

**IT 15-05**

**Tax Type: Income Tax**

**Tax Issue: Claim Issues – Property and Timely Filed**

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

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>No. XXXX</b>
<b>v.</b>	)	<b>Letter ID: XXXX</b>
	)	<b>Tax Year: 2008</b>
<b>JOHN &amp; JANE DOE,</b>	)	
<b>TAXPAYERS</b>	)	<b>Kenneth J. Galvin</b>
	)	<b>Administrative Law Judge</b>

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. John Doe, appearing *pro se*; Ms. Jennifer Kieffer, Special Assistant Attorney General, appearing on behalf of The Department of Revenue of the State of Illinois.

**Synopsis:**

On November 26, 2013, the Illinois Department of Revenue (hereinafter “the Department”) issued a Notice of Claim Denial to John and Jane Doe (hereinafter “taxpayers”) for tax year 2008. The basis of the Notice of Claim Denial was the Department’s determination that the taxpayers had failed to file a claim for a refund of Illinois taxes within three years after their tax return was filed. On December 12, 2013, taxpayers filed a timely protest and requested a hearing, which was held on September 4, 2014. Following a review of the testimony and the evidence presented at the hearing, it is recommended that the Department’s Notice of Claim Denial be affirmed.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the Notice of Claim Denial, dated November 26, 2013, which denied the taxpayers' claim for a refund for overpayment of 2008 Illinois income taxes. Tr. pp. 4-5; Dept. Ex. No. 1.
2. Taxpayers filed their original IL-1040 for 2008 on April 1, 2009. The Department received taxpayers IL-1040-X for 2008 on August 14, 2013. Tr. pp. 13-14; Dept. Ex. Nos. 2 and 3.

**Conclusions of Law:**

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). A different limitations period applies if the refund claim is the result of a change in a federal return. 35 ILCS 5/911(b)(1). The refund claim at issue in this case was not filed as a result of a federal change and, accordingly, subpart (b)(1) is not applicable in this case. Taxpayers' 2008 IL-1040 was timely filed on April 1, 2009. The Department received taxpayers' IL-1040-X for 2008 on August 14, 2013. The IL-1040-X for 2008 had to be filed by April 1, 2012, which is "not later" than 3 years after the date the original return was filed. Taxpayers' request for a refund for overpayment of 2008 taxes was filed more than 3 years after the original return at issue was filed. The Department notified the taxpayers that their claim for a refund was denied because their request was filed after the statute of limitations had expired.

It is noted here that Mr. John Doe testified at the hearing that the taxpayers did receive refunds for overpayments of taxes for some tax years after 2008. Tr. pp. 14-15. Mr. John Doe argued that all tax returns were amended for the same reason and that when the Department accepted the 1040-X's for 2009, 2010 and 2011, it set a "precedent" which should then have allowed the amendment for 2008. Tr. pp. 8-9. Mr. John Doe's requested refund for 2008 was \$165.

In Dow Chemical Company v. The Department of Revenue, 224 Ill. App. 3d 263 (1<sup>st</sup> 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 35 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 Mr. and Mrs. John and Jane Doe, Illinois law does not permit any discretion in this matter and requires that statutes of limitation be strictly construed.

For the reasons stated above, it is my recommendation that the Notice of Claim Denial issued November 26, 2013 for 2008 be finalized as issued.

Kenneth J. Galvin  
Administrative Law Judge

August 18, 2015