

The statute of limitations *is the same* for assessments and overassessments.

The four year limitation starts on the date the return is required to be filed or on the date the return is actually filed, *whichever is later*.

Therefore, since the return was not filed until 7/25/2008, the four year statute does not start until that date - for both assessments and overassessments.

Further, Ms [REDACTED] is not asking for a refund - she is asking for an offset against tax and penalties for other years assessed on or about the same time as the 2003 return was filed. (Emphasis in original.)

Taxpayer's representative also requested a formal hearing in the event that the Section disagreed with his conclusion. The Section disagreed, and a hearing was scheduled.

At the hearing, Taxpayer's representative stated that he was hired by Taxpayer to assist in filing past-due unfiled state and federal returns. These returns (including the 2003 Arizona tax return) were completed and filed after April 15, 2008.

Taxpayer's representative also testified that, at or around the time the returns were filed, he had been in conversation with an employee(s) at the Department who told him that the net amount due for all delinquent tax years would be approximately \$[REDACTED].¹ This amount included calculating a \$[REDACTED REFUND REQUEST] refund for tax year 2003 based upon excess

¹ Apparently, in subsequent tax years, Taxpayer's withholdings were not as large, resulting in deficiencies for such subsequent tax years.

withholdings for that year. Taxpayer's representative stated that he was later contacted by the same Department employee to inform him that her supervisor determined that the 2003 excess withholdings could not be used to offset deficiencies in other years because the 2003 return was not timely filed. Taxpayer's representative asserted that Taxpayer is currently facing financial hardship, and under these circumstances, Taxpayer sought relief of or offset from any other taxes due by utilizing the purported excess 2003 withholdings.

The Section maintained that the Department cannot be bound by oral advice given by one of its employees to a taxpayer or his/her representative. The Section also testified that in 2005 the Department had requested (in writing) that Taxpayer file her 2003 tax return. However, Taxpayer did not do so. The Section also stated that they could not provide any relief to Taxpayer based upon her financial hardship. Rather, the Section advised that this would be a matter that could be addressed with the Department's Collections section if the refund denial was upheld. The issue to be decided by the Hearing Office is whether the Section properly denied Taxpayer's claim for refund for tax year 2003.

CONCLUSIONS OF LAW

With respect to oral advice or opinions that may have been given by Department employees, the law is clear that the Department is not bound by erroneous oral advice given to a person by a Department employee. See A.R.S. § 42-2052.

With regard to the statute of limitations, A.R.S. § 42-1106.A provides that the period within which a claim for credit or refund may be filed is the period within which the Department may make an assessment under A.R.S. § 42-1104. A.R.S. § 42-1104.A establishes a general four-year statute of limitations. Further, A.R.S. § 42-1106.B specifically provides:

If the total amount withheld under § 43-401 exceeds the amount of the tax on the employee's entire taxable income as computed under title 43, no refund, credit or offset may be made to the employee unless the employee files a return, in respect of which the tax withheld might be credited, within four years from the due date of the original return. (Emphasis added.)

Thus, A.R.S. § 42-1106.D provides that the failure to begin an action for a credit or refund within the time specified in A.R.S. § 42-1106 is a bar against the recovery of taxes by the taxpayer.

The due date of Taxpayer's original 2003 Arizona return was April 15, 2004. Pursuant to A.R.S. § 42-1106.B, in order to be eligible for a refund or offset for Arizona withholdings from 2003, Taxpayer needed to file her 2003 Arizona return by April 15, 2008. However, Taxpayer did not file her 2003 Arizona return until May 9, 2008, which is beyond the four-year period established in A.R.S. § 42-1106.B. Therefore, the Section properly denied Taxpayer's claim for refund (or offset) for excess withholding from 2003 because the return was filed after the four-year period established in A.R.S. § 42-1106.B expired.

At the hearing, Taxpayer's representative sought relief from the statute of limitations period stating that Taxpayer was

currently facing financial hardship. A.R.S. § 42-2068 provides for suspension of the statute of limitations for refunds, but only under certain narrow circumstances. A.R.S. § 42-2068 provides:

A. Notwithstanding § 42-1106, the running of the statute of limitations for refunds is suspended if an individual, as defined in § 43-104, is financially disabled and eligible for equitable tolling of the statute of limitations for refunds under § 6511(h) of the internal revenue code. The department shall suspend the statute of limitations during any period of a qualifying individual's life that the individual is financially disabled.

I.R.C. § 6511(h) suspends the statute of limitations period for filing a claim for credit or refund under I.R.C. § 6511(a) for any period of an individual taxpayer's life during which the taxpayer is unable to manage the taxpayer's financial affairs because of a medically determinable mental or physical impairment that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 12 months.

The Internal Revenue Service has issued a Revenue Proclamation to address this issue. Rev. Proc. 99-21 describes the information that is required to be submitted with the taxpayer's claim for credit or refund of tax in order to request suspension of the limitations period under I.R.C. § 6511 due to an individual taxpayer's financial disability. Rev. Proc. 99-21 provides in pertinent part:

Unless otherwise provided in IRS forms and instructions, the following statements are to be submitted with a claim for credit or refund of tax to claim financial disability for purposes of § 6511(h).

(1) a written statement by a physician (as defined in § 1861(r)(1) of the Social Security Act, 42 U.S.C. § 1395x(r)), qualified to make the determination, that sets forth:

(a) the name and a description of the taxpayer's physical or mental impairment;

(b) the physician's medical opinion that the physical or mental impairment prevented the taxpayer from managing the taxpayer's financial affairs;

(c) the physician's medical opinion that the physical or mental impairment was or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months;

(d) to the best of the physician's knowledge, the specific time period during which the taxpayer was prevented by such physical or mental impairment from managing the taxpayer's financial affairs; and

(e) the following certification, signed by the physician:

I hereby certify that, to the best of my knowledge and belief, the above representations are true, correct, and complete.

(2) A written statement by the person signing the claim for credit or refund that no person, including the taxpayer's spouse, was authorized to act on behalf of the

taxpayer in financial matters during the period described in paragraph (1)(d) of this section. Alternatively, if a person was authorized to act on behalf of the taxpayer in financial matters during any part of the period described in paragraph (1)(d), the beginning and ending dates of the period of time the person was so authorized.

Taxpayer has not provided evidence to show that she meets the requirements of Rev. Proc. 99-21. There is also no evidence that Taxpayer is eligible for equitable tolling of the statute of limitations for refunds under I.R.C. § 6511(h). Therefore, the statute of limitations for refunds may not be suspended under A.R.S. § 42-2068, and the Hearing Office is bound by the provisions of A.R.S. § 42-1106.B.

Based on the foregoing, Taxpayer's protest is denied.

DATED this 12th day of March, 2009.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by certified mail to:

[REDACTED]

Copy of the foregoing mailed to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section