

IT 09-11

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.:	00-IT-0000
OF THE STATE OF ILLINOIS)	SSN:	000-00-0000
)		
v.)	Tax Year:	2004
)		
JOHN DOE, JR.,)	Julie-April Montgomery	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

The Illinois Department of Revenue (“Department”) issued a Notice of Deficiency (“NOD”) on May 9, 2008 to John Doe, Jr. (“Taxpayer”) in the amount of \$424.14, pursuant to the Illinois Income Tax Act (“IITA”), 5 ILCS 5/101 *et seq.* The basis of the NOD was receipt of information from the Internal Revenue Service (“IRS”) reflecting the denial of two personal exemptions and the earned income tax credit which Taxpayer had claimed for the 2004 tax year. Taxpayer timely protested and requested a hearing in the matter.

The parties agreed that the issues to be decided are whether Taxpayer is entitled to two additional personal exemptions and the earned income tax credit denied him by the IRS for the tax year 2004. June 8, 2009 Pre-Trial Order. At the hearing held on July 31, 2009, Taxpayer testified and submitted documents that were admitted into evidence.

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, are made the 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 May 9, 2008, proposing a deficiency of \$366 plus interest of \$58.14 for a total amount due of \$424.14. Dept. Ex. No. 1 ("Notice of Deficiency"); Tr. p. 8.
2. The IRS adjusted Taxpayer's 2004 federal return to disallow two of the personal exemptions previously claimed and the benefit of the earned income tax credit. Taxpayer Ex. No. 1 (IRS Account Transcript for the tax year 2004); Tr. p. 10.

Conclusions of Law:

Section 904(a) of the IITA provides that the admission into evidence of the NOD establishes the Department's *prima facie* case 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). Once the Department's *prima facie* case is established, the burden of proof is shifted to the taxpayer to overcome the Department's *prima facie* case and rebut the correctness of the assessment. *Id.*

In order to overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with their books and records that show the Department's determination is incorrect. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988). Testimony alone is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Rather, documentary proof is required to prevail against a Department determination of the amount due. Sprague v. Johnson, 195 Ill. App. 3d 789 (4th Dist. 1990).

Pursuant to Section 204 of the IITA, the determination with respect to the allowance of deduction for personal exemptions in Illinois is based on the federal Internal Revenue Code, 26 U.S.C.A., Section 1 *et seq.* (“IRC”), specifically Section 151 therein. 35 ILCS 5/204. For this reason, instructions for the IL-1040 require that the number of personal exemptions claimed in Illinois be the number claimed for federal 1040 purposes. *See* 2004 Form IL-1040 Instructions, pp.8-10.

Pursuant to Section 212 of the IITA, the determination with respect to the allowance of the earned income tax credit in Illinois is also based on the IRC, specifically Section 32 therein. The IITA specifically provides that a taxpayer is only entitled to have a credit of five percent (5%) of the federal earned income tax credit allowed for the applicable tax year. 35 ILCS 5/212(a); *see* 2004 Form IL-1040 Instructions, p. 16.

The Department obtained information from the IRS under the authorization of IRC, Section 6103(d) that Taxpayer had been denied two of the three personal exemptions and the entire earned income tax credit that he had claimed for the 2004 tax year. Dept. Ex. No. 1. As a result of such denials by the IRS, the Department issued the NOD which assessed tax, interest and penalty for 2004. *Id.*

Taxpayer does not dispute that the IRS denied him two personal exemptions and the earned income tax credit he had claimed in 2004. In fact, both Taxpayer’s testimony and the one exhibit that was admitted into evidence on his behalf substantiate the Department’s case that there was a denial of two personal exemptions and the earned income tax credit for the tax year 2004. Taxpayer Ex. No. 1; Tr. pp. 9-10.

Taxpayer did not deny the correctness of the amounts assessed in the NOD nor state that such amounts were not due the Department. Taxpayer testified that he really had “nothing to say” (tr. pp. 10, 12) and merely sought a “waiver” (tr. p. 12) of the NOD. Taxpayer, however, offered no basis for the granting of a waiver.

Taxpayer’s response to the Department’s NOD did not overcome or rebut the Department’s *prima facie* case, but rather, substantiated and 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.

September 4, 2009
Date

Julie-April Montgomery
Administrative Law Judge