

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

GMODELO CORP., INC.,)	
)	
Petitioner,)	
)	
v.)	14-TT-0082
)	James M. Conway, Chief Judge
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

**PETITIONER'S MEMORANDUM OF LAW CONCERNING
TRIBUNAL JURISDICTION**

Petitioner filed (income tax) refund claims but the Department of Revenue never acted on them, so under a special provision in the Illinois Income Tax Act, Petitioner sought relief from this Tribunal. This Tribunal now asks whether either section 1-45 or section 1-15 of the Illinois Independent Tax Tribunal Act preclude jurisdiction over Petitioner's appeal. They do not, because the manifest policy behind establishment of the Tribunal was for it to hear *all* income tax appeals (exceeding \$15,000), and because if it did lack jurisdiction, then Petitioner *would be left with nowhere* to file its appeal, in clear violation of its due process rights.

Section 909 of the Income Tax Act Grants This Tribunal Jurisdiction

Section 1-45 of the Illinois Independent Tax Tribunal Act does not foreclose Tribunal jurisdiction over this appeal because this statute must be read in conjunction with section 909(e) of the Illinois Income Tax Act. Section 1-45 provides in relevant part that:

Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, *Notices of Claim Denial*, and Notices of Penalty Liability where the

amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000, exclusive of penalties and interest.

35 ILCS 1010/1-45 (emphasis added).

There is no Notice of Claim Denial in this case because the Department never acted on Petitioner's refund claims. But, in section 909(e), the Illinois Income Tax Act says that in such a case, the taxpayer can treat the Department's non-action as a denial of its claim, and seek review of the "administrative decision" *by petitioning this Tribunal*. The statute provides:

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.

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 [35 ILCS 5/910].

35 ILCS 5/909(e) (emphasis added).

Thus while the former limits Tribunal jurisdiction to "Notices of Claim Denial", the plain language of the latter *broadens* it to include cases where, as here, the Department's prolonged non-action results in a *deemed* denial of a taxpayer's claim. Basic rules of statutory

interpretation mandate this conclusion. Notably, both section 1-45 and the italicized language in section 909(e) were passed into law as part of the same enactment, P.A. 97-1129.

When two statutory provisions are enacted at the same time, they must be construed together whenever possible. *See* 5 ILCS 70/6; *see also Secretary of State v Mikusch*, 138 Ill.2d 242, 248 (1990); *People ex rel. v. Kirkpatrick*, 164 Ill. App. 328, 331 (3rd Dist. 1911). In addition, when dealing with seemingly conflicting statutes concerning the same subject, courts strive to interpret the statutes in a way which avoids inconsistency and gives effect to both. *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311-12 (2001).

Moreover, when the plain language of one statute conflicts with the plain language of another, courts construe the enactments *in pari materia* when reasonably possible to do so; in so doing, legislative intent remains the paramount consideration, and in ascertaining that intent, courts consider the purpose of the statutes, the goals they seek to achieve, and the consequences that would follow from construing the laws one way or another. *Moore v. Green*, 219 Ill.2d 470, 479 (2006).

The unquestionable purpose of the law creating this Tribunal was to vest it with broad jurisdiction to resolve tax disputes between taxpayers and the Department—including disputes arising from the Department's non-action on claims for refund of income taxes. This legislative intent is manifest not only in the plain language of section 909(e), which expressly provides for Tribunal appeals in such cases, but also in section 1-5(b) of the Illinois Independent Tax Tribunal Act itself.

Section 1-5 is the "statement of purpose" section. In subsection (b), the statute directs in relevant part that:

The Illinois Independent Tax Tribunal shall provide administrative hearings *in all tax matters except those matters reserved* to the Department of Revenue or another entity by statute, and shall render decisions and orders relating to matters under its jurisdiction.

5 ILCS 1010/1-5(b) (emphasis added).

As we have noted, section 909(e) provides that where, as here, the Department does not timely act on a refund claim, the taxpayer may treat it as denied and appeal to this Tribunal. This circumstance is clearly encompassed within the phrase "*all tax matters*" (as used in section 1-5(b)), and, there is no statute reserving matters of this kind to either the Department or any other agency. The General Assembly's intent could not be more clear: the Tribunal has jurisdiction to provide hearings in cases of this nature.

Finally, when two statutes conflict, the tension is resolved by weighing the consequences that would result from interpreting the laws one way or another. *Moore v. Green*, 219 Ill.2d at 479. Given that Petitioner's claims exceed \$15,000, the Department would not have jurisdiction to consider a protest of their denial. Thus, if section 1-45 is read as nullifying section 909(e) (notwithstanding the former's simultaneous enactment with the italicized language of the latter), and therefore as blocking Tribunal jurisdiction over this appeal, then Petitioner *would have no forum* for contesting the denial of its claims—in clear violation of its right to due process.

This Appeal Not Time-Barred By Section 1-15

Section 1-15 of the Illinois Independent Tax Tribunal Act does not foreclose jurisdiction over this appeal either. The Tribunal was established in 2012 and was scheduled by the enacting legislation to begin operations on July 1, 2013. However, in June 2013, this beginning date was delayed until January 1, 2014 because of changes made to state programs necessary to implement the Governor's Fiscal Year 2014 budget recommendations. See P.A. 98-0024, § 1-5.

Presumably to avoid prejudicing taxpayers who had relied on the initial (July 1, 2013) starting date, section 1-45 was amended (in June 2013) to permit opting out of the Department's internal hearing system, where the delay relegated them to filing their protests, by subsequently transferring their cases to the Tribunal. The statute was amended by the addition of subsection (d), which provides that:

Notwithstanding any provision in the tax statutes listed in Section 1-45 of this Act, the Tax Tribunal shall exercise its jurisdiction on and after January 1, 2014, and any protests prior to that date shall continue to be filed with the Department, and the Department shall exercise jurisdiction over such matters, but the administrative law judges of the Tax Tribunal may be appointed prior to that date and may take any action prior to that date that is necessary to enable the Tax Tribunal to properly exercise its jurisdiction on or after that date. Any administrative proceeding commenced on or after June 1, 2013, that would otherwise be subject to the jurisdiction of the Illinois Independent Tax Tribunal may be conducted according to the procedures set forth in this Act if the taxpayer so elects. Such an election shall be irrevocable and may be made on or after January 1, 2014, but no later February 1, 2014.

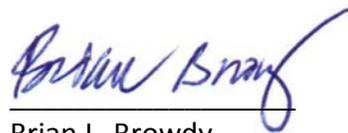
35 ILCS 1010/1-15(d) (emphasis added).

The amendment thus provided that eligible cases could be transferred from the Department to the Tribunal, as long as the election to make the transfer was made between

January 1, 2014 and February 1, 2014. But by its terms, the new subsection defines the cases eligible for transfer as those "administrative proceedings commenced on or after June 1, 2013".

Id. Petitioner did not commence an administrative proceeding at the Department, and therefore had case to transfer and no election to make by the section 1-15 deadline.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Brian Browdy", is written over a horizontal line.

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