Judge Conway:

On June 12, 2014, during the previous event in your office, you asked the parties to submit either a legal memorandum or a brief discussing whether the matter involving GModelo Corporation, Inc. ("GModelo") is properly before the Tax Tribunal, i.e., whether the Tax Tribunal has jurisdiction to hear GModelo's petition in response to a "deemed denial" of its claims for refund for tax years ending December 31, 2009, December 31, 2010 and December 31, 2011 (the "Years at Issue").

After reviewing Section 909(e) of the Illinois Income Tax Act ("IITA"), I have concluded that the Tax Tribunal does have jurisdiction to hear those matters raised in GModelo's petition involving the Years at Issue. IITA §909(e) states, in relevant part, that:

> 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 . . . 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. . . .
>
> On and after July 1, 2013, if the protest would otherwise be subject to the jurisdiction of the Illinois Independent Tax Tribunal, the claimant may elect to treat the Department's non-action as a denial of the claim by filing a petition to review the Department's administrative decision with the Illinois Independent Tax Tribunal, as provided by Section 910.

According to the Department's records, GModelo filed amended returns claiming refunds for the Years at Issue on or about January 13, 2013. As of July 13, 2013, six months after GModelo filed its claims for refund, the

Department had not approved or denied the refunds. Therefore, on May 15, 2014, pursuant to IITA §909(e) GModelo filed its petition in response to the "deemed denial" of its refund claims, which, as of July 1, 2013, were subject to review by the Tax Tribunal. Therefore, it appears that the Tax Tribunal had jurisdiction to hear this matter. Based on the foregoing, the Department's counsel asserts that it is not necessary for the Department to submit a memorandum or a brief discussing jurisdiction.

Notwithstanding the foregoing, the Department continues to assert that this matter should be stayed, consistent with this Tribunal's order dated May 28, 2014, to allow the Department time to audit GModelo's claims for refund for the Years at Issue. If time truly was of the essence, GModelo would have filed a petition in response to the "deemed denial" on or shortly after July 13, 2013, the date six months after GModelo filed its claims for refunds. Instead, GModelo waited ten (10) months before filing a petition under IITA §909(e). Further, a completed audit provides a starting point for the litigation phase of any case. Many issues are resolved during the audit, thereby eliminating the need to address such matters during discovery, during which strict discovery rules apply. All matters not addressed during an audit must be explored during discovery, which comes replete with deadlines and the various motions that follow discovery disputes. Accordingly, the Department reiterates its position that this Tribunal should stay these proceedings pending the completion of the Department's audit of GModelo's claims for refund for the Years at Issue.

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