

December 20, 2021


VIA HAND DELIVERY

Illinois Independent Tax Tribunal
160 N. LaSalle Street
Room N506
Chicago, Illinois 60601

To the Honorable Members of the Court:

On behalf of Petitioner Mitutoyo America Corporation, enclosed are four copies of our petition and a check of \$500 for the filing fee, payable to the Illinois Independent Tax Tribunal.

Respectfully,



Murray Gordon
(312) 848-6014
mgordon@masudafunai.com

cc: Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street
7-900
Chicago, Illinois 60601

cc: Mitutoyo America Corporation
ATTN: Etsuko Neupane Otake
965 Corporate Boulevard
Aurora, Illinois 60502-9176

ILLINOIS INDEPENDENT
TAX TRIBUNAL

DEC 20 2021

RECEIVED

Mitutoyo America Corporation)
)
Petitioner,)
)
v.)
)
ILLINOIS DEPARTMENT)
OF REVENUE,)
)
Respondent.)
)

PETITION

The Petitioner, Mitutoyo America Corporation, hereby petitions the Illinois Independent Tax Tribunal to review and reverse the Notice of Claim Denial (“Notice”) issued by the Illinois Department of Revenue (“Department”) on November 4, 2021, a copy of which is attached hereto as Exhibit A, for the reasons stated below:

INTRODUCTION

1. The Notice was issued by the Department on November 4, 2021 denying Petitioner’s claim for refund of \$250,282 of Illinois corporate income taxes paid with respect to the taxable year ending December 31, 2016.
2. Petitioner is a corporation with its principal place of business in Aurora, Illinois.

3. Petitioner is located at 965 Corporate Boulevard, Aurora, Illinois 60502-9176 and its telephone number is 1 (888) 648-8869. The Taxpayer Account number is 10554-04288, and the Audit Identification Number is A1774237696.

4. Petitioner is a sales, marketing, and service organization that was established in the United States in 1963 by Mitutoyo Corporation, a Japanese corporation. Petitioner deals in products, solutions, and systems for metrology—the science and practice of precision measurement—in industrial, scientific, engineering, academic, and other technical environments.

BACKGROUND AND RELEVANT FACTS

5. Petitioner timely filed its Illinois Corporate Income Tax Return, Form IL-1120, for its taxable year ending December 31, 2016.

6. The Department examined the return and issued its Notice of Audit Results on May 10, 2021 (a copy of which is attached hereto as Exhibit B), concluding that the Department “did not find any errors and will process your return as filed.”

7. Shortly after that, PLANTE & MORAN, PLLC (“Plante Moran”), Petitioner’s accountants and tax advisors, reviewed this return and concluded that Petitioner, on its 2016 Form IL-1120, had incorrectly allocated revenues from its sales and service activities to Illinois that, under 35 ILCS 5/304, should have been correctly allocated to, and taxed in, other states in which Petitioner sells products and renders services.

8. Accordingly, on October 15, 2020, Plante Moran delivered to Petitioner an

amended return and claim for refund of overpaid income taxes, with appropriate instructions for signing and filing.

9. On or before October 16, 2021, the due date for filing the amendment and claim, Michelle Brazee, CPA, then an employee of Petitioner, caused the amendment and claim to be signed by Etsuko Otake, officer of Petitioner, then applied the proper amount of postage to a properly addressed envelope, and deposited the envelope in an official United States Postal Service mailbox. The proper address and postage were evidenced by the fact that the Department acknowledged receipt of the claim.

10. By way of background, Plante Moran had previously reviewed Petitioner's Forms IL-1120 for each of its taxable years ending on December 31, 2014, 2015, and 2016, similarly concluding that Petitioner had incorrectly allocated revenues from its sales and service activities to Illinois that, under 35 ILCS 5/304, should have been correctly allocated to, and taxed in, other states in which Petitioner sells products and renders services.

11. Accordingly, prior to the due date for each such claim for refund, Plante Moran delivered to Petitioner appropriately completed amended Forms IL-1120, which Petitioner timely executed and mailed to the Illinois Department of Revenue.

12. The Illinois Department of Revenue reviewed each of the refund claims for Petitioner's 2014, 2015, and 2016 taxable years, accepting them as having been timely filed and allowable in full.

APPLICABLE LAW

13. 35 ILCS 5/911(a) generally provides that 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. No credit or refund shall be allowed unless the claim is filed within such period.

14. The instructions for Form IL-1120 provide that the due date for corporate tax return filings is the same as the Federal due date. See, generally, 2016 IL-1120 Instructions (illinois.gov) (retrieved on December 12, 2021), at Page 4; 35 ILCS 5/505; and 86 Ill. Adm. Code 100.5000.

15. Federal “time of filing” rules, codified at 26 U.S.C.A. § 7502 (Internal Revenue Code §7502), generally provide that if the Internal Revenue Service receives a return after the statutory due date, the date of the United States postmark stamped on the envelope in which the return was mailed shall be deemed to be the date of delivery (the “mailbox rule”).

16. IRC §7502(a)(2)(B) additionally requires that the return was, within the time prescribed for filing, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return is required to be filed.

17. Following these rules, if a return due to be filed with the Illinois Department of Revenue is received after its due date, but meets the above requirements, it will be deemed timely filed.

18. 26 C.F.R. § 301.7502-1, Treas. Reg. § 301.7502-1, the regulations under the

IRC's mailbox rule, allow for the use of postmarks imprinted by private postage meter to satisfy the mailbox rule if the postmark bears a legible date that is on or before the last date for filing the return, and if the return is received in a reasonable amount of time.

19. The United States Tax Courts have generally allowed between two and six days for reasonable delivery times by the United States Postal Service, taking into account weekends and holidays. See, e.g., *McCurry*, Robert E., (1981) TC Memo 1981-68, PH TCM ¶81068, 41 CCH TCM 904 (6 days); *Beacham*, Herman W., (1996, S Ct) TC Memo 1996-226, RIA TC Memo ¶96226, 71 CCH TCM 3012 (3 days); *Sable*, Jacqueline, (1996) TC Memo 1996-535, RIA TC Memo ¶1996-535, 72 CCH TCM 1442 (4 days); *Rothbard*, Moshe, (2001) TC Memo 2001-230, RIA TC Memo ¶2001-230, 82 CCH TCM 476 (2 days); *Leventis*, P. P., Jr., (1968) 49 TC 353, acq sub *Dixie Beverage Co.*, 1969-2 CB xxiv (4 days); *Guerra*, Hector, (1983) TC Memo 1983-21, PH TCM ¶83021, 45 CCH TCM 510 (4 days); *Booher*, William C., (1983) TC Memo 1983-193, PH TCM ¶83193, 45 CCH TCM 1246 (5 days, which included Christmas and a weekend); *Gomez*, Benjamin V., (1996) TC Memo 1996-561, RIA TC Memo ¶96561, 72 CCH TCM 1602 (3 days); *Neuman*, George S., (1986) TC Memo 1986-329, PH TCM ¶86329, 51 CCH TCM 1645 (5 or 6 days); *Robinson*, Orlander, (2000) TC Memo 2000-146, RIA TC Memo ¶2000-146, 79 CCH TCM 1956 (3 days); *Stotter*, Arthur, (1978) 69 TC 896 (4 days); and *Fujioka*, Janine Midori, (1999) TC Memo 1999-316, RIA TC Memo ¶99316 (3 days).

ERROR

20. Petitioner respectfully submits that the Department erroneously disallowed the

claim for refund, holding that the claim was received after the deadline.

21. Petitioner further respectfully submits that the Department received the claim within a reasonable period after mailing. The Department notified Petitioner that it received the claim on Wednesday, October 21, 2020, which is five days after Friday, October 16, 2020, the latest date Petitioner would have mailed the claim. Of those five days, two are the weekend, thus implying the Department received the claim within three days of mailing.

22. Petitioner further submits that under an executive order in effect in October 2020 issued by Governor Pritzker, many employees of the Department were working from home, and there were, therefore, significant delays in internally processing mail by the Department, so that it is reasonable to infer that the claim arrived at the premises of the Department even earlier than October 21, 2020.

23. Petitioner respectfully submits that the October 21, 2020 acknowledgement further supports a timely mailing, taking into account the highly publicized United States Postal Service delays attributable to retirement and reassignment of mail processing equipment, reductions in overtime work ordered by the Postmaster General, mail carrier shortages caused by the pandemic, and prioritization by the USPS of processing and delivery of mail-in and early ballots for the 2020 Federal, state, and local elections.

24. In the rush to file the claim and minimize time in public places, Petitioner's employee used the internal postage machine to obtain a timely postmark and sufficient postage for the properly addressed envelope but failed to make and keep a photocopy of the postmarked envelope. The Department was unable to provide us with our envelope.

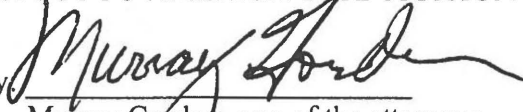
Nevertheless, Petitioner expects its employee to be available by affidavit or to testify.
Petitioner submits that three other refund claims were successfully filed with the
Department using the same procedure.

CONCLUSION AND RELIEF REQUESTED

25. Petitioner respectfully submits that it satisfied the requirements of the “mailbox
rule” as applicable to the State of Illinois and, therefore, timely filed its claim for refund.

WHEREAS, Petitioner respectfully requests that the “Notice” be canceled and
the Department treat Petitioner’s refund claim as timely filed.

MITUTOYO AMERICA CORPORATION

By 
Murray Gordon, one of the attorneys
representing Petitioner

Representatives:

Nancy Sasamoto
Masuda, Funai, Eifert and Mitchell, LTD.
203 North LaSalle Street
Chicago, IL 60601-1262
Tel. (312) 245-7429
ARDC No. 3128178

Murray Gordon
Masuda, Funai, Eifert and Mitchell, LTD.
203 North LaSalle Street
Chicago, IL 60601-1262
Tel. (312) 848-6014
ARDC No. 1015591

Notice of Claim Denial

Exhibit A



November 4, 2021



Letter ID: CNXXXXX217944166

Taxpayer ID: 13-1980272

Account ID: 10554-04288

Audit ID: A1774237696

Reporting period: December 2016

_____ #BWNKMGV
#CNXX XXX2 1794 4166#
MITUTOYO AMERICA CORP
MITUTOYO AMERICA CORPORATION
_____ ATTN: ETSUKO NEUPANE OTAKE
965 CORPORATE BLVD
AURORA IL 60502-9176

We have audited your Form IL-1120, Corporation Income and Replacement Tax Return for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the Explanation of Audit Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

If you do not agree, you may protest this notice by following the instructions listed below.

- **If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice.** Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue within 60 days of this notice.** If you file a protest on time, we must reconsider our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest within 60 days, this denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following page of this notice for additional information and instructions.

If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

ILLINOIS DEPARTMENT OF REVENUE
AUDIT BUREAU
PO BOX 19012
SPRINGFIELD IL 62794-9012
(217) 782-9339

Statement

Exhibit A

Exhibit A

Date: November 4, 2021
Letter ID: CNXXXXX217944166
Name: MITUTOYO AMERICA CORP
Taxpayer ID: 13-1980272
Account ID: 10554-04288
Audit ID: A1774237696
Reporting period: December 2016

Computation of claim denial

Reporting period ending:	12/31/2016
Claim receive date:	10/21/2020
Amount of original claim:	\$250,282.00
Amount of proposed adjustment:	(\$250,282.00)
Net claim allowed:	\$0.00

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

Taxpayer Statement

Exhibit A
Exhibit A



November 5, 2021 TDD 1 800 544-5304



Letter ID: CNXXX179254X2722

Account ID: 10554-04288
FEIN: 13-1980272

#BWNKMGV

#CNXX X179 254X 2722#
MITUTOYO AMERICA CORP
MITUTOYO AMERICA CORPORATION
ATTN: ETSUKO NEUPANE OTAKE
965 CORPORATE BLVD
AURORA IL 60502-9176

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

IL Business Income Tax

You have available credits of \$177,193.00

Account ID: 10554-04288

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2015	213,626.00	8,793.43	-	-	(399,612.43)	(177,193.00)

P-000011

SOA

If necessary, respond to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19004
SPRINGFIELD IL 62794-9004

Exhibit A

Exhibit A

Notice of Audit Results

Exhibit B



#BWNKMGV
#CNXX X143 2743 7529#
MITUTOYO AMERICA CORP
MITUTOYO AMERICA CORPORATION
ATTN: ETSUKO NEUPANE OTAKE
965 CORPORATE BLVD
AURORA IL 60502-9176

May 10, 2021



Letter ID: CNXXX14327437529

Taxpayer ID: 13-1980272
Account ID: 10554-04288
Audit ID: A631636480
Return type: IL-1120
Audit periods: 01/2016 - 12/2016

This letter is to notify you that we have completed a review of the return as identified above.

We did not find any errors and will process your return as filed. **See the next page for breakdown by period.**

We have determined that you have an overpayment for 10/15/2020, but that no refund or credit for the overpayment is allowed because the statute of limitations in Section 911 of the Illinois Income Tax Act (35 ILCS 5/911) has expired

If you have a balance due, make your check payable to the Illinois Department of Revenue and return it in the enclosed envelope for processing. **Note:** interest will continue to accrue on any unpaid tax until it is paid in full.

If you do not pay the tax due as shown on the next page within 30 days of the "interest through date," your late payment penalty will increase.

All audits are subject to quality review. If no changes are made, we will send you a Notice of Audit Closure. Otherwise, we will notify you if we need additional information.

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

If you have questions, contact us using the information listed below.

Sincerely,

See Back of Page

Rae Ann Weldin
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19020
SPRINGFIELD IL 62794-9020

217 557-0774
217 785-3251 fax

RaeAnn.Weldin2@illinois.gov

10-May-2021

Letter ID: CNXXX14327437529

Exhibit B

Taxpayer ID: 13-1980272
Account ID: 10554-04288
Audit ID: A631636480
Return type: IL-1120
Audit periods: 01/2016 - 12/2016

Overpayment Results

Tax period ending
Return filing date

Overpayment

Amended Return

12/31/2016

10/21/2020

\$250,282.00