

6. The additional information provided by Taxpayer consisted of a 2005 Cash Disbursement Journal spreadsheet sent July 13, 2007, Internal Revenue Service Power of Attorney form sent to Taxpayer for signature on May 27, 2013, an e-mail and invoice dated June 16, 2008 from a private investigator firm and copies of timely filed Arizona Quarterly Withholding Tax Returns by Taxpayer's corporation for tax year 2008.

CONCLUSIONS OF LAW

1. Arizona Revised Statutes (A.R.S.) § 42-1106.B. provides that if the total amount of tax withheld from an employee exceeds the amount of the tax on the employee's entire taxable income, no refund, credit or offset may be made to the employee unless the employee files a return, in respect of which the tax withheld might be credited, within four years from the due date of the original return.
2. Calendar year returns are required to be filed on or before the fifteenth day of April following the close of the calendar year. A.R.S. § 43-325.
3. The due date for Taxpayer's original tax return for tax year 2008 was April 15, 2009.
4. Taxpayer's return for claiming a refund of tax withheld for tax year 2008 was required to be filed on or before April 15, 2013.
5. Taxpayer's return for tax year 2008 filed July 31, 2013 was not timely filed.
6. The failure to begin an action for refund or credit within the time specified in A.R.S. § 42-1106 is a bar against the recovery of taxes by the taxpayer. A.R.S. § 42-1106.D.
7. The department has no obligation to refund taxes that have been overpaid if a timely refund claim is not presented. *McNutt v. Ariz. Dep't of Revenue*, 196 Ariz. 255, 995 P.2d 691 (App.1998).

8. A tax refund claim not filed within limitations period cannot be maintained, regardless of whether the tax is alleged to have been erroneously, illegally or wrongfully collected. *U.S. v. Dalm*, 494 U.S. 596, 110 S.Ct. 1361 (1990).
9. Taxpayer has presented no evidence or legal authority that would permit the Department to allow Taxpayer's untimely filed claim for refund.
10. Taxpayer was not entitled to a refund of taxes withheld for tax year 2008. The Section's denial of Taxpayer's claim for refund is upheld.

DISCUSSION

Taxpayer was employed by his corporation and taxes were withheld by the corporation for tax year 2008. On July 31, 2013 Taxpayer filed an original state income tax return for tax year 2008 claiming a refund of the taxes that were withheld. The Section denied Taxpayer's claim for refund because the return seeking the refund was not filed within four years of the due date for the original return.

Taxpayer protested stating that he discovered that embezzlement had occurred with his corporation and the corporate records had to be reconstructed so that accurate corporate and individual returns could be filed.

There is no question that the claim was outside the statute of limitations. The only question presented is whether the Department may nevertheless consider the claim for tax year 2008 because of extenuating circumstances.

First, A.R.S. § 42-1106.B. requires that a return claiming a refund of withholding must be filed within four years of the due date of the original return. The failure to begin an action for refund or credit within the time specified is a bar against the recovery of taxes by the taxpayer. A.R.S. § 42-1106.D. Cases have held that the Department has no obligation to refund taxes that have been overpaid if a timely refund claim is not presented, even if the tax is alleged to have been erroneously, illegally or wrongfully collected. The Department does not have authority to allow Taxpayer's claim for refund.

Second, while Taxpayer contends there were extenuating circumstances for the delay, Taxpayer has presented no authority that extenuating circumstances, even if they existed, could allow the Section to disregard the refund statute of limitations. Here, Taxpayer has presented no evidence supporting that he could not have filed his personal income tax return by April 15, 2013.

Based on the foregoing, the Section's denial of Taxpayer's claim for refund for tax year 2008 is affirmed.

DATED this 26th day of April, 2016.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section