

IT 16-05
Tax Type: Income Tax
Tax Issue: Claim Issues – Properly and Timely Filed

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JANE DOE,
Taxpayer

No. XXXX
Account ID XXXX
Letter ID XXXX
Tax Year 2014

Ted Sherrod
Administrative Law Judge

**ORDER ON DEPARTMENT OF REVENUE’S MOTION FOR
SUMMARY JUDGMENT**

Synopsis:

This matter arose from a timely protest filed by *JANE DOE* (the “Taxpayer”) to the Department’s Notice of Claim Denial for Form IL-1040-X, Amended Individual Income Tax Return issued June 24, 2015 which denied the Taxpayer’s refund claim for the calendar year ending 12/31/14. Pursuant to the pre-trial order entered in this case, the issue presented is whether the Notice of Claim Denial correctly determined the Taxpayer’s liability for tax, penalty and interest for the aforementioned tax year. Prior to the commencement of any hearing in this matter, the Department filed a Motion for Summary Judgment. The Taxpayer has not responded to the Department’s Motion for Summary Judgment and did not appear at the hearing on this motion scheduled for April 8, 2016. Consequently, the Taxpayer has failed to present any testimony or documentary evidence of any kind contesting the Department’s motion. For the

reasons enumerated herein, I find that the Department's Notice of Claim Denial is correct, and I am accordingly granting its Motion for Summary Judgment.

Uncontested Facts:

1. On April 10, 2015, *JANE DOE* ("Taxpayer") electronically filed an original return, Form IL-1040, for the tax year ending December 31, 2014. Department Motion for Summary Judgment ("Motion") Group Exhibit ("Ex.") 1, pp. 2-7.
2. The Taxpayer's original return requested a refund of \$XXX. Motion Ex. 1, p. 3.
3. The Department issued a refund of \$XXX on April 21, 2015 by check number XXX. Motion Ex. 2.
4. The Department's records show that check number XXX cleared the bank on or before April 30, 2015. *Id.*
5. On April 22, 2015, the Taxpayer filed an amended return, Form IL-1040-X, dated April 15, 2015 ("first amended return") for the tax year ending December 31, 2014. Motion ¶5; Motion Ex. 1, pp. 8-10.
6. The Taxpayer's first amended return requested a refund of \$XXX. Motion Ex. 1, p. 9.
7. On June 19, 2015, the Department issued the Taxpayer a refund of \$XXX by check number XXX. Motion Ex. 2.
8. The Department's records show that check number XXX cleared the bank on or before June 26, 2015. *Id.*
9. On June 12, 2015, the Taxpayer filed an amended return, Form IL-1040-X ("second amended return"), for the tax year ending December 31, 2014. Motion Ex. 1, pp. 11-14.

10. The Taxpayer's 2014 second amended return requested a refund of \$XXX. Motion Ex. 1, p. 12.
11. The Department issued the Taxpayer a Notice of Claim Denial on June 24, 2015 in which the Department denied the Taxpayer's refund of \$XXX claimed on the Taxpayer's 2014 second amended return. Motion Ex. 3. The Department denied the Taxpayer's refund claim of \$XXX on the Taxpayer's second amended return because the Taxpayer failed to indicate on its second amended return that this refund had already been paid on June 19, 2015 by indicating the payment of this refund on Line 32 of the Taxpayer's second amended return. Motion Ex. 1, p. 12.
12. The Department and the Taxpayer agree that the Taxpayer's Illinois income tax due for the tax year ending December 31, 2014 is \$XXX, as shown on Line 25 of the Taxpayer's 2014 amended return and on the Taxpayer's 2014 second amended return. Motion ¶13; Motion Ex. 1, pp. 9-12; Motion Ex. 3.
13. The Taxpayer timely filed a protest and request for hearing contesting the Department's refund claim denial.¹

Conclusions of Law:

Summary Judgment is appropriate where there is no genuine issue of material fact and a movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005; Eidson v. Audrey's CTL, Inc., 251 Ill. App. 3d 193 (5th Dist. 1993), app. den. 154 Ill. 2d 558 (1993). It is also appropriate when the parties dispute the correct construction of an applicable statute. Bezan v. Chrysler Motors Corp., 263 Ill. App. 3d 858 (2d Dist. 1994). In this case, the only issue presented is the proper calculation of the Taxpayer's refund based on the Taxpayer's reported adjusted gross

¹ I take judicial notice of the Taxpayer's "EAR-14 Format for Filing a Protest of Income Tax" objecting to the Department's refund claim denial denying the Taxpayer's second amended refund claim which was timely filed on July 3, 2015.

income and taxable income, which is not in dispute. Accordingly, no genuine issue of material fact is presented in the instant case. The Department, in its Motion for Summary Judgment, contends that the refund the Taxpayer seeks in its refund claim at issue in this case was previously paid to the Taxpayer. Department's Motion ¶¶ 6-12. The Department's records indicate that a refund check for \$XXX for the tax year ending 12/31/14 was issued by the Department on June 19, 2015, and that this check was cashed by the Taxpayer on June 26, 2015. *Id.*

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 (1st Dist. 1981). Section 909 of the IITA, 35 ILCS 5/909, authorizes the payment of refunds to a taxpayer that has overpaid its Illinois income tax liabilities. 35 ILCS 5/909. Here, the Taxpayer claims a refund of tax previously paid over to the Department. Motion Ex. 1, pp. 11-14. Therefore, the Taxpayer has the burden of proof. Balla, *supra* at 296.

Moreover, section 904(a) of the IITA provides that the admission into evidence of the Department's Notice of Claim Denial denying the refund the Taxpayer claims establishes the Department's *prima facie* case and is *prima facie* correct. 35 ILCS 5/904(a). Once the Department's *prima facie* case is established, the burden of proof shifts to the taxpayer to overcome the Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

A taxpayer's mere assertion that the Department erred in computing the taxpayer's tax liability is not sufficient to rebut the statutory presumption of correctness that attaches to the Department's *prima facie* correct determination. Central Furniture Mart, v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987); Quincy Trading Post v. Department of Revenue, 12 Ill. App. 3rd

725 (4th Dist. 1973). To rebut the Department's determination, a taxpayer must produce accounting books and records of business activities that demonstrate the amount of tax it claims to be properly due. PPG Industries v. Department of Revenue, 328 Ill. App. 3d 16 (1st Dist. 2002).

The Department, in its Motion for Summary Judgment, established its *prima facie* case by introducing its refund claim denial, based upon its review of the Taxpayer's second amended tax return into evidence. 35 ILCS 5/904(a). The burden then shifted to the Taxpayer to overcome the Department's *prima facie* case. Anderson v. Department of Finance, 370 Ill. 225 (1938); Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978).

In the instant case, the Taxpayer did not respond to the Department's Motion for Summary Judgment and did not appear at the hearing on this motion scheduled, by agreement of the parties, for April 8, 2016. Accordingly, the Taxpayer has failed to produce any evidence to overcome the Department's *prima facie* case and the Department's *prima facie* correct determination denying the Taxpayer's refund claim must, therefore, be finalized and affirmed.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notice of Claim Denial issued June 24, 2015 denying the Taxpayer's refund claim for overpayment of income tax for the tax year ended 12/31/14 be finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: April 27, 2016