

IT 08-6

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)	Tax ID Nos.	000-00-0000
)	Tax Year	2002
JOHN DOE,)	John E. White,	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared *pro se*; Ralph Bassett, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis: This matter involves John Doe's (Doe or taxpayer) protest of a Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to him regarding tax year ending December 31, 2002. The Department issued the NOD after it determined that taxpayer had not filed an Illinois income tax return for that year, and that he was required to have done so.

The issue is whether the tax, penalties and interest proposed in the NOD were proper. After considering the evidence offered at hearing, I recommend that the issue be resolved in the Department's favor, and that the NOD be finalized as issued.

Findings of Fact:

1. Taxpayer was an Illinois resident during 2002. Department Ex. 1 (NOD), Taxpayer Ex. 1 (copy of a 2002 W-2 form for taxpayer showing an Illinois address).

2. The Department did not receive an Illinois individual income tax return from taxpayer regarding tax year 2002. Department Ex. 1, p. 2 (“Statement” portion of NOD).
3. The Department issued an NOD to taxpayer on October 23, 2007. Department Ex. 1.
4. The NOD notified taxpayer that, after receiving information from the Internal Revenue Service, the Department determined that taxpayer had received income as a resident of Illinois during 2002, and that he had not filed an Illinois individual income tax return for 2002, even though he was required by law to do so. Department Ex. 1, p. 2. The NOD further notified taxpayer that the Department was proposing to assess Illinois income tax, as well as interest and penalties pursuant to the Uniform Penalty and Interest Act (UPIA). *Id.*
5. The NOD proposed to assess Illinois income tax in the amount of \$291, a late-filing or nonfiling penalty in the amount of \$256, and a late payment penalty in the amount of \$58. Department Ex. 1, pp. 3-4 (copy of form EDA-24, auditor’s report of taxpayer’s liability).
6. The Department measured taxpayer’s proposed Illinois income tax liability based on the following determinations: taxpayer’s adjusted gross income (AGI) for 2002 was \$11,695; taxpayer was entitled to 1 exemption; and taxpayer’s net income was \$9,695. Department Ex. 1, p. 3; *see also* 35 **ILCS** 5/202 (“net income” defined); 35 **ILCS** 5/203(a) (defining “base income” of an individual).
7. On July 14, 2006, prior to issuing the NOD, the Department’s issued a Notice of Proposed Tax Due (NPTD). Department Ex. 1, p. 5 (copy of NPTD). The NPTD stated, in part, “If you do not respond within 30 days from the date of this notice, we

will presume that our proposed deficiency is correct and issue a “Notice of Deficiency.” *Id.*

Conclusions of Law:

When the Department introduced the NOD it issued to taxpayer into evidence under the certificate of the Director, it presented prima facie proof that Edwards was liable for the tax and penalties proposed. 35 ILCS 735/3-3(f); 35 ILCS 5/904(a). The Department’s prima facie case is a rebuttable presumption. Branson v. Department of Revenue, 68 Ill. 2d 247, 261, 659 N.E.2d 961, 968 (1995); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department’s assessment, or merely by denying knowledge of a tax deficiency. Branson, 68 Ill. 2d at 267, 659 N.E.2d at 971. Instead, a taxpayer is obliged to present documentary evidence that is consistent, probable and closely identified with its books and records, to show that the proposed assessment is not correct. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33-34, 765 N.E.2d 34, 48-49 (1st Dist. 2002).

At hearing, taxpayer testified that he believed he had already paid the liability at issue in 2005, but that he had no proof of such payment. Hearing Transcript (Tr.), pp. 5-7. He also testified that he did not believe that he received income in the amount determined by the Department, and thought that the only income that he received that year was from the Laborers’ Welfare Fund, which was less than the AGI as determined by the Department. Tr. pp. 6-7. He testified that he asked the Department’s litigator to review

the Department's records for evidence of such payment, and that the litigator told taxpayer that he could not find any such Department records. *Id.*

Taxpayer also offered a copy of a W-2 form showing that he received income in the amount of \$5,285 during 2002 from the Laborers' Welfare Fund. Taxpayer Ex. 1. That document reflects that the payor identified the income paid to taxpayer as third-party sick pay, and that payor withheld no taxes from such income. *Id.* The record includes no evidence that would allow me to conclude that the income identified on Taxpayer Ex. 1 was of a type that was, in 2002, embraced by one the subtraction modifications authorized by § 203(a)(2) of the Illinois Income Tax Act IITA. *See* 35 **ILCS** 5/203(a)(2)(E)-(Y) (2002).

The evidence taxpayer admitted at hearing is not sufficient to rebut the Department's prima facie case. First, there is no documentary evidence to corroborate taxpayer's claim that the tax liability at issue here was, in fact, previously paid by him. On that point, taxpayer testified that he believed he paid the liability at issue in 2005. Tr. pp. 6-7. The evidence does not support taxpayer's recollection. What triggered the Department's issuance of the NPTD and NOD was the Department's review of information from the IRS showing resident Illinois taxpayers that filed federal income tax returns, and its comparison of that information with the Department's own records of resident taxpayers that filed Illinois income tax returns. Department Ex. 1, p. 2. In this case, the Department saw that the IRS records showed that taxpayer filed a federal income tax return for 2002, but that the Department had no record that taxpayer filed an Illinois income tax for that year. *Id.* Considering that the Department first determined that taxpayer might be liable for Illinois income tax regarding the 2002 tax year in 2006,

when it issued the NPTD (Department Ex. 1, p. 5), it is unlikely that taxpayer would have paid that liability in 2005. The documentary evidence is simply inconsistent with taxpayer's testimony.

Next, taxpayer's admission of one W-2 form into evidence does not preclude the possibility that he also received income from some other source(s). As Edwards, himself, testified, "... I don't see how [the Department would] come up with verification of the other income unless it was, like Mr. Bassett said, maybe it was unemployment compensation[.] [T]hat's the only thing I could put on a tax form other than what I was getting from the welfare fund.." Tr. pp. 6-7. Edward's inability to recall does not rebut the Department's presumptively correct determinations that taxpayer's 2002 AGI was \$11,695, and that his Illinois net income for 2002 was \$9,695. Department Ex. 1, p. 3; Balla, 96 Ill. App. 3d at 296-97, 421 N.E.2d at 239 (uncontroverted testimony that was not corroborated with documentary evidence was insufficient to rebut the Department's prima facie case).

Finally, taxpayer has not offered any evidence sufficient to rebut the Department's determination that the two penalties proposed in the NOD were proper. PPG Industries, Inc., 328 Ill. App. 3d at 33-34, 765 N.E.2d at 48-49.

Conclusion:

I recommend that the Director finalize the NOD as issued, pursuant to statute.

June 6, 2008
Date

John E. White, Administrative Law Judge