ILLINOIS INDEPENDENT

TAX TRIBUNAL

UI S. YI,	)	
Petitioner,	)	
	)	
	)	
v.	)	22 TT 54
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

ORDER ON SUMMARY JUDGMENT

On April 27, 2022, the Illinois Department of Revenue ("Department") issued a Notice of Penalty Liability for unpaid sales tax against the Petitioner, as the responsible officer of Veyond Wireless, Inc. ("Veyond"), for the periods of January 11, 2011 through December 31, 2013 and January 1, 2014 through December 31, 2016. Previously, the Department had issued Notices of Tax Liability for unpaid sales tax covering the same tax periods against Veyond itself. Veyond contested these two Notices in the Tribunal in *Veyond Wireless, Inc. v. Illinois Department of Revenue*, No. 16TT188 and *Veyond Wireless, Inc. v. Illinois Department of Revenue*, No. 18TT07 (collectively "the *Veyond* cases"). The *Veyond* cases were settled by a written agreement, signed on April 2, 2019 by Veyond's counsel and, on April 5, 2019, the cases were dismissed by the Tribunal.

The Petitioner timely filed a three-count petition in the Tax Tribunal challenging the April 27, 2022 Notice of Penalty Liability. The Petitioner alleged as Error 1 that the Notice was barred by the three-year statute of limitations governing Notices of Penalty Liability found in section 3-7(c) of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7(c). The Petitioner moved for summary judgment on Error I, contending that the three-year

limitations period began to run on April 2, 2019, the date that the settlement was executed in the *Veyond* cases. Thus, the April 27, 2022 Notice of Penalty Liability was untimely issued and should be cancelled.

The Department responded that the statute of limitations began to run on May 3, 2019, the date it issued a document called a "Notice of Final Assessment," or, alternatively, that the running of the limitations period was tolled for 35 days after April 5, 2019, and thus, in either case, its April 27, 2022 Notice of Penalty Liability was timely issued.

For the reasons stated below, I find that although it was April 5, 2019, the date the Tribunal dismissed the *Veyond* cases, and not April 2, 2019, the date the Petitioner signed the agreement, that began the running of the limitations period, the Notices here, issued on April 27, 2022, were not timely issued. The May 3, 2019 document did not restart the limitations period, nor did the limitations period toll for 35 days after the Tribunal's April 5, 2019 dismissal order. Thus, the Petitioner is entitled to summary judgment in his favor.

Background

The Petitioner was Veyond's sole owner. Stipulation of Facts ("Stip.") at ¶ 1. [1] Veyond was the subject of two sales tax audits, resulting in two notices of tax liability and in the filing of the *Veyond* cases in the Tribunal protesting those notices. Stip. at ¶¶ 2-3. On April 2, 2019, Veyond and the Department entered into a Global Settlement Agreement ("Settlement Agreement") for these two matters. *Id*. at ¶¶ 4-5. The parties stipulated that the *Veyond* cases "were finalized and assessed" pursuant to the April 2, 2019 Settlement Agreement. *Id*. at ¶ 4.

Under the terms of the Settlement Agreement, Veyond was to make a partial payment of its outstanding balance by April 5, 2019, at which point it was to seek dismissal of the *Veyond* cases in the Tribunal. Stip. at Ex. A. If the partial payment was not made by April 5, 2019, Veyond had a "ten-day cure period" before it was deemed in breach of the Settlement Agreement. *Id*. The Settlement

[1] The facts are taken from the party's stipulation of facts and accompanying exhibits.

Agreement did not foreclose Veyond from entering into a payment plan with the Department or from seeking relief in the Department's Board of Appeals. *Id.* The Settlement Agreement had no other provisions for payment of the agreed upon amount. *See id.*

Once payment was made and accepted by the Department, Veyond agreed to dismiss the *Veyond* cases in the Tribunal. *Id.* On April 5, 2019, the Tribunal was advised by the parties that the settlement was complete, and it dismissed the *Veyond* cases with prejudice. *Id.* at ¶ 6; *see also id.* at Ex. B.

On May 3, 2019, the Department's Audit Bureau issued two documents entitled Final Assessment EDA 105-R to Veyond, for the two tax periods involved in the *Veyond* cases. Stip. at ¶¶ 8-9; *see also id.* at Ex. C-1, C-2. The Final Assessment forms stated that "[i]n accordance with the provisions of our settlement agreement, we are issuing this final assessment against you for the amounts of tax, E911 Surcharge and interest shown below." Stip. Ex. C-1, C-2. The Final Assessment forms also stated that "[t]o avoid additional penalties and interest on this assessment, you must pay before June 2, 2019." *Id.* The documents did not include any notice of protest or appeal rights. *See id.*

On April 27, 2022, the Department issued a Notice of Penalty Liability, pursuant to section 3-7(c) of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7(c), against the Petitioner for the balances assessed against Veyond that were the subject of the April 2, 2019 Settlement Agreement in the *Veyond* cases. Stip. at ¶ 10; *see also* Stip. at Ex. D.

Analysis

Summary judgment may be sought at any time after the parties have appeared. *See* 735 ILCS 5/2-1005(a)-(b). "The judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

The Petitioner claimed that that the Department's April 27, 2022 Notice of Penalty Liability was barred by the statute of limitations governing responsible officer liability. That provision states in relevant part:

> No notice of penalty liability shall be issued after the expiration of **3 years after the date all proceedings in court for the review of any final or revised final assessments issued against a taxpayer which constitute the basis of such penalty liability have terminated or the time for the taking thereof has expired without such proceedings being instituted** or after the expiration of 3 years after the date a return is filed with the Department by a taxpayer in cases where the return constitutes the basis of such liability.
>
> 35 ILCS 735/3-7(c) (emphasis added).

The question of when the statute of limitations runs is a matter of statutory construction, which is a proper subject for summary judgment. *Oswald v. Hamer*, 2018 IL 122203, ¶ 9. A statute must be construed according to its plain language, *Oswald*, 2018 IL 122203, ¶ 10, but "each part of a statute should be interpreted in light of every other provision, and the entire statute should be construed to produce a harmonious whole," *Dow Chemical Co. v. Department of Revenue*, 224 Ill. App. 3d 263, 266 (1st Dist. 1991). Statutes of limitations are strictly construed. *American Airlines, Inc. v. Department of Revenue*, 402 Ill. App. 3d 579, 605 (1st Dist. 2009) (citing *Dow Chemical Co.*, 224 Ill. App. 3d at 268-69)). Exceptions or enlargements to a limitations period will not be implied but must be authorized by statute. *Id.* at 605. A statute of limitation "is not a one-way street," it applies equally to bind both taxpayers and the Department. *Redbox Automated Retail, LLC v. Illinois*

Department of Revenue, 17TT45 (Sept. 18, 2018) at 14, *aff'd* 2019 IL App (5th) 180489-U.

The parties have proposed various dates at which section 3-7(c)'s limitations period began to run. The Petitioner first contended that it was April 2, 2019, the date it signed the Settlement Agreement or, alternatively, April 5, 2019, the date the settlement payment was made, thus making the April 27, 2022 notice untimely issued. *See* Pet'r Br. in Supp. of Mot. for Sum. J. as to Error 1 of the Pet. ("Pet'r Br.") at 6-7; Pet'r Reply to Resp't Resp. to Pet'r Br. in Supp. of Mot. for Summ. J. as to Error 1 of the Pet. ("Pet'r Reply"), at 2-3. The Department contended that it was either April 5, 2019 plus 35 days (the time for post-judgment motions or appeal), or May 3, 2019, the date it issued the Final Assessment, thus rendering its notice timely. Resp.'s Br. in Supp. of Den. of Mot. for Summ. J. as to Error 1 of the Pet. ("Dep't Resp."), at 4-5. Each possibility will be examined in turn.

The date that the Settlement Agreement was signed, April 2, 2019, is easily eliminated as the date that the limitations period began to run. Under section 3-7(c), the 3-year limitations period is not tied to the date of an assessment. Rather, it runs from "the date all proceedings in court for the review of any final or revised final assessments issued against a taxpayer which constitute the basis of such penalty liability have terminated." 35 ILCS 735/3-7(c). Proceedings to review the assessment did not terminate on April 2, 2019, and the 3-year limitations period did not begin to run on that date.

The earliest possible date that the limitations date began to run was April 5, 2019, the date the Tribunal dismissed the *Veyond* cases. The Petitioner's argument that the assessment was finalized on April 5, 2019, because that is when the Settlement Agreement payment was made, *see* Pet'r Reply at 2-3, again is irrelevant. The relevant consideration is whether the Tribunal's dismissal of the *Veyond* cases terminated all proceedings for their review.

The Department contended that review proceedings did not terminate on April 5, 2019, because the Tribunal's order was a final order "of an administrative body" that did not become final for limitation purposes until 35 days after the

issuance of the order, thus making the April 27, 2022 Notice of Penalty Liability timely issued. Dep't Resp. at 5.[2] The flaw in this argument is that because the case was dismissed pursuant to settlement, there was nothing to appeal. *See, e.g.*, *Figgie International, Inc. v. Illinois Department of Revenue*, 167 Ill. App. 3d 196, 202 (4th Dist. 1988) ("A settlement agreement is final and binding upon the parties [Citation.] . . . [and] acts as a bar to further proceedings [Citation.]"); *In re Marriage of Wright*, 89 Ill. 2d 498, 500 (1982) (dismissing appeal and vacating lower court decision where matter settled); *accord Madison Park Bank v. Zagel*, 91 Ill. 2d 231, 234-35 (1982) (dismissing appeal and vacating lower court decisions after taxpayer notified court that it paid disputed taxes). Even if the limitations period could have been tolled for some post-judgment relief, it did not toll here because no such relief was sought. *See, e.g.*, *Bowers v. Palatine*, 204 Ill. App. 3d 135, 138-39 (1st Dist. 1990) (holding that the limitations period for refiling from a non-appealable dismissal for want of prosecution tolled while a motion to vacate was pending but did not toll if no motion to vacate was filed); *cf. Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99-104 (2004) (tolling the limitations period for filing a malicious prosecution action during period where criminal charges were stricken with leave to reinstate). The April 5, 2019 Tribunal dismissal pursuant to settlement thus effectively terminated "all proceedings in court for the review of any final or revised final assessments issued" in the *Veyond* cases that "constitute[d] the basis of [the Petitioner's] penalty liability" here. 35 ILCS 735/3-7(c).

Finally, the Department's argument that the limitations period began to run with the issuance of the May 3, 2019 Final Assessment is groundless. Dep't Resp. at 4-5. The Department argued that the Final Assessment was not issued until May 3, 2019 because under the Settlement Agreement, if Veyond did not make payments by April 5, 2019, it had 10 days to cure the defect. *Id.* Any such

[2] The Department mistakenly states the Tribunal's final decisions are appealable to the circuit court within 35 days of the final decision under the Illinois Administrative Review Law. *See* Dep't Resp. at 5. In fact, they are subject to direct review in the appellate court. *See* 35 ILCS 1010/1-75.

payments would need time to clear the banks and be deposited with the Department before finalization of the agreement. *Id.* Thus, May 3, 2019 was a reasonable period to allow the Petitioner to cure any defaults and for payments to clear, making it the date the limitations period began to run. *Id.*

The Department's argument lacks merit because, again, under section 3-7(c) the limitations period began to run from the termination of court proceedings, not the time of assessment. The May 3, 2019 Final Assessment was expressly issued "[i]n accordance with the provisions of our settlement agreement," *see* Stip. Ex. C-1, C-2, after the case was dismissed in the Tribunal (and notably before any available time to appeal or seek post-judgment relief would have run). Nothing about the May 3, 2019 Final Assessment indicated that it was reviewable; it appeared to simply memorialize the revised assessment set forth in the Settlement Agreement. The Final Assessment did not restart review proceedings in the Tribunal.

Further, section 3-7(c) makes no reference to a reasonable time period in calculating the limitations period, and any such consideration was contrary to the rule of strict construction governing statutes of limitations. *See American Airlines, Inc.*, 402 Ill. App. 3d at 605. While the May 3, 2019 Final Assessment may have relevance for the collection process (a matter beyond the Tribunal's power to review, *see* 35 ILCS 1010/1-40), nothing in the document or the law indicates it had any effect on the running of the limitations period in this case.

Illinois law is clear that exceptions or extensions of limitations periods are not implied but must be expressly stated. *American Airlines*, 402 Ill. App. 3d at 605-07. Absent any express Illinois law tolling the limitations period in section 3-7(c), the limitations period began to run on April 5, 2019, when the Tribunal dismissed the *Veyond* cases pursuant to the Settlement Agreement. The Notice of Penalty Liability issued on April 27, 2022, more than 3 years after the dismissal date, was untimely issued, and the Petitioner is entitled to summary judgment in his favor.

Conclusion

The Petitioner's motion for summary judgment is GRANTED. The Department's Notice of Penalty Liability is vacated and cancelled.

This is a final order subject to appeal under section 3-113 of the Administrative Review Law, and service by email is service under section 3-113(a). *See* 35 ILCS 1010/1-90; 86 Ill. Admn. Code § 5000.330. The Tribunal is a necessary party to this appeal.

s/ *Brian Barov*
BRIAN F. BAROV
Administrative Law Judge

Date: April 25, 2023