

IT 08-5

Tax Type: Income Tax

Issue: Federal Change (Individual)

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

THE DEPARTMENT OF REVENUE)	Docket No.:	07-IT-0000
OF THE STATE OF ILLINOIS)	SSN:	000-00-0000
)		
v.)	Tax Year:	2003
)		
JANE DOE,)	Julie-April Montgomery	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Jessica O'Brien, Special Assistant Attorney General for the Illinois Department of Revenue; Jane Doe¹ appeared *pro se*.

Synopsis:

The Illinois Department of Revenue ("Department") issued a Notice of Deficiency ("NOD") on June 8, 2007 to Jane Doe ("Taxpayer") in the amount of \$220. The basis of the NOD was a finalized federal change about which the Taxpayer did not timely notify the Department. Taxpayer timely protested and requested a hearing in the matter. Taxpayer testified at hearing, but no documents were admitted into evidence on her behalf. Following the submission of all evidence and a review of the record, it is recommended that the NOD be finalized as issued, and in support thereof, I make the

¹ Subsequent to receipt of the Notice of Deficiency, Taxpayer married, and as such, currently uses the last name of Doe.

following findings of fact and conclusions of law:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements was established by admission into evidence of the NOD dated June 8, 2007, proposing a deficiency based upon a finalized federal change. Dept. Ex. No. 1 ("Notice of Deficiency"); Tr. pp. 9, 13, 17.
2. Taxpayer's 2003 federal return was adjusted by the Internal Revenue Service ("IRS") causing her to owe additional federal tax which she subsequently paid to the IRS. These payments were made to the IRS under a payment plan that commenced in 2005. Tr. pp. 12-13, 16, 18.
3. Taxpayer did not contact the Department regarding the adjustments made to her 2003 federal return nor her payment of the amount due the IRS because of such adjustment. Tr. pp. 15-16.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/1-1 *et seq.* (*the "Act"*), provides that a taxpayer must report to the Department any change made to their federal income tax return within 120 days after such change has been agreed to or finally determined. *Id.* at 5/506(b). This is the basis of the NOD at issue herein.

The NOD issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax and penalty due. 35 ILCS 5/904(a); PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33 (1st Dist. 2002); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97 (1st Dist. 1981). The burden is then on the taxpayer to rebut the correctness of the assessment. *Id.*

Taxpayer testified that she believed that she should not be liable for the current NOD because she was not notified by the IRS that she owed "any additional amount."

Tr. p. 7. She assumed that payments she made to the IRS, under a payment plan that commenced in 2005, included any amounts owed the Department. Tr. pp. 6, 12-13, 16, 18. Taxpayer also testified that she believed that the IRS “would have contacted me” (tr. p. 16) if additional amounts were due, including any amount owed the Department. Tr. p. 19. Taxpayer argues that the lack of notice until receipt of the NOD in 2007 should not burden her with a liability to the Department. Taxpayer reasons that because she was making federal tax payments for the 2003 tax year to the IRS it was the IRS’ obligation to inform her of any other amounts due other entities like the Department. Tr. pp. 18-19.

Taxpayer’s argument is contrary to what the Act requires. Taxpayer, not the Department or IRS, is charged with the responsibility of notifying the Department of changes that occur with respect to Taxpayer’s federal return. Conversely, the Taxpayer did not cite, nor am I aware of, any legal requirement that the IRS has to notify any taxpayer of its reporting obligations to a State, in a circumstance such as this one.

It is clear that Taxpayer did not notify the Department of her federal tax changes nor agreement to pay additional tax due the IRS for the year 2003 as a result of such changes. Taxpayer only contacted the Department in 2007 when she received the NOD. This contact was to question the NOD and was not to report that any alteration or payment of additional amounts had been made to the IRS for the year 2003. By her own testimony, Taxpayer did not comply with the 120 day notification requirement of the Act. Taxpayer did not rebut, but rather, confirmed the Department’s *prima facie* case.

Recommendation:

For the reasons stated above, it is recommended that the NOD as issued be finalized, with interest to accrue pursuant to statute.

March 20, 2008
Date

Julie-April Montgomery
Administrative Law Judge