxable years ending on or after December 31, 2001 or (ii) \$400 for corporations.” 35 ILCS 5/803(a). Section 803(d) provides that estimated tax “... shall be paid [in] four equal installments ... for each taxable year, payable as follows:

Required Installment:	Due Date:
1 st	April 15
2 nd	June 15
3 rd	September 15
4 th	Individuals: January 15 of the following taxable year Corporations: December 15

35 ILCS 5/803(d). As a financial incentive to insure that taxpayers make estimated tax payments, the Illinois General Assembly imposed a penalty to be assessed on the amount of any underpayment of an estimated tax installment, at the rate prescribed by § 3-3(b) of the Uniform Penalty and Interest Act (UPIA). 35 ILCS 5/804(a); 35 ILCS 735/3-3(b-20)(1).

Here, the evidence shows that Taxpayer did not make any estimated tax payments during TYE 2007-2009, even though, for each of those years, his estimated tax was in excess of \$XXX.

Department Exs. 17-19; 35 ILCS 5/803(a). And while the IITA treats taxes withheld as estimated tax payments, Taxpayer did not have any tax withheld during those tax years. Department Exs. 17-19. In short, there is no doubt that Taxpayer's failure to make estimated tax payments during TYE 2007 through 2009 properly subjected him to a penalty authorized by § 804(a) of the IITA, at the rate prescribed by § 3-3(b-20)(1) of the UPIA. 35 ILCS 5/804(a); 35 ILCS 735/3-3(b-20)(1).

At hearing Taxpayer argued that, since he erroneously overstated the correct amount of tax due on his original returns for TYE 2007 through 2009, the Department was obliged to refund to him the corresponding amount of penalty he overpaid in error. Tr. pp. 20, 32-36 (Franiuk). The Department responded that Taxpayer is not entitled to any refund for a penalty previously paid regarding the non-payment of estimated taxes, even if it is later determined that the correct amount of his estimated tax was less than what was shown as being due on the original return filed for a particular tax year. Tr. pp. 37-38, 45-47. For the following reasons, I conclude that the law favors Taxpayer's argument on this point, rather than the Department's.

The penalty imposed by § 3-3(b-20)(1) of the UPIA is based on a mathematical percentage of tax required to be paid "prior to the filing of a return or without a return (penalty for late payment or nonpayment of estimated or accelerated tax)." 35 ILCS 735/3-3(b-20). Illinois courts have long treated the issuance of penalties like those described in UPIA § 3-3 to be a ministerial act, based simply on a mathematical percentage of the amount of tax the Department determined to be due. Diogenes v. Department of Finance, 377 Ill. 15, 22, 35 N.E.2d 342, 346 (1941) ("The taxpayer's return, as amended by the Department to include the 'A' penalty, was prima facie correct, and the duty rested upon the plaintiff to establish that his tax return had been filed on time and that the penalty was, in consequence, improperly exacted.");

Department of Finance v. Gandolfi, 375 Ill. 237, 240, 30 N.E.2d 737, 739 (1940) (“Our decision in Department of Finance v. Cohen, supra, that the power to review and revise tax returns under the Retailers' Occupation Tax Act is ministerial, and not judicial, as requiring merely a calculation or computation from data upon which all minds must ordinarily reach the same result, applies with equal force to the assessment of penalties under sections 4 and 5.”).

Section 3-3(d) of the UPIA provides that the § 3-3 penalty “shall be applied to the tax required to be shown even if that amount is less than the tax shown on the return.” 35 ILCS 735/3-3(d). The Department argues that paragraph 3-3(d) “does not say anything about abating a penalty that has been imposed in a prior year with the filing of the original return. This [¶ 3-3(d)] is primarily to cover any current imposition of the penalty where the return has been audited.” Tr. pp. 46-47. Counsel is correct that the text of UPIA § 3-3(d) does not say anything about abating a penalty previously imposed and paid in a prior year. But what it does express is a clear identification of the correct starting point for calculating a penalty imposed by UPIA § 3-3. 35 ILCS 735/3-3(d).

Section 909 of the IITA is the statutory provision that authorizes the payment of credits or refunds. That section provides, in pertinent part:

Sec. 909. Credits and Refunds.
a) In general. In the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and shall refund any balance to such person.

35 ILCS 5/909(a). A penalty is a “liability in respect of the tax imposed by [the IITA]” 35 ILCS 5/904(a); *see also* 35 ILCS 5/1005; 35 ILCS 735/3-3.

Here, the Department determined that Taxpayer did not report the correct amount of Illinois income tax due, that is, the amount of tax that was required to be shown due, on his original returns for TYE 2007 through 2009. Department Exs. 17-19 (p. 2 of each exhibit). That means that the penalty that the Department had previously determined was due, at or about the time Taxpayer filed each of his original returns for TYE 2007 through 2009, was also incorrectly determined, because each was measured as a mathematical percentage of an incorrect amount of tax that was shown as being due on each return. Department Exs. 17-19; 35 ILCS 735/3-3(d). Read together, IITA § 909(a) and UPIA §§ 3-3(b-20)(1), (d) authorize Taxpayer's request for a refund for the portion of the penalty that Taxpayer overpaid in error regarding each of his original returns. 35 ILCS 5/909(a); 35 ILCS 735/3-3(b-20)(1), (d).

If Taxpayer had not erroneously failed to claim a subtraction for retirement income on his original Illinois return for TYE 2007, the correct amount of the § 804(a) penalty would have been 10% of 90% of \$XXX, or \$XXX, which, rounded to the nearest dollar is \$XXX. 35 ILCS 5/804(a); 35 ILCS 735/3-3(b-20)(1), (d) ($XXX * .9 = XXX * .1 = XXX$). Taxpayer previously paid a penalty in the amount of \$XXX, which, rounded to the nearest dollar, is \$XXX. Department Ex. 17, p. 2. Taxpayer is entitled to an additional refund or credit of \$XXX for the portion of the penalty he overpaid in error for TYE 2007. 35 ILCS 5/804(a); 35 ILCS 5/909(a); 35 ILCS 735/3-3(b-20)(1), (d) ($XXX - XXX = XXX$).

If Taxpayer had not erroneously failed to claim a subtraction for retirement income on his original Illinois return for TYE 2008, the correct amount of the § 804(a) penalty would have been 10% of 90% of \$XXX, or \$XXX, which, rounded to the nearest dollar, is \$XXX. 35 ILCS 5/804(a); 35 ILCS 735/3-3(b-20)(1), (d) ($XXX * .9 = XXX * .1 = XXX$). Taxpayer previously paid a penalty in the amount of \$XXX, which rounds to \$XXX. Department Ex. 18. Taxpayer

should be refunded or credited an additional \$XXX for TYE 2008. 35 ILCS 5/804(a); 35 ILCS 5/909(a); 35 ILCS 735/3-3(b-20)(1), (d).

Finally, if Taxpayer had not erroneously failed to claim a subtraction for retirement income on his original Illinois return for TYE 2009, the correct amount of the § 804(a) penalty would have been 10% of 90% of \$XXX, or \$XXX, which, rounded to the nearest dollar, is \$XXX. 35 ILCS 5/804(a); 35 ILCS 735/3-3(b-20)(1), (d) ($XXX * .9 = XXX * .1 = XXX$). Taxpayer previously paid a penalty in the amount of \$XXX, which rounds to \$XXX. Department Ex. 19. Taxpayer should be refunded or credited an additional \$XXX for TYE 2009. 35 ILCS 5/804(a); 35 ILCS 5/909(a); 35 ILCS 735/3-3(b-20)(1), (d) ($XXX - XXX = XXX$).

Conclusion:

I recommend that the Director finalize the Department's prior Denials issued for TYE 1991 through 2006, and that no refunds or credits be given for those years. I respectfully recommend that the Director revise the Department's partial Denials issued for TYE 2007 through 2009, and either refund or issue a credit to Taxpayer for the amounts of penalty he overpaid in error, as more fully described in this recommendation.

June 19, 2014

John E. White
Administrative Law Judge