

IT 14-10

Tax Type: Income Tax

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.

JOHN & JANE DOE

Taxpayers

Docket # XXXX
Letter ID: XXXX
Reporting Period: XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Daniel A. Edelstein, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Kim Wehrenberg, Attorney at Law, for John & Jane Doe.

Synopsis:

On July 10, 2012, John & Jane Doe (“taxpayers”) filed with the Department of Revenue (“Department”) a second Form IL-1040-X, Amended Individual Income Tax Return (“amended return”) for the year 2007 that requested a refund in the amount of \$XXXX. The Department issued a Notice of Claim Denial (“Notice”), which denied the taxpayers’ claim for refund, and the taxpayers timely protested the Notice. The Department filed a Motion for Summary Judgment in which it contends that the taxpayers’ claim for refund must be denied because their second amended return that requested the refund was not timely filed. The taxpayers filed a Response to the Motion in which they agreed with the Department’s Statement of Facts but argued that their second amended return was timely filed. The Department filed a Reply as well as a Supplement with attached exhibits. The taxpayers filed a Response to the Supplement in

which they ask that the Department's Motion be denied because the Department failed to prove that the taxpayers' second amended return does not fall under the extension for filing amended returns in Section 911(b) of the Income Tax Act (35 ILCS 5/101 *et seq.*). After reviewing the Motion and exhibits, it is recommended that the Department's Motion for Summary Judgment be granted and the taxpayers' claim for refund be denied.

FINDINGS OF FACT:

1. The taxpayers were residents of the State of Illinois during the year 2007. (Dept. Ex. A)
2. On or about August 14, 2008, the taxpayers filed with the Department an Individual Income Tax Return, Form IL-1040, for the year 2007. The taxpayers paid the tax that was due with this return on or about August 24, 2008. (Dept. Ex. A; Dept. Motion, p. 1)
3. On or about July 14, 2011, the taxpayers filed with the IRS an Amended U.S. Individual Income Tax Return, Form 1040X, for the year 2007. The reason for the amendment was a decrease in their adjusted gross income ("AGI") in the amount of \$XXXX due to a 2009 NOL carryback and also to include tax credits in the amount of \$XXXX. (Dept. Ex. C, pp. 1-4; Dept. Motion, p. 1)
4. On or about July 14, 2011, the taxpayers filed with the Department their first Amended Individual Income Tax Return, Form IL-1040-X, for the year 2007. The reason for the amendment was the decrease in the federal AGI due to the NOL carryback; the first amended return requested a refund in the amount of \$XXXX. (Dept. Ex. D, pp. 1-2; Dept. Motion, p. 2)
5. The Department accepted the first amended return filed by the taxpayers and credited their account. (Dept. Motion, p. 2)

6. On May 25, 2012, the Commonwealth of Virginia sent a letter to the taxpayers stating that it believed that some of their 2007 income was “Virginia source income” because one of the taxpayers was an owner of a “pass-through” entity doing business in Virginia known as ABC Business, Inc. The taxpayers had reported this income on their original Form IL-1040 that was filed on August 14, 2008. (Dept. Ex. B; Dept. Motion, p. 1)
7. On July 10, 2012, the taxpayers filed with the Department their second Amended Individual Income Tax Return, Form IL-1040-X, for the year 2007. They filed this return because of the correspondence that they received from the Commonwealth of Virginia dated May 25, 2012. On the second amended return, the taxpayers explained that they “erroneously failed to file an income tax return for the State of Virginia for tax year 2007 and as a result of filing the income tax return for the State of Virginia ... the taxpayers [are entitled to] a credit from the State of Illinois for taxes paid to another State while residents of the State of Illinois.” The second amended return requested a refund in the amount of \$XXXX and noted that the taxpayers had previously amended their return due to the NOL carryback. (Dept. Ex. E, pp. 1-3; Dept. Motion, p. 2)
8. On February 6, 2013, the Department issued a Notice of Claim Denial that denied the taxpayers’ claim for refund of \$XXXX for the year 2007 on the basis that the second amended return was not timely filed. (Dept. Ex. F, pp. 1-3; Dept. Motion, p. 2)

CONCLUSIONS OF LAW:

Under section 2-1005(c) of the Code of Civil Procedure, a party is entitled to summary judgment under the following circumstances:

[I]f the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c).

The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine issue of material fact exists. Gilbert v. Sycamore Municipal Hospital, 156 Ill. 2d 511, 517 (1993).

Both parties agree with the Statement of Facts in the Department's Motion (Taxpayers' Response, p. 1), and those are all the relevant facts necessary to resolve this dispute. Although the taxpayers contend that the Department failed to show that their claim is barred by the statute of limitations, there is no genuine issue as to any material fact in this case. Summary judgment is, therefore, appropriate.

Section 904 of the Illinois Income Tax Act ("Act") (35 ILCS 5/101 *et seq.*) concerns overpayments and provides, in relevant part, as follows:

Sec. 904. Deficiencies and Overpayments.

(a) Examination of return. As soon as practicable after a return is filed, the Department shall examine it to determine the correct amount of tax. ... *If the Department finds that the tax paid is more than the correct amount, it shall credit or refund the overpayment as provided by Section 909.* The findings of the Department under this subsection shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due. Emphasis added; 35 ILCS 5/904(a).

Section 909 of the Act concerns credits and refunds and provides, in relevant part, as follows:

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, ... and shall refund any balance to such person. Emphasis added; 35 ILCS 5/909(a).

The applicable period of limitations for a claim for refund (*i.e.*, amended return) is found in section 911 of the Act, which provides, in relevant part, as follows:

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.*

(b) Federal changes.

(1) *In general. In any case where notification of an alteration 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.*

...

(e) **Time return deemed filed.** For purposes of this section 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.¹

...

Emphasis added; 35 ILCS 5/911(a)(1), (2); (b)(1); (e).

Section 506 of the Act concerns Federal Returns and provides, in relevant part, as follows:

Sec. 506. Federal Returns.

...

(b) **Changes affecting federal income tax.** A person shall notify the Department if:

(1) the taxable income, any item of income or deduction, the income tax liability, or any tax credit *reported in an original or amended federal income tax return* of that person for any year or as determined by the Internal Revenue Service or the courts *is altered by amendment of such return ... and such alteration reflects a*

¹ Under Section 505(a)(2), the taxpayers' original individual income tax return was due by April 15, 2008 (35 ILCS 5/505(a)(2)), but one of the Department's regulations grants an automatic extension of 6 months (86 Ill. Admin. Code §100.5020(b)). Therefore, under Section 911(e), the taxpayers' 2007 return is deemed to have been filed on October 15, 2008.

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...

Such notification shall be in the form of an amended return ...and shall be filed not later than 120 days after such alteration has been agreed to or finally determined for federal income tax purposes...

Emphasis added; 35 ILCS 5/506(b).

As stated in section 904, the findings of the Department are *prima facie* correct, and the Department's certified record relating to the tax is proof of such determination. 35 ILCS 5/904, 914; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981). The Department's *prima facie* case was established in this matter with the certified copy of the Notice of Claim Denial. (Dept. Ex. F, pp. 1-3) The Department denied the claim on the basis that the second amended return was not timely filed.

The Department argues that under Section 911(a), the taxpayers' second amended return should have been filed by October 15, 2011, which is 3 years after the original return was deemed to have been filed. Because the second amended return was filed on July 10, 2012, the Department contends that it was not timely and the claim for refund must be denied. The Department states that the extension for filing an amended return that is provided in Section 911(b) does not apply in this case because there was no federal change that affected the taxpayers' Illinois income in a manner that caused the filing of the second amended return. Although the taxpayers had filed both a federal and Illinois amended return in 2011, those returns were filed due to a NOL carryback. The taxpayers did not file another amended federal income tax return that would have triggered the extension in Section 911(b), and the increase in the Virginia income did not result in a federal change. The Department, therefore, argues that the claim for refund must be denied.

The taxpayers argue that they have been unfairly taxed twice by two different States, and their second amended return was timely filed because they filed a federal amended return on July 14, 2011; they believe that under Section 911(b), they have 2 years after the date that their federal amended return was accepted to file their second amended return. Because their second amended return was filed on July 10, 2012 (which was within 2 years of July 14, 2011 when their first federal amended income tax return was filed), the taxpayers contend that their second amended return was timely filed. The taxpayers also cite an appellate court order that was filed under Supreme Court Rule 23, Con-Way Transportation Services Inc. v. Hamer, 2013 WL 297986 (Ill. App. 1 Dist.), which they claim support their contentions.

The taxpayers' arguments are without merit. Although orders filed under Supreme Court Rule 23 are not precedential and may only be cited, *inter alia*, to support the law of the case (Sup. Ct. R. 23(e)(1)), the Con-Way case is not similar to the present case. In that case, there was a federal audit that altered Con-Way's federal taxable income, and both parties agreed that alteration was required to be reported to the Department under Section 506(b) of the Act. In the present case, there was no change or alteration that affected the taxpayers' federal income tax that required the taxpayers to file a second amended return with the Department pursuant to Section 506(b). Because there was no federal income tax change that related to the taxpayers' income that was sourced in Virginia, the taxpayers were not required to file an amended return under Section 506(b), and, therefore, the extension of time under Section 911(b) was not triggered. The change that triggered the second amended return (*i.e.*, filing an income tax return with the State of Virginia) is a change that did not result in the taxpayers filing a second federal amended income tax return, and, therefore, it did not trigger the extension of the limitations period under Sections 506(b) and 911(b).

Instead, the relevant limitations period for the taxpayers' second amended return is in Section 911(a), which indicates that the second amended return should have been filed by October 15, 2011. Because the taxpayers filed their second amended return on July 10, 2012, it was not timely filed. The Notice of Claim Denial, therefore, must be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the Department's Motion for Summary Judgment be granted and the Notice of Claim Denial be upheld.

Linda Olivero
Administrative Law Judge

Enter: September 18, 2014