

**IT 08-10**

**Tax Type: Income Tax**

**Issue: Non-Filers (Income Tax)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS,**

v.

**JOHN DOE,  
Taxpayer**

**No. 08-IT-0000  
SSN 000-00-0000  
Tax Years 1992 – 1995,  
2001 – 2003**

**Ted Sherrod  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General Rick Walton on behalf of the Illinois Department of Revenue (hereinafter the “Department”); John Doe, *pro se*, on behalf of the taxpayer.

**Synopsis:**

This matter involves John Doe’s protest of a Notice of Deficiency (“NOD”) the Illinois Department of Revenue (“Department”) issued to him assessing tax deficiencies for calendar years 1992 through 1995 and 2001 through 2003. The NOD assessed tax, penalties, and interest for the taxpayer’s failure to file Illinois individual income tax returns for these years.

A hearing in this matter was held at the Department’s offices in Chicago, Illinois on September 22, 2008 at which John Doe (“taxpayer”) offered testimony and supporting

documentation. I have reviewed the evidence and I am including in this recommendation findings of fact and conclusions of law. I recommend that the tax and penalties shown in the NOD be revised as noted below, and that the NOD then be finalized as issued.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency issued on November 21, 2007 assessing the taxpayer \$14,244 in tax, penalty and interest for the tax years 1992 - 1995 and 2001 - 2003. Department Group Exhibit (“Ex.”) 1.
2. On November 21 2007, the Department issued an NOD to the taxpayer after determining that he was an Illinois resident who was required to file Illinois individual income tax returns, and that he did not file such returns for the tax years ending December 31 1992 through December 31, 1995, and December 31, 2001 through December 31, 2003. *Id.*
3. Laurie Evans (“Evans”) is an auditor employed by the Department. *Id.* During the first quarter of 2007, Evans conducted an audit of the taxpayer during which she determined that, based on information obtained from the Internal Revenue Service (“IRS”), the taxpayer failed to report: Adjusted Gross Income (“AGI”) for 1992 of \$18,082; AGI for 1993 of \$31,114, AGI for 1994 of \$32,076, AGI for 1995 of \$33,068, AGI for 2001 of \$11,976, AGI for 2002 of \$12,346 and AGI for 2003 of \$12,728. *Id.* In addition to the liability for tax determined based on the auditors findings, the Department’s NOD, in the statement portion of the NOD, assessed late filing or non-filing penalties and penalties for underpayment of estimated tax. *Id.*

4. During discovery, the taxpayer produced documentary evidence to the Department, including W-2 forms showing amounts of Illinois income tax that employers withheld from taxpayer's wages during the tax periods 1992 through 1995, and 2001 through 2003. *Id.*
5. At hearing, the Department conceded that the taxpayer has established that Illinois income tax had been withheld from his wages. Tr. pp. 4, 18.

**Conclusions of Law:**

Section 904 of the IITA provides:

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed.  
35 ILCS 5/904(b)

The *prima facie* correctness of the Department's determination that the taxpayer failed to file Illinois income tax returns, and that tax was due in the amount proposed, was established when the NOD was introduced into evidence at hearing, or otherwise made part of the record. 35 ILCS 5/904, 5/914. Taxpayer offered no evidence to show that the Department's determination that it did not file Illinois income tax returns for calendar years 1992 through 1995 and 2001 through 2003 was incorrect. Thus, I conclude that the Department correctly determined taxpayer failed to file original IL-1040 forms for the aforementioned tax years.

The Department conceded, however, that the amount of tax proposed on the NOD was incorrect because it did not take into account certain amounts withheld from

taxpayer's wages. Tr. pp. 4, 18. Specifically, the Department conceded that tax proposed should be reduced to take into account taxes that had been withheld from taxpayer's wages during the tax periods in controversy, as shown in the Department's Group Exhibit 1. *Id.*

The taxpayer contends that amount shown as income on the NOD for the tax years at issue are in error. Tr. pp. 5, 13 – 18. In support of his claim, the taxpayer, during the hearing, submitted information obtained from the Social Security Administration showing taxpayer's wages as determined by the Social Security Administration for purposes of computing the amount of the Federal Insurance Contribution Act (FICA) taxes, which is calculated as a percentage of wages pursuant to 26 U.S.C. §§ 3101, 3111, and 3121. Taxpayer Ex. 1, 2.

Illinois income tax is imposed on a taxpayer's net income, which is its base income for the tax year allocable to Illinois, less the standard exemption and a deduction for net losses. 35 **ILCS** 5/202; 86 Ill. Admin. Code, ch. I, §100.2050. An individual's base income is the taxpayer's federal adjusted gross income for the tax year adjusted by state additions and subtractions. 35 **ILCS** §5/203(a); 35 **ILCS** 5/203(e).

Section 203(h) of the IITA, 5/203(h) provides as follows:

- (h) Legislative intention. Except as expressly provided by this Section there shall be no modifications or limitations on the amount of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income or taxable income for federal income tax purposes for the taxable year, or in the amount of such items entering into the computation of base income and net income under this Act for such taxable year ...[.]

Pursuant to this provision, a taxpayer cannot modify or limit the amount of income, gain, loss or deduction taken into account in figuring adjusted gross income, or taxable income for federal purposes for any tax year.

During the hearing on this matter, and in documentation submitted into the record the Department indicated that the taxpayer's assessment was based on adjusted gross income as reported or otherwise determined for federal income tax purposes. Tr. pp. 21, 22; Department Ex. 1. As indicated by the foregoing, Illinois law bases adjusted gross income on this amount. See also e.g. IL-1040 Instructions (2001) p.7. Since Illinois law bases AGI for its purposes on what is accepted by the IRS, in order to support a modification of AGI the taxpayer must prove that such modification has made by the IRS. Illinois is, simply, legally bound by the IRS's determination with respect to this matter. Since the taxpayer has failed to show any IRS determination of AGI differing from AGI reported by the IRS to the Department and used by the Department in arriving at the taxpayer's liability, I find that he has failed to rebut the Department's *prima facie* determination of tax liability, which is based on the taxpayer's finally determined federal AGI for each of the tax years at issue.

For the foregoing reasons, I do not dispute the auditor's determination regarding the taxpayer's Illinois net income for the tax years at issue. Department Ex. 1. However, based on the documentary evidence introduced at hearing and the Department's concessions, I recommend that the Director revise the amount of tax due shown in the NOD by subtracting the sum of the tax withheld from the taxpayer's wages as shown by the Department's Group Ex. 1. After taking into account payments the Department

concedes that the taxpayer made, the Department's determination of the amount of tax remaining due should be finalized and affirmed.

Taxpayer has introduced no evidence to show that any of the penalties proposed should be abated based on reasonable cause. Thus, I recommend that the penalties proposed be assessed, but revised to take into account the correct amount of tax remaining due after the adjustments recommended above.

**Conclusion:**

I recommend that tax, penalties, and interest proposed in the NOD be revised as set forth in this recommendation. The NOD should then be finalized and revised, with interest to accrue pursuant to statute.

Ted Sherrod  
Administrative Law Judge

Date: October 22, 2008