

ILLINOIS INDEPENDENT
TAX TRIBUNAL

Yosef and Chana Meystel,)
Petitioners,)
)
v.)
)
ILLINOIS DEPARTMENT)
OF REVENUE,)
Respondent.)

187136

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PETITION

The Petitioners, Yosef and Chana Meystel, hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Claim Denial (“Notice”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

INTRODUCTION

1. The “Notice” was issued by the Department on March 2, 2018 denying a refund in the amount of \$50,770.00 for taxable period December 31, 2014. A redacted copy of the “Notice” is attached to this petition.
2. Petitioners are individuals with their principal residence in Chicago, Illinois.
3. The Petitioners reside at 6237 N. St. Louis Ave., Chicago, IL 60659, and their telephone number is (847) 673-6767. The Taxpayer Account number is P10656276.

BACKGROUND AND RELEVANT FACTS

4. The Petitioners filed IRS Form 1045 for the 2016 tax year. This form carried back a net operating loss from 2016 to the 2014 tax year. Subsequently, the Petitioners filed Form IL-

1040-X for the 2014 tax year on or about October 27, 2017. (The refund claim presently in dispute with the Department of Revenue.) Upon receipt of the Department's March 2, 2018 Notice of Claim Denial, the Petitioners' accountant sent a letter to the Department on March 13, 2018. The letter provided information as to why the Taxpayers believed the claim for refund should be accepted and provided the following items:

- a. Form EAR-14 protesting the denial of the previously filed 2014 amended return.
- b. The Department of Revenue's notice of March 2, 2018 denying the claim for refund.
- c. Copy of the IRS letter of March 5, 2018 accepting the federal refund claim,
- d. Copy of the IRS refund check in payment of the 2014 claim.

A copy of this letter and attachments are available upon request.

5. The Petitioners received a letter from the Office of Administrative Hearings, dated September 21, 2018, dismissing the protest for lack of jurisdiction. A copy of this letter is attached.

6. The latest communications with the Department were on October 30, 2018 and on November 2, 2018. On October 30, 2018, the Petitioner's accountant was placed in contact with the Deputy General Counsel Income Tax Litigation who requested the accountant mail all pieces of information in the aforementioned paragraph, as well as the original Power of Attorney and new Power of Attorney. This information was sent to the Deputy's attention on November 2, 2018. A copy of this letter is available upon request. As of November 19, 2018, we have not heard from the Deputy General Counsel regarding the status of the Petitioners' 2014 Illinois amended return.

APPLICABLE LAW

7. The Illinois tax statute provides Taxpayer's with the opportunity to receive a refund of previously paid taxes where such refund relates to the carryback of a federal net operating loss. The ability to receive this refund of tax is predicated on the Internal Revenue Service's (the "Service") review and acceptance of the federal claim for refund. In the matter addressed in this petition, all of these requirements have been fulfilled and the Taxpayers have received their Federal refund.

8. The Illinois tax law which provides this benefit is discussed in the Illinois Administrative Code, Title 86: Revenue Chapter I, Part 100, Section 100.2300(a) which states as follows:

“An Illinois net loss deduction is not available for individuals. Losses incurred by individuals are recognized for Illinois tax purposes in the computation of adjusted gross income for federal tax purposes.”

Therefore, the net operating loss is taken into consideration based on the fact that the starting point for determining an individual’s Illinois base income for tax purposes is federal adjusted gross income. (Illinois Income Tax Act Section 203 (a)(1)).

9. The practical rules for filing a net operating loss claim are also provided in the instructions to Illinois Form IL-1040-X. This is the Illinois form used for submitting the claim for refund with the Department.

ERROR

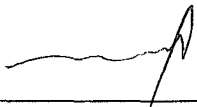
10. The Department has erred in not refunding the \$50,770.00 requested in the 2014 claim filed on Form IL-1040-X. Such claim being filed on or about October 27, 2017.

CONCLUSION AND RELIEF REQUESTED

11. There have been numerous calls and letters sent to the Department in an attempt to resolve this matter, or at least be advised of the issues that have prevented the Taxpayers from receiving their refund. It is requested that the Tax Tribunal find for the Taxpayers, and direct the Department to issue the refund requested along with interest.

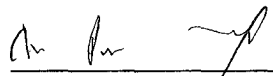
WHEREAS, Petitioner requests that the “Notice” be modified or canceled for the reasons contained herein.

NAME OF PETITIONERS



Yosef Meystel

11/19/2018



Chana Meystel

11/19/2018

Representatives:

Gary Barron

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Notice of Claim Denial
for Form IL-1040-X, Amended Individual Income Tax Return



#BWNKMGV
#CNXX X2X7 5352 5284#
YOSEF and CHANA MEYSTEI
6237 N ST LOUIS AVE
CHICAGO IL 60659-2209

March 2, 2018



Letter ID: CNXXX2X753525284

Account ID: P10656276
Reporting period: December 31, 2014

Dear Taxpayer:

We are writing regarding your 2014 Form IL-1040-X, Amended Individual Income Tax Return, dated November 02, 2017.

Based on our review, we denied your claim for refund of overpayment of income tax. This review is not the result of an audit.

If you do not agree with our determination and the amount of this tax deficiency, exclusive of penalty and interest, is

- \$15,000 or less, you must 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, and if requested, grant you or your authorized representative an administrative hearing. Your protest must be filed by sending us a completed Form EAR-14, Format for Filing a Protest for Income Tax. You should include with your protest all documentation supporting your refund claim, especially any documents requested in this letter. If we do not receive your protest within 60 days, this denial shall become final. A protest of this notice does not preserve your rights under any other notice.
- more than \$15,000, you may 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.). Note: If no tax deficiency is assessed but the total penalties and interest is more than \$15,000, you may file a petition with the Tribunal.

Under Section 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 2a.1), you may instead pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, etc.

We changed Line 1 from ~~XXXXXXXXXX~~ to ~~XXXXXXXXXX~~

We did not receive a complete copy of the federal finalization notification you received from the Internal Revenue Service (IRS), stating they accepted the changes on your federal Form 1040-X, Amended U.S. Individual Income Tax Return. This notification could be in the form of a refund check, a "Statement of Account," an agreement, or a judgment. Please send us this notification or a copy of your most recent federal account transcript.

Please send us this information along with your protest. If you do not have a copy of your federal account transcript, please call the IRS or go to their website at www.irs.gov to request one. Include your account transcript with your protest if you receive it in time to file your protest.

The Illinois Income Tax Act does not provide for Net Operating Loss (NOL) carrybacks or carryforwards for individual taxpayers. Instead, you are entitled to the NOL carryback or carryforward deduction allowed on your federal return.

Notice of Claim Denial

YOSEF and CHANA MEYSTEI

Summary



Letter ID: CNXXX2X753525284
Account ID: P10656276
Reporting Period: December 2014

Form IL-1040-X Financial Details

<i>Line Description</i>	<i>Amount</i>
Income	
1 Federal adjusted gross income (AGI)	12,345.00
2 Federally tax-exempt interest income	100.00
3 Other additions to your income	1,200.00
4 Total income	13,645.00
Subtractions	
5 Social Security and retirement income	1,200.00
6 Illinois refund included in US1040	100.00
7 Other subtractions to your income	1,000.00
8 Total subtractions	2,300.00
9 Illinois base income	11,345.00
Exemptions	
10 Exemption allowance	1,000.00
Net Income	
11 Net income (resident)	10,345.00
Tax	
13 Tax	1,200.00
14 Recapture of investment tax credits	100.00
15 Income Tax	1,100.00
Nonrefundable Credits	
16 Tax paid to another state	100.00
17 Schedule ICR credits	100.00
18 Schedule 1299-C credit	100.00
19 Total nonrefundable credits	300.00
20 Tax after nonrefundable credits	800.00
Other Taxes	
22 Household employment tax	100.00
23 Use tax	100.00
24 Medical Cannabis Surcharge	100.00
25 Total tax	1,100.00
Payments and Refundable Credit	
26 Illinois Income Tax withheld	1,200.00
27 Estimated payments (IL-1040-ES, IL-505-1, and prior year credit)	1,000.00
28 Pass-through withholding payments	1,000.00
29 Earned Income Credit	100.00
30 Amount previously paid	1,000.00
31 Total payments and refundable credit	4,300.00
Previous Overpayments	
32 Previous overpayments, refunds, or credit carryforward	1,000.00
33 Voluntary contributions from IL-1040	100.00
34 Tax after previous overpayments	1,100.00
Refund or Balance Due	
Penalty	100.00
Interest	100.00
Total penalty and interest	200.00
Previous payments applied to penalty and interest	1,000.00
38 Amount you owe	1,100.00
Total amount you owe	1,100.00



**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

September 21, 2018

Gary Barron
Marcum, LLP
Nine Parkway North, Suite 200
Deerfield, Illinois 60015

Yosef and Chana Meystel
6237 North St. Louis Avenue
Chicago, Illinois 60659

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**
Notice of Tax Liability, dated March 2, 2018
Account ID: P10656276
Letter ID: CNXXX2X753525284

Dear Mr. Barron:

The Office of Administrative Hearings of the Illinois Department of Revenue received your **timely** protest and request for an administrative hearing regarding the above Notice, on behalf of your clients, Yosef and Chana Meystel. However, the assessment at issue for the protest exceeds the statutory amount for which the Department has jurisdiction for protests filed on or after January 1, 2014. **The Department does not have jurisdiction over this protest and is respectfully dismissing your protest and request for administrative hearing.**

Jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* The Tax Tribunal's rules provide that a **timely** protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal. See Subsection (a)(3) of Section 5000.310 of the Tax Tribunal's rules.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry D. Charlton".

Terry D. Charlton
Chief Administrative Law Judge

TDC