

IT 09-12

Tax Type: Income Tax

Issue: Federal Change (Individual)

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS)	Docket No.: 00-IT-0000
)	SSN: 000-00-0000
)	
v.)	Tax Year: 2000
)	
JOHN DOE, SR.)	Julie-April Montgomery
Taxpayer.)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

The Illinois Department of Revenue (“Department”) issued a Notice of Deficiency (“NOD”) on March 24, 2008 to John Doe, Sr. (“Taxpayer”) in the amount of \$3,042. The basis of the NOD was a finalized federal change for the 2000 tax year. Taxpayer timely protested the NOD and requested a hearing in the matter. Taxpayer proffered both testimonial and documentary evidence at his July 6, 2009 hearing.

The issues to be resolved are whether: 1) Taxpayer’s Adjusted Gross Income (“AGI”) was increased by the Internal Revenue Service (“IRS”) for the 2000 tax year so as to warrant issuance of the NOD; 2) Taxpayer reported changes in his AGI for the tax year 2000 so as to avoid issuance of the NOD; 3) the Department violated the applicable statute of limitations provision when it issued the NOD; 4) there was a violation of Internal Revenue Code Section 6103(d); and 5) a final federal change existed that warranted the issuance of the NOD. May 7, 2009 Pre-Trial Order. 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 March 24, 2008, proposing a deficiency based upon a finalized federal change. Dept. Ex. Gr. No. 1 ("Notice of Deficiency"); Tr. p. 7.
2. Taxpayer's 2000 Illinois income tax return stated AGI to be \$48,771. Dept. Gr. Ex. No. 1 ("EDA-24, Auditor's Report").
3. The IRS subsequently increased Taxpayer's AGI to \$93,618 for the 2000 tax year causing Taxpayer to owe additional federal tax. Dept. Gr. Ex. No. 1; Tr. p. 54.
4. Taxpayer underwent an audit reconsideration/appeal with the IRS regarding an increase in his AGI for the 2000 tax year which was completed in June 2007. Taxpayer Ex. Nos. 4 (Taxpayer's January 16, 2008 letter), 8 (Taxpayer's March 11, 2008 letter and IRS Form 13873).
5. The Department obtained information from the IRS under the authorization of Internal Revenue Code Section 6103(d) that a finalized federal change had occurred for tax year 2000 which increased Taxpayer's AGI by \$44,847. Dept. Gr. Ex. No. 1; Taxpayer Ex. No. 4 (Department's December 19, 2007 letter).
6. On September 7, 2007 the Department issued Taxpayer an EDA-131 Examiner's Report which reflected the increase in Taxpayer's AGI. *Id*; Tr. p. 21.
7. In response to Taxpayer's September 25, 2007 letter, the Department, in a letter dated December 19, 2007, explained that based on information received from the IRS, Taxpayer's AGI on his Illinois return and his IRS records needed to be "the same" but were not. This letter also informed Taxpayer that if he felt the Department was incorrect in changing his AGI he should contact the IRS and obtain his federal transcript for the 2000 tax year and substantiate that the change

- revealed to the Department had “been reversed” lest the Department’s assessment “remain due and payable.” Taxpayer Ex. No. 4.
8. Taxpayer made requests for his federal transcript in 2007 and 2008 but was denied by the IRS because the transcripts were not available. Taxpayer Ex. Nos. 4 (“Request for Transcript Return”); 8 (IRS request response); Tr. pp. 23-24.
 9. On March 24, 2008, the Department issued the NOD to Taxpayer. Dept. Gr. Ex. No. 1.
 10. In an April 3, 2008 IRS letter, the IRS confirmed that the determination made in its “closing letter denying [Taxpayer’s] claim for abatement w [ould] not change.” Taxpayer Ex. No. 2 (IRS letter).
 11. In a notice dated April 28, 2008, the IRS sent Taxpayer a demand for payment of additional tax plus interest and penalty with respect to the 2000 tax year. Taxpayer Ex. No. 1 (IRS notice); Tr. p. 9.
 12. Taxpayer paid the entire amount demanded by the IRS on August 19, 2008. Tr. pp. 28, 30, 54, 72.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/1-1 *et seq.* (the “Act”), provides:

A person shall notify the Department if:

- (1) the taxable income, any item of income or deduction, the income tax liability ... reported in a federal income tax return of that person for any year is altered by amendment of such return of that person for any year is ... or as a result of any other recomputation or redetermination of federal taxable income or loss, and such alteration reflects a change or settlement with respect to any item or items, affecting the computation of such person’s net income ...

Such notification shall be in the form of an amended return or such other form as the Department may by regulations prescribe, shall contain the person’s name and address and such other information as the Department may by regulations prescribe, shall be signed by such person or his duly authorized representative, and shall be filed not

later than 120 days after such alteration has been agreed to or finally determined for federal income tax purposes or any federal income tax deficiency ... resulting therefrom has been assessed or paid, whichever shall first occur. 35 ILCS 5/506(b).

Moreover Department regulations provide:

IITA Section 506(b) also requires that a notification of the alteration, showing the taxpayer's address and signed by him or his representative, be filed with the Department not later than 120 days after such alteration has been agreed to or finally determined or after any federal income tax deficiency ... resulting therefrom, has been assessed or paid for federal income tax purposes. Such finality also exists where a taxpayer ... pays any asserted tax increase, even if it is his intent thereafter to file a claim for refund for all or part of such tax (in such instance, the claim would constitute a separate case), or after any federal income tax deficiency ... resulting therefrom, has been assessed or paid for income tax purposes. 86 Ill. Admin. Code, Sec. 100.9200(a) (4).

Section 905 of the Act entitled "Limitations on Notices of Deficiency" states the relevant statute of limitations provisions or timeframes in which the Department may assess a taxpayer. Generally speaking the statute of limitations for issuance of a NOD is no later than three years after the return for the year in question was filed. 35 ILCS 5/905(a) (1). Moreover, if a taxpayer's base income is understated by 25% on his return, the period is extended and the NOD may be issued within a six year period following the date the return was filed. 35 ILCS 5/905(b) (1). If no return is filed then there is no statute of limitations for issuance of a NOD. 35 ILCS 5/905(c). When a taxpayer fails to give notice of a change in his federal income which affects the computation of base income, a NOD may be issued at any time. 35 ILCS 5/905(d). However, if a taxpayer does give notice of a federal change, the Department has two years after notification to issue a NOD. 35 ILCS 5/905(e) (2).

Section 904(a) of the Act further 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 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 notice. *Id.* 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. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

In order to overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with his 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).

The first issue to be resolved in this case is whether Taxpayer's AGI for tax year 2000 was increased by the IRS so as to warrant the Department's NOD. The answer is yes. Taxpayer admitted that he paid the IRS tax, penalty and interest assessed as a result of an increased AGI for the tax year 2000. Tr. pp. 30, 54. This admission and the fact that Taxpayer presented no documentary or testimonial evidence to contradict the amounts stated on the NOD substantiate the Department's *prima facie* case with respect to the NOD.

Taxpayer does not dispute the amounts the Department seeks in the NOD. Rather Taxpayer disputes the Department's actions regarding how information was obtained from the IRS and communicated to him. Taxpayer believes that the Department's actions with respect to the issuance of the NOD were illegal and invalid. Tr. pp. 4, 37. In support of his position Taxpayer posits four arguments.

Taxpayer first argues that the Department acknowledged that he gave notice of the federal change to his AGI. Tr. pp. 29, 34-36, 60. As previously stated, Section 506 of the Act requires a taxpayer notify the Department of a federal change "in the form of an amended return or such other form as the Department may by regulations prescribe [and such notification] shall contain the person's name and address ... shall be signed by such person or his duly authorized representative." 36 ILCS 5/506(b); 86 Ill. Admin. Code Sec. 100.9200(a) (4). The Department has not prescribed alternative requirements for the report of a federal change in its regulations. Hence, an amended return is the sole notification required by the Act of a federal change.

While Taxpayer argues that the Department was given notice of the change, Taxpayer does not allege that he filed an amended return for the 2000 tax year nor did he present documentary evidence of such a filing with the Department. Taxpayer merely alleges the Department was notified of the change to his AGI and asserts the Department acknowledged he reported the change in both the NOD and the Department's December 7, 2007 letter. This is not true.

The NOD clearly states the Department "changed your adjusted gross income to include a final federal change about which you did not timely notify us." Dept. Gr. Ex. No. 1 (NOD "Statement"). The EDA-24, Auditor's Report, supporting the NOD, also reflects a Department correction of Taxpayer's 2000 tax return as originally filed. Dept. Gr. Ex. No. 1. Nowhere in the NOD or its supporting document of explanation is there reference to Taxpayer having actually reported the AGI increase in a timely manner.

Moreover, Taxpayer presented no documentation to reflect that he provided the written notification required by the Act. Furthermore, Taxpayer's reliance on the Department's December 19, 2007 letter as a document in which the Department acknowledges Taxpayer gave notification of the federal change is misplaced for two reasons. The first is that the letter does not contain any language that Taxpayer reported his AGI increase but merely acknowledges receipt of Taxpayer's response to the Department's EDA-131 Examiner's Report dated September 7, 2009. Second, the letter clearly reflects that the Department was the one to contact Taxpayer regarding the increased AGI. In addition, Taxpayer's protest acknowledges it was the Department who contacted Taxpayer regarding the federal change ("IDOR did not notify me until 2007"). Taxpayer Ex. No. 9 ("EAR-14: Format for Filing a Protest for Income Tax"). Consequently no documentary evidence exists to support Taxpayer's claim that he reported his increased AGI to the Department.

Taxpayer's next argument is his belief that the Department violated the state's relevant statute of limitations when it issued the NOD. Tr. pp. 4, 33-34, 73. Taxpayer alleges that Section 902 of the Act limits the Department to a three year period after his initial return was filed in which to issue an NOD for any additional income tax due. *Id*; Taxpayer Ex. No. 9. Taxpayer is not only incorrect, but has relied upon the wrong provision of the Act. Taxpayer relies on Section 902 of the Act entitled "Notice and Demand" in support of his argument. However, it is Section 905 of the Act entitled "Limitations on Notices of Deficiency" which is relevant to the instant case.

Taxpayer's position is that the appeal of his federal change was complete in June 2007. However, there is no documentary evidence that Taxpayer notified the Department of the federal change by filing an amended return as required by Section 506(b) of the Act. While Taxpayer alleges the Department stated that he had given notification of the federal change sometime between September 2007 and December 2007, the documents cited by Taxpayer make no such statements. Tr. p. 36. The Department issued the NOD

on March 24, 2008. Inasmuch as Taxpayer did not give the notification required by the Act, the Department could issue the NOD whenever it chose. 35 ILCS 5/905(d). Moreover, even if Taxpayer's contention were accepted that he gave notice of the federal change sometime between September and December 2007, the Department's issuance of the NOD in March 2008 was well within the two year limitations period. 35 ILCS 5/905(e)(2). Hence, the Department's issuance of the NOD was timely and well within the appropriate statute of limitations.

Taxpayer also alleges that Section 6103(d) of the IRS Code was violated by the Department. Tr. 36. Taxpayer contends this is so because the IRS would not provide Taxpayer with his federal transcript for the 2000 tax year in 2007 or 2008 when he made the requests. Tr. p. 37. Taxpayer therefore concludes that no one else, including the Department, could properly have access to his 2000 tax year information. Tr. pp. 37-39. Again, Taxpayer is incorrect.

Taxpayer states that the Department had "false[ly] or they illegally obtained a transcript from the IRS." Tr. p. 37. Taxpayer reasons that because the IRS stated his 2000 tax year federal transcript was unavailable to him that it was also unavailable to the Department and assumes said transcript was the sole source of information for the Department's NOD. Tr. pp. 36-37. Section 6103(d) provides that state agencies, like the Department, may have "returns and return information ... for the administration of state tax laws." IRS Code Section 6103(d). Taxpayer assumes that the only information available and relevant to the Department is his federal transcript. Neither the Department's NOD Statement nor its December 19, 2007 letter stated that it relied solely on Taxpayer's federal transcript for the NOD and Taxpayer's statement to the contrary (tr. pp. 36-37) was not substantiated at hearing. Rather the Department stated that it relied on information obtained from the IRS.

Further, Section 6103(d) not only places no apparent restriction on the time period in which the Department may receive information, it also does not limit the information

the Department may receive about a taxpayer. The IRS will make available both returns and return information to states like Illinois. It should also be noted that Taxpayer cited no law which states the Department is restricted solely to the use of one's federal transcript as the basis of a NOD or that the IRS can only provide the Department with information for a few years. Taxpayer erroneously assumes that because the IRS had informed him that it will not provide him his 2000 tax year transcript there exist no other information upon which the Department may make a determination that his AGI had increased. To the contrary, Taxpayer's Exhibits Nos. 1 (which seeks payment of tax, penalty and interest) and 2 (regarding non-qualification for certain tax deductions) are IRS documents that reflect information regarding Taxpayer's increased AGI. Hence, there can be no doubt that the Department did not falsely or illegally obtain Taxpayer's 2000 tax year AGI information.

Taxpayer's final response to the NOD is his assertion that there was no final federal change which occurred prior to the issuance of the NOD. Tr. pp. 4, 43. Taxpayer alleges that a final determination first existed on August 19, 2008 when he paid the IRS. Tr. p. 4. This argument has no merit.

As previously stated, Section 506(b) of the Act states that a federal change is final when the change is: 1) agreed to by taxpayer and the IRS, 2) the IRS has made its final determination, 3) the IRS has issued an income tax deficiency or 4) the deficiency is paid, whichever occurs first.

While Taxpayer clearly agreed with the federal change to his AGI on August 19, 2008 when he admits paying the IRS, his federal change was final prior to this date. Taxpayer submitted documents which reflect three different dates at which a final determination by the IRS would be deemed to have occurred pursuant to the Act. The first date is June 2007. Taxpayer presented the letters he wrote to the Department that stated his audit reconsideration/appeal was concluded in June 2007. Taxpayer Ex. Nos. 4, 8. Taxpayer also placed in evidence an IRS document which gave the date of June 21,

2007 as confirmation of these statements made in his letters. Taxpayer Ex. No. 8. In addition, Taxpayer's admission of the Department's December 19, 2007 letter lends credence to the existence of a final determination prior to the issuance of the NOD inasmuch as the letter stated that the Department had issued an EDA-131 Examiner's Report to Taxpayer based on information received from the IRS. Taxpayer Ex. No. 4. The second date is April 2008 when the IRS informed Taxpayer that it would not alter its decision to deny his claim for abatement, and as such, later in the same month, it issued a notice which sought payment of the amount due. Taxpayer Ex. Nos. 1, 2. The third date was in August 2008 when Taxpayer admits that he paid the IRS. Tr. pp. 28, 30, 54, 72. Pursuant to Section 506(b) of the Act, the first date of June 2007 is deemed the date of Taxpayer's final determination by the IRS – a date prior to the March 2008 NOD.

It must again be reiterated that Taxpayer bears the burden to rebut the presumptive correctness of the Department's determinations. PPG, *supra* at 33; Balla, *supra* at 296-297. This presumption of correctness applies to all elements for the issuance of an assessment. See Branson v. Department of Revenue, 168 Ill. 2d 247, 261 (1995). As such, the instant case would include a presumption that the NOD was based upon a final determination, and as such, the final determination existed prior to the issuance of the NOD. Taxpayer did not present the IRS closing letter that was referenced in Taxpayer Ex. No. 2 which denied his claim for abatement to show that the IRS did not make its final determination prior to issuance of the NOD. Neither did Taxpayer produce a deficiency notice issued by the IRS to support his claim. Taxpayer failed to sustain his burden of proof and establish, with documentary evidence, a final determination did not occur prior to the issuance of the NOD. To the contrary, Taxpayer produced documents which reflect there was a final determination prior to the issuance of the NOD.

In addition, Taxpayer's presentation of alternative dates for the final determination does not establish that Taxpayer has met his "burden to overcome the prima facie case." Mel-Park, *supra* at 222. This is especially true because the Act

expressly recognizes various dates can exist wherein an IRS determination can be deemed final, and as such, clearly states that the earliest/first date controls. 35 ILCS 5/506(b).

Taxpayer's claim that his appeal with the IRS is still ongoing (even as the hearing in this matter proceeded) shows Taxpayer's failure to comprehend when a federal change is final. There are no stages of the appeals process, as Taxpayer argues, which include payment of tax, penalty and interest followed by a penalty relief stage and thereafter an interest relief stage which until completed prohibit a federal change from being deemed final. Tr. pp. 25-27, 32, 43. Department regulations clearly state that the IRS's final determination is final when "finally determined or after any federal income tax deficiency ... has been assessed or paid for federal income tax purposes. Such finality also exists where a taxpayer ... pays any asserted tax increase." 86 Ill. Admin. Code, Sec. 100.9200 (a) (4).

Taxpayer also misinterprets the IRS' April 3, 2008 letter. Taxpayer testified that this letter showed that "the real final determination had not been achieved" (tr. p. 32) but was "coming up" (tr. p. 31) because this IRS letter was informing him that he had "two years to take the case to court." *Id.* Contrary to Taxpayer's interpretation this letter merely advised Taxpayer that the IRS' prior determination for the 2000 tax year would not be altered, and as such, recognized that Taxpayer had previously received a final determination. The letter further advised Taxpayer that his "next step [was] to file suit" and such a claim could be pursued within a two year period. Taxpayer's Ex. No. 2.

In summary, Taxpayer did not rebut, but rather, confirmed the Department's *prima facie* case. Taxpayer not only agreed that his AGI had been increased by the IRS but affirmed that belief when he paid the amount the IRS deemed due. Taxpayer has not shown that he reported his increased AGI to the Department. Taxpayer has not shown a state violation of the relevant statute of limitations with respect to the issuance of the

NOD or noncompliance with Section 6103(d) of the IRS Code. Lastly, Taxpayer confirmed that a final federal change for the 2000 tax year occurred.

Recommendation:

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

September 17, 2009
Date

Julie-April Montgomery
Administrative Law Judge