

IN THE ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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COUNTRY Life Insurance Company	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	No.
	)	
	)	
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
	)	
Respondent,	)	

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**PETITION**

The Petitioner, COUNTRY Life Insurance Company®, (hereinafter “Petitioner”) by its attorneys of record, David Kupiec and Natalie Martin of Kupiec & Martin, LLC, hereby petitions the Illinois Independent Tax Tribunal to review, and withdraw and/or modify the Notice of Denial (hereinafter “Notice”) issued by the Illinois Department of Revenue (hereinafter “Department” or “IDOR”) on May 7, 2018, for the reasons set forth below.

**INTRODUCTION**

1. Petitioner is a stock insurance company organized in the State of Illinois.
2. The FEIN associated with Petitioner is 37-0808781.
3. Petitioner is located at 1711 GE Rd., Bloomington, IL 61704-2286. The phone number is 309-821-3000.

4. The Department issued to Petitioner the Notice under dispute on May 7, 2018, for the tax period ending December 31, 2010 (hereinafter “tax year at issue”), denying a claim for refund of \$ 964,122. A copy of the Notice is attached.

### **JURISDICTION**

5. The Tax Tribunal has jurisdiction pursuant to the Illinois Independent Tax Tribunal Act of 2012, 35 ILCS 1010, because the alleged tax liability in question from the Illinois Income Tax Act (hereinafter “IITA”) in the aggregate exceeds, \$15,000, exclusive of penalties and interest, and because Petitioner has remitted the \$500 filing fee and filed this Petition within 60 days of the Notice of Denial.

### **BACKGROUND AND RELEVANT FACTS**

6. Petitioner is a stock insurance company organized in the State of Illinois.
7. Petitioner COUNTRY Life Insurance Company offers life insurance, long term care, and disability policies and annuities in the United States.
8. Petitioner was incorporated in 1928 and is based in Bloomington, Illinois. The company has operations in Alabama, Alaska, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Oregon, Tennessee, Washington, West Virginia, and Wisconsin.
9. Petitioner timely filed its 2009 Illinois income tax return on September 8, 2010.
10. Petitioner timely filed its 2010 Illinois income tax return on September 13, 2011.
11. Petitioner filed an amended 2009 Federal 1120-X to claim an ordinary bad-debt deduction for impairments on August 30, 2013.
12. On October 31, 2013, Petitioner received notice that its claim was selected for review/audit by the IRS.

13. On September 15, 2014, an opening conference for the IRS audit was held and the audit was to cover 2006, 2007, 2009 and 2010 tax years.
14. The 2010 tax year was subject to IRS audit only to the extent that a capital loss originating in 2010 was carried back to 2007.
15. On April 21, 2015, the IRS accepted the claim for refund for years 2006, 2007, 2009 and 2010.
16. The RAR accepted by the IRS did not require any changes to the 2010 federal return.
17. Petitioner filed a 2009 Illinois IL-1120-X for the federal change amendment establishing and claiming a net loss on December 17, 2016. The 2009 amended return changed the amounts reported for “federal taxable income,” “base income or net loss” and “net income” from positive to negative numbers.
18. The amount of the 2009 net loss at issue was reported on the timely filed 2009 Illinois amended income tax return and resulted entirely from the federal change.
19. Petitioner received a Notice of Denial on April 18, 2017 indicating that Column A did not agree with the IDOR records as it was off \$1.
20. Petitioner filed a second 2009 Illinois IL-1120-X to correct the \$1 change on Line 47. The 2009 amended return reported “federal taxable income,” “base income or net loss” and “net income” as negative numbers.
21. Petitioner received another Notice of Denial on May 1, 2017 indicating that the amount of refund requested was \$1 greater than tax paid.
22. Pursuant to discussions with the IDOR, an amended page 3 of the 2009 IL-1120-X was provided to IDOR on May 8, 2017 to fix this \$1 issue.
23. The IDOR issued an Illinois refund check to Petitioner on July 5, 2017 for this amended 2009 Illinois return to refund estimated tax payments made for 2009 as the 2009 amended return reported a net loss.
24. Petitioner filed an amended 2010 Federal 1120-X to claim a dividend received deduction and an ordinary bad-debt loss for impairments on March 31, 2016.
25. On August 11, 2016, Petitioner received notice that its claim was being sent to the IRS Area Office for review.

26. On March 7, 2017, Petitioner received a refund check from the IRS for the 2010 amended return claim.
27. Pursuant to this March 7, 2017 IRS acceptance, Petitioner filed a 2010 IL-1120-X on March 17, 2017, to report the federal changes associated with this 2010 federal amended return.
28. On May 23, 2017, Petitioner received a Notice of Partial Refund indicating a \$1 discrepancy.
29. Petitioner did not disagree with this \$1 adjustment and the IDOR issued a refund check to Petitioner on July 18, 2017 for the 2010 Illinois amended return but the refund check did not include any of the net loss deduction reported on the 2009 Illinois amended return.
30. Petitioner filed another 2010 IL-1120-X on January 4, 2018 to obtain the refund for the net loss deduction previously reported on Petitioner's 2009 IL-1120-X.
31. Petitioner received a Notice of Denial dated May 7, 2018 denying the 2010 refund claimed on the January 4, 2018 amended return "because you filed your amended return past the statute of limitations." The Notice did not state the date on which the Statute of Limitations started or expired.<sup>1</sup>

**APPLICABLE LAW AND ILLINOIS COURT AND ADMINISTRATIVE  
HEARINGS CASES**

Petitioner relies upon the following authority to dispute the Department's refund denial at issue:

**United States Constitution – Due Process and Equal Protection Clause**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

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<sup>1</sup> Although the May 7, 2018 Notice of Denial did not state the day on which the IDOR contends the statute of limitations started or ended for the 2010 amended return at issue, Petitioner received an email on June 12, 2018 from IDOR Revenue Tax Specialist II Heather Ausmus stating that the statute of limitations started on April 21, 2015 and expired on August 19, 2017 (2 years plus 120 days).

any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**  
U.S. CONST., amend XIV, Section 1 (emphasis added).

### **Constitution of the State of Illinois– Due Process, Equal Protection and Uniformity Clauses**

Article I, section 2 of the Constitution of the State of Illinois provides:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Ill. Const. 1970, art. I, Section 2.

Article IX, section 2, of the Constitution of the State of Illinois provides:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

Ill. Const. 1970, art. IX, Section 2.

### **Illinois Statutory Provisions**

#### **35 ILCS 5/207**

Sec. 207. Net Losses.

(a) If after applying all of the (i) modifications provided for in paragraph (2) of Section 203(b), paragraph (2) of Section 203(c) and paragraph (2) of Section 203(d) and (ii) the allocation and apportionment provisions of Article 3 of this Act and subsection (c) of this Section, the taxpayer's net income results in a loss;

(1) for any taxable year ending prior to December 31, 1999, such loss shall be allowed as a carryover or carryback deduction in the manner allowed under Section 172 of the Internal Revenue Code;

(2) for any taxable year ending on or after December 31, 1999 and prior to December 31, 2003, such loss shall be allowed as a carryback to each of the 2 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of such loss; and

(3) for any taxable year ending on or after December 31, 2003, such loss shall be allowed as a net operating loss carryover to each of the 12 taxable years following the taxable year of such loss, except as provided in subsection (d).

(a-5) Election to relinquish carryback and order of application of losses.

(A) For losses incurred in tax years ending prior to December 31, 2003, the taxpayer may elect to relinquish the entire carryback period with respect to such loss. Such election shall be made in the form and manner prescribed by the Department and shall be made by the due date (including extensions of time) for filing the taxpayer's

return for the taxable year in which such loss is incurred, and such election, once made, shall be irrevocable.

(B) The entire amount of such loss shall be carried to the earliest taxable year to which such loss may be carried. The amount of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the prior taxable years to which such loss may be carried.

(b) Any loss determined under subsection (a) of this Section must be carried back or carried forward in the same manner for purposes of subsections (a) and (b) of Section 201 of this Act as for purposes of subsections (c) and (d) of Section 201 of this Act.

(c) Notwithstanding any other provision of this Act, for each taxable year ending on or after December 31, 2008, for purposes of computing the loss for the taxable year under subsection (a) of this Section and the deduction taken into account for the taxable year for a net operating loss carryover under paragraphs (1), (2), and (3) of subsection (a) of this Section, the loss and net operating loss carryover shall be reduced in an amount equal to the reduction to the net operating loss and net operating loss carryover to the taxable year, respectively, required under Section 108(b)(2)(A) of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the amount of discharge of indebtedness income that is excluded from gross income for the taxable year (but only if the taxable year ends on or after December 31, 2008) under Section 108(a) of the Internal Revenue Code and that would have been allocated and apportioned to this State under Article 3 of this Act but for that exclusion, and the denominator of which is the total amount of discharge of indebtedness income excluded from gross income under Section 108(a) of the Internal Revenue Code for the taxable year. The reduction required under this subsection (c) shall be made after the determination of Illinois net income for the taxable year in which the indebtedness is discharged.

(d) In the case of a corporation (other than a Subchapter S corporation), no carryover deduction shall be allowed under this Section for any taxable year ending after December 31, 2010 and prior to December 31, 2012, and no carryover deduction shall exceed \$100,000 for any taxable year ending on or after December 31, 2012 and prior to December 31, 2014; provided that, for purposes of determining the taxable years to which a net loss may be carried under subsection (a) of this Section, no taxable year for which a deduction is disallowed under this subsection, or for which the deduction would exceed \$100,000 if not for this subsection, shall be counted.

(e) In the case of a residual interest holder in a real estate mortgage investment conduit subject to Section 860E of the Internal Revenue Code, the net loss in subsection (a) shall be equal to:

- (1) the amount computed under subsection (a), without regard to this subsection (e), or if that amount is positive, zero;
- (2) minus an amount equal to the amount computed

under subsection (a), without regard to this subsection (e), minus the amount that would be computed under subsection (a) if the taxpayer's federal taxable income were computed without regard to Section 860E of the Internal Revenue Code and without regard to this subsection (e).

The modification in this subsection (e) is exempt from the provisions of Section 250.

### **35 ILCS 5/506**

#### **Sec. 506. Federal Returns.**

(a) In general. Any person required to make a return for a taxable year under this Act may, at any time that a deficiency could be assessed or a refund claimed under this Act in respect of any item reported or properly reportable on such return or any amendment thereof, be required to furnish to the Department a true and correct copy of any return which may pertain to such item and which was filed by such person under the provisions of the Internal Revenue Code.

(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 or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alteration reflects a 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, or in the number of personal exemptions allowable to such person under Section 151 of the Internal Revenue Code, or

(2) the amount of tax required to be withheld by that person from compensation paid to employees and required to be reported by that person on a federal return is altered by amendment of the return or by any other recomputation or redetermination that is agreed to or finally determined on or after January 1, 2003, and the alteration affects the amount of compensation subject to withholding by that person under Section 701 of this Act.

Such notification shall be in the form of an amended return or such other form as the Department may by regulations prescribe, shall contain the person's name and address and such other information as the Department may by regulations prescribe, shall be signed by such person or his duly authorized representative, and shall be filed not later than 120 days after such alteration has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency or refund, tentative carryback

adjustment, abatement or credit resulting therefrom has been assessed or paid, whichever shall first occur.

### 35 ILCS 5/904

(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 amount of tax shown on the return is less than the correct amount, it shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. **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.

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### 35 ILCS 5/909

(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, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and shall refund any balance to such person or credit any balance to that person pursuant to an election under subsection (b) of this Section.

(b) Credits against estimated tax. The Department shall prescribe regulations providing for a taxpayer election on an original return, an amended return, or otherwise for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Department to be an overpayment of the tax imposed by this Act for a preceding taxable year.

(c) Interest on overpayment. Interest shall be allowed and paid at the rate and in the manner prescribed in Section 3-2 of the Uniform Penalty and Interest Act upon any overpayment in respect of the tax imposed by this Act. For purposes of this subsection, no amount of tax, for any taxable year, shall be treated as having been paid before the date on which the tax return for such year was due under Section 505, without regard to any extension of the time for filing such return.

(d) Refund claim. Every claim for refund shall be filed with the Department in writing in such form as the Department may by regulations prescribe, and shall state the specific grounds upon which it is founded.

(e) Notice of denial. **As soon as practicable after a claim for refund is filed, the Department shall examine it and either issue a notice of refund, abatement or credit to the claimant or issue a notice of denial.** If the Department has failed to approve or



deny the claim before the expiration of 6 months from the date the claim was filed, the claimant may nevertheless thereafter file with the Department a written protest in such form as the Department may by regulation prescribe, provided that, on or after July 1, 2013, protests concerning matters that are subject to the jurisdiction of the Illinois Independent Tax Tribunal shall be filed with the Illinois Independent Tax Tribunal and not with the Department. If the protest is subject to the jurisdiction of the Department, the Department shall consider the claim and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing within 6 months after the date such request is filed.

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### 35 ILCS 5/911

#### 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 (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), 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.

(2) Tentative carryback adjustments paid before January 1, 1974. If, as the result of the payment before January 1, 1974 of a federal tentative carryback adjustment, a notification of an alteration is required under Section 506(b), a claim for refund may be filed at any time before January 1, 1976, 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 base income for the taxable year after giving effect to the federal alteration resulting from the tentative carryback adjustment irrespective of any limitation imposed in paragraph (1) of this subsection.

## 20 ILCS 2520

(20 ILCS 2520/2) (from Ch. 120, par. 2302) Sec. 2. Legislative Declaration. The General Assembly finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the General Assembly to place guarantees in Illinois law to ensure that the rights, privacy, and property of Illinois taxpayers are adequately protected during the process of the assessment and collection of taxes.

The General Assembly further finds that the Illinois tax system is based largely on self-assessment, and the development of understandable tax laws and taxpayers informed of those laws will both improve self-assessment and the relationship between taxpayers and government. It is the further intent of the General Assembly to promote improved taxpayer self-assessment by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

(Source: P.A. 86-176; 86-189.)

### Illinois Case Law

Dow Chemical Co. v. Dept. of Revenue, 586 N.E.2d 516 (Ill. App. Ct. 1991)

American Airlines, Inc. v. Department of Revenue, 402 Ill. App. 3d 579, N.E.2d 666 (1<sup>st</sup> Dist. 2009).

The Department Of Revenue Of The State Of Illinois v. ABC, Inc., State of Illinois Department of Revenue Office Of Administrative Hearings, IT 09-14.

**I. THERE WAS NO 2010 FEDERAL CHANGE TO REPORT TO ILLINOIS PURSUANT TO THE ORIGINAL FEDERAL RAR ACCEPTED ON APRIL 21, 2015**

32. Petitioner realleges and reincorporates paragraphs 1-31 of the Petition herein.
33. Petitioner received an acceptance of its claim for 2009 from the IRS on April 21, 2015.
34. As part of this settlement, there was no change to 2010 as it was included only to the extent it would affect 2007.
35. The RAR made no change to the 2010 federal tax, adjustments to income, carryback/carryovers. The effect was a zero 2010 federal tax change.
36. IITA Sec. 506 requires an Illinois amended return if  
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 or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alteration reflects a 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, or in the number of personal exemptions allowable to such person under Section 151 of the Internal Revenue Code....
37. Pursuant to this RAR, there was no requirement for Petitioner to file an amended 2010 Illinois income tax return as there were no changes to the 2010 federal income tax return.
38. Pursuant to the information provided above, the statute of limitations did not start on April 21, 2015 and therefore, Petitioner's 2010 Illinois amended return dated January 4, 2018 was timely filed.
39. Based on the Petitioner's facts presented above and the express language of the Illinois Income Tax Act, the Petitioner's amended return should be accepted, the Notice of Denial withdrawn and the refund claim of \$964,122 should be granted.

**II. PETITIONER'S 2010 AMENDED IL-1120-X RETURN REFLECTING THE NET LOSS DEDUCTION FILED ON JANUARY 4, 2018 WAS TIMELY FILED BASED ON THE MARCH 31, 2016 FEDERAL AMENDED RETURN AND THE MARCH 17, 2017 ILLINOIS AMENDED RETURN PURSUANT TO 35 ILCS 5/506**

40. Petitioner realleges and reincorporates paragraphs 1-31 of the Petition herein.
41. Petitioner filed a 2010 federal amended return on March 31, 2016 to report changes to the dividend received deductions and bad debt losses. This return was timely filed and accepted by the IRS.
42. This return was reviewed, subsequently accepted and a refund check was received by Petitioner on March 7, 2017.
43. Petitioner timely filed a 2010 IL-1120-X on March 17, 2017 to properly reflect the 2010 federal changes on its Illinois return.
44. This 2010 Illinois amended return was reviewed and the IDOR sent a Notice regarding a \$1 change which was accepted by the Petitioner.
45. This 2010 Illinois return was filed after Petitioner's 2009 IL-1120-X that was filed on December 17, 2016 and subsequently accepted by the IDOR.
46. This IDOR receipt and acceptance of Petitioner's 2009 Illinois amended return clearly shows that the IDOR had the knowledge of Petitioner's 2009 net loss deduction carryforward to 2010 in its records as early as December 2016.
47. Petitioner's filing of the 2010 federal amended return on March 31, 2016 allows the timely filing of Petitioner's 2010 amended Illinois return on January 4, 2018 as the statute is open pursuant to 35 ILCS 5/506.
48. Based on the Petitioner's facts presented above, the Petitioner's 2010 amended return should be accepted, the Notice of Denial withdrawn and the refund claim of \$964,122 should be granted.

**III. TWO AMENDED 2010 IL-1120-X RETURNS WERE FILED PURSUANT TO THE IDOR PROCEDURE**

49. Petitioner realleges and reincorporates paragraphs 1-31 of the Petition herein.
50. As noted above in II, Petitioner filed two amended 2010 Illinois returns.
51. The first was filed on March 17, 2017 to report the federal changes reported on Petitioner's 2010 federal amended return.
52. Petitioner's second 2010 Illinois amended return was filed on January 4, 2018 to obtain the refund from the 2009 net loss which amount was not included in the IDOR check issued to Petitioner on July 18, 2017.
53. The Petitioner filed two separate 2010 amended returns based on IDOR guidance provided in a March 2, 2015 Notice of Claim Denial for the 2008 tax year.
54. This Notice of Claim Denial noted the following:

“When a change or correction affects your Illinois Income Tax liability and the extended due date for your return has passed, you are required to file Form IL-1120-X, Amended Corporation Income and Replacement Tax Return. Your amended return indicated that two federal changes have occurred. Therefore, two Illinois amended returns need to be filed. Form IL-1120-X need to be filed as a result of the federal audit and a separate Form IL-1120 needs to be filed as a result of the federal Form 1120-X.”
55. Based on this representation from the IDOR, the Petitioner filed separate returns for the federal change and the 2009 net loss carryforward.
56. Based on the Petitioner's facts presented above, the Petitioner's January 4, 2018 amended 2010 return should be accepted, the Notice of Denial withdrawn and the refund claim of \$964,122 should be granted.

**IV. THE IDOR HAD PROPER NOTICE OF THE 2009 NET OPERATING LOSS AND THE CARRYFORWARD TO 2010 PURSUANT TO IITA SECTION 904**

57. Petitioner realleges and reincorporates paragraphs 1-31 of the Petition herein.
58. The IDOR had knowledge of the 2009 net loss carryforward by virtue of the properly filed and accepted 2009 IL-1120-X dated December 17, 2016.
59. The IDOR also issued multiple notices regarding the 2009 IL-1120-X.

60. The IDOR also issued multiple notices regarding the 2010 IL-1120-X.
61. By virtue of these notices, it seems reasonable to assume that the account was reviewed and verified, as required by IITA Section 904, and the 2009 net operating loss was accounted for by the IDOR.
62. Based on the Petitioner's facts presented above, the Petitioner's amended return should be accepted, the Notice of Denial withdrawn and the refund claim of \$964,122 should be granted.

**V. THE STATUTORY PROVISIONS OF IITA SECTION 207(a)(3) EXPRESSLY REQUIRE A NET LOSS REPORTED AND UNUSED IN 2009 BE CARRIED FORWARD TO 2010**

63. Petitioner realleges and reincorporates paragraphs 1-31 of the Petition herein.
64. The 2009 timely filed amended Illinois income tax return changed the amounts reported for "federal taxable income," "base income or net loss," and "net income" from positive to negative numbers.
65. "The Illinois General Assembly has described what an Illinois net loss is for a given year (35 ILCS 5/207(a)), and, under the plain and clear terms of that statute," (IT 09-14 Administrative Hearings). It is clear from the Petitioner's 2009 Illinois amended return that a net loss was established.
66. Upon the filing of the filing of Petitioner's 2009 amended income tax return which established a net loss, the Petitioner was statutorily required under IITA Section 207 to carryforward the net loss to 2010.
67. Upon the IDOR's review and acceptance of Petitioner's timely filed 2009 amended income tax return which established the 2009 net loss, the Department recorded the Petitioner's 2009 net loss and was required to apply the net loss to income taxes previously reported on Petitioner's timely filed 2010 income tax return. This is the same as the IDOR's system applying an income tax overpayment to offset any outstanding tax balances reflected on Petitioner's account at that time.

68. Moreover, IITA Section 904 expressly states that “the Department shall examine a return as soon as practicable after it is filed to determine the correct amount of tax” and “**if the Department finds that the tax paid exceeds the correct amount, it shall credit or refund the overpayment as provided by IITA Section 909.**”
69. Upon the timely filing of the Petitioner’s first amended 2010 income tax return dated March 17, 2017, the Department was required pursuant to the provisions of IITA Section 904 and 909 to review and apply the 2009 net loss in calculating the 2010 refund issued to Petitioner on July 18, 2017.
70. Based on the Petitioner’s facts presented above, the Petitioner’s 2010 amended return should be accepted, the Notice of Denial withdrawn and the refund claim of \$964,122 should be granted.

**VI. AS A COMPLETELY INDEPENDENT BASIS FOR OBJECTING TO THE NOTICE OF DENIAL, PETITIONER SUBMITS THAT THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE U.S. CONSTITUTION AND ILLINOIS CONSTITUTION PROHIBIT THE DEPARTMENT’S DENIAL OF THE 2010 REFUND CLAIM AT ISSUE**

71. Petitioner realleges and reincorporates paragraphs 1-31 of the Petition herein.
72. Petitioner contends that the Department’s denial of its 2010 income tax refund claim is unconstitutional pursuant to the due process and equal protection clause provisions.
73. As noted in the facts above, Petition timely filed its 2009 and 2010 Illinois income tax returns and during a 13 month period from December 17, 2016 thru January 4, 2018 submitted five filings to report its 2009 and 2010 federal changes and claim its 2009 and 2010 Illinois income tax refunds which included a refund resulting from a timely reported 2009 Illinois net loss.
74. Moreover, all of the Petitioner’s Illinois filing activities at issue as well as the Petitioner’s ongoing correspondence with the Department occurred while the statute of limitation periods for 2009 and 2010 were open.

75. The Illinois Appellate Court has clearly stated that Illinois provides clear and certain statutory means by which a taxpayer may request a refund and that any error or confusion that occurred within the Department is not considered for purposes of constitutional due process challenges if such activity occurred after the statute of limitations expired. American Airlines, Inc. v. Department of Revenue, 402 Ill. App. 3d 579, N.E.2d 666 (1<sup>st</sup> Dist. 2009).
76. Petitioner argues that the provisions of both the U.S. and Illinois Due Process Clause and Equal Protection Clause expressly precludes the State of Illinois from depriving Petitioner of its property without due process of law as Petitioner meets the due process requirements through its business operations and filing of the required amended Illinois income tax returns at issue. The United States Supreme Court recently referenced due process in the Wayfair Opinion, South Dakota v. Wayfair, Inc., 585 U.S. \_\_\_\_ (2018) ; by stating that:
- the due process requirement that there be “some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax,” Miller Brothers Co. v. Maryland, 347 U. S. 340, 344–345 (1954).
77. Accordingly, Petitioner contends that the Department’s denial of Petitioner’s 2010 refund claim at issue based on the Department’s interpretation and application of certain statute of limitation dates is unconstitutional and its 2010 refund claim should be granted.

**VII. PETITIONER’S 2010 REFUND AT ISSUE SHOULD BE ISSUED BASED ON TAXPAYER GUARANTEES PROVIDED WITHIN THE ILLINOIS TAXPAYERS’ BILL OF RIGHTS ACT**

78. Petitioner realleges and reincorporates paragraphs 1-31 of the Petition herein.
79. Petitioner contends that its amended returns were timely filed allowing the Department to approve its 2010 refund claim at issue without conceding any of the positions and arguments presented above. In arguendo, Petitioner argues that even if the second 2010 amended return was filed after the statute of limitations



expired, the Illinois Taxpayers' Bill of Rights Act, 20 ILCS 2520, supports the issuance of the refund at issue.

80. Section 2 of the Taxpayers' Bill of Rights Act expressly states:

The General Assembly finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. ***It is the intent of the General Assembly to place guarantees in Illinois law to ensure that the rights, privacy, and property of Illinois taxpayers are adequately protected during the process of the assessment and collection of taxes***

The General Assembly further finds that the Illinois tax system is based largely on self-assessment, and the development of understandable tax laws and taxpayers informed of those laws will both improve self-assessment and the relationship between taxpayers and government. ***It is the further intent of the General Assembly to promote improved taxpayer self-assessment by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.***

(Source: P.A. 86-176; 86-189.)

81. Petitioner argues that the second 2010 amended return can also be viewed as timely filed by treating it as an amendment to the timely filed first 2010 amended return, which the Department accepted as timely filed, as it did not raise any new factual or legal issues, American Airlines, Inc. v. Department of Revenue, 402 Ill. App. 3d 579, N.E.2d 666 (1<sup>st</sup> Dist. 2009); W.L. Miller Co. v. Zehnder, 315 Ill. App. 3d 799, 734 N.E.2d 502 (2000).
82. Petitioner also argues that the second 2010 amended return can also be viewed as timely filed by applying the narrower approach and using the March 7, 2017 federal change date, Dow Chemical Co. v. Dept. of Revenue, 586 N.E.2d 516 (Ill. App. Ct. 1991).
83. Based on the facts stated above as well as the provisions of the Taxpayers' Bill of Rights that expressly state that it is the **“intent of the General Assembly to place guarantees in Illinois law to ensure that the rights, privacy, and property of Illinois taxpayers are adequately protected during the process of the assessment and collection of taxes,”** 20 ILCS 2520, Petitioner contends that

it should be determined that Petitioner's 2010 refund claim at issue was timely filed and the Department should issue Petitioner the refund at issue.

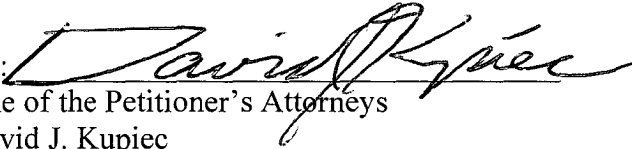
84. Based on the Petitioner's facts presented above, the Petitioner's 2010 amended return should be accepted, the Notice of Denial withdrawn and the refund claim of \$964,122 should be granted.

### **CONCLUSION AND RELIEF REQUESTED**

WHEREAS, Petitioner requests that the Department withdraw the Notice of Denial at issue and issue the refund requested. We respectfully request that the Tax Tribunal Rule in favor of Petitioner.

Respectfully Submitted,

COUNTRY Life Insurance Company

By: 

One of the Petitioner's Attorneys

David J. Kupiec

Kupiec & Martin, LLC

600 W. Van Buren #202

Chicago, IL 60607

(312) 632-1022

[dkupiec@kupiecandmartin.com](mailto:dkupiec@kupiecandmartin.com)

Attorney No. 58817

# Notice of Claim Status

for IL-1120-X, Amended Corporation Income and Replacement Tax Return



#BWNKMGV  
#CNXX XX99 8588 1127#  
COUNTRY LIFE INSURANCE CO  
ATTN: TAX DEPARTMENT  
1711 GE RD  
BLOOMINGTON IL 61704-2286

May 7, 2018



Letter ID: CNXXXX9985881127

Account ID: 13842-52160

FEIN: 37-0808781

Reporting Period: December 2010



## Notice of Denial

We have reviewed your Form IL-1120-X, Amended Corporation Income and Replacement Tax Return, which you signed and dated January 4, 2018, for the reporting period shown above. **This review is not the result of an audit.**

We denied your claim for refund because you filed your amended return past the statute of limitations to claim a refund. If your federal change decreases the tax due to Illinois and you are entitled to a refund, you must file Form IL-1120-X within two years plus 120 days of federal finalization.

If you agree with our determination and your account is in balance, do nothing. You will receive a 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 are under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligation to file tax returns.

If you do not agree with our determination, you may file a written protest against our denial, and, if you desire, you may request a hearing. You must do so within 60 days of date of this notice. Your request must be in writing, clearly indicating that you want to protest, and explaining in detail why you do not agree.

If you file an acceptable protest on time, we must reconsider our denial as provided in IITA, Sections 910 and 914. If requested, we will grant you or your authorized representative a hearing. If you do not file a written protest within the time period, this denial shall become final.

If you have any questions, please write or call our Springfield office weekdays between 7:00 a.m. and 3:00 p.m. Our address and telephone number are below.

Heather Ausmus  
Revenue Tax Specialist

BUSINESS PROCESSING DIVISION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19004  
SPRINGFIELD IL 62794-9004

(217) 785-5838  
(217) 785-8202 fax

Enclosures:    Form EAR-14, Protest Filing Form  
                  Form IDR-867, Taxpayer Bill of Rights  
                  Return Envelope  
                  Protest Rights

IN THE INDEPENDENT TAX TRIBUNAL

<u>COUNTRY Life Insurance Company</u>	)	<b>Doc.</b>
<b>Petitioner</b>	)	
<b>Vs.</b>	)	
<u>THE ILLINOIS DEPARTMENT OF</u>	)	
<u>REVENUE</u>	)	
<b>Respondent</b>	)	

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**NOTICE OF FILING**

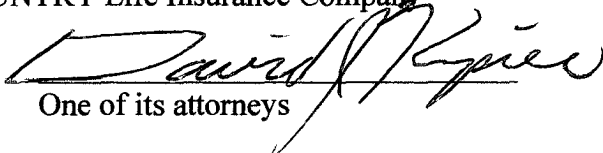
TO:

Illinois Department of Revenue  
100 W. Randolph St.  
SUITE 7-900  
Chicago, IL 60601

Please take note that on July 2, 2018, the undersigned representative for COUNTRY Life Insurance Company, filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle St. Room 506, Chicago, IL 60601 a Petition, a copy of which is attached and served on you.

Date: July 2, 2018

Respectfully Submitted,  
COUNTRY Life Insurance Company

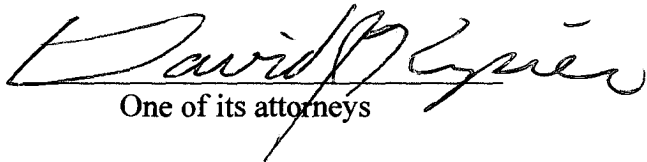
By:   
One of its attorneys

David J. Kupiec  
Kupiec & Martin, LLC  
600 West Van Buren Street, Ste 202  
Chicago, Illinois 60607

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered in person before the hour of 5:00p.m. on the 2th day of July, 2018.

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

By:   
One of its attorneys

David J. Kupiec  
Kupiec & Martin, LLC  
600 West Van Buren Street, Ste 202  
Chicago, Illinois 60607