

IT 09-13

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)	No. 00 IT 0000
)	
)	SSN: 000-00-0000
v.)	
)	Tax Year 2004
JOHN DOE,)	
TAXPAYER)	
)	Administrative Law Judge
)	Kenneth J. Galvin

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John Doe, appearing *pro se*; Mr. Rickey Walton, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

On August 25, 2008, the Illinois Department of Revenue (hereinafter "Department") issued a Notice of Deficiency (hereinafter "NOD") to John Doe (hereinafter "taxpayer"). The basis of the NOD was the Department's determination that the taxpayer had failed to report a federal change in adjusted gross income to the Department. The NOD proposed the assessment of additional taxes, penalties and interest.

Taxpayer subsequently filed a timely protest of the NOD and requested a hearing, which was held on September 30, 2009, with Mr. Doe testifying. Following a review of

the evidence and the arguments made at the hearing, it is recommended that the NOD be finalized as issued.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD, issued on August 25, 2008. The NOD indicates that taxpayer had adjusted gross income of \$26,631, rather than the \$616 that taxpayer claimed on his 2004 IL-1040. The NOD assessed a net tax due of \$661 plus penalties and interest. Tr. pp. 7-10; Dept. Ex. Nos. 1 and 2.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.*, requires that a tax return be filed by the fifteenth day of April following the close of the taxable year. 35 ILCS 5/505(2). Section 601 provides that every taxpayer required to file a return shall pay any tax due to the Department on or before the date fixed for filing such return. 35 ILCS 5/601(a). If a taxpayer fails to file a tax return, the Department shall determine the amount of the tax due and this amount shall be "*prima facie* evidence of the correctness of the amount due." 35 ILCS 5/904(b). Additionally, Section 904(a) of the Illinois Income Tax Act provides that a NOD is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a).

Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any federal change which affects the computation of such person's base income. 35 ILCS 5/506(a)(b). In the instant case,

taxpayer failed to notify the Department of a federal change in his adjusted gross income for 2004 which increased taxpayer's net tax due to Illinois by \$661. The NOD also assessed penalties and interest.

Taxpayer has apparently disputed the federal change in adjusted gross income for 2004. On August 1, 2008, the IRS advised taxpayer that it was disallowing his claim because he had failed to provide the required documentation. Dept. Ex. No. 3. To overcome the Department's *prima facie* case, the taxpayer must present consistent and probable evidence identified with book and records. Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Taxpayer has provided no documentary evidence to rebut the *prima facie* case of the Department. Accordingly, it is my conclusion that taxpayer is subject to the additional income tax, penalties and interest.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Deficiency issued August 25, 2008 be finalized as issued.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

November 6, 2009