

IT 09-15

Tax Type: Income Tax

Issue: Non-Filers (Income Tax)

**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 Nos.:	000-00-0000
)		000-00-0000
v.)	Tax Year:	2004
)		
John and Jane Doe,)	Julie-April Montgomery	
Taxpayers)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

This matter involves John and Jane Doe's ("Taxpayers") protest of a Notice of Deficiency ("NOD") that the Illinois Department of Revenue ("Department") issued to them on April 25, 2008 to propose a tax deficiency for the calendar year 2004. The NOD proposed to assess tax, penalties, and interest for Taxpayers' failure to file their 2004 Illinois individual income tax return. Taxpayers timely protested the NOD and requested a hearing in the matter. Taxpayers proffered both testimonial and documentary evidence at their October 20, 2009 hearing.

The issues to be resolved are whether: 1) the NOD correctly determined Taxpayers' 2004 liability for tax, penalty and interest; and 2) Taxpayers are entitled to a credit for taxes paid to the State of North Carolina. May 18, 2009 Pre-Trial Order. Following the submission of all evidence and a review of the record, it is recommended that the proposed tax, penalties and interest be revised, then finalized as a result of said

revisions, and in support thereof, are made the following findings of fact and conclusions of law.

Findings of Fact:

1. On April 25, 2008, the Department issued a NOD to Taxpayers, after a determination that they were required to file an Illinois individual income tax return for 2004. Dept. Gr. Ex. No. 1, (“IDR-393 Notice of Deficiency” and “EDA-131 Examiner’s Report”); Tr. pp. 4-7.
2. The Department informed Taxpayers that based upon information obtained from the Internal Revenue Service, the Department determined that both their adjusted gross income and Illinois base income were \$103,672; and that they owed \$2,810 in Illinois income tax. In addition, the Department assessed a late filing or non-filing penalty of \$306.20, a penalty for underpayment of estimated tax of \$41.40, a late payment penalty of \$479.20, and interest of \$528.13. *Id.*
3. Taxpayers admit that they were “delinquent in filing this [2004] return.” Tr. p. 8.
4. Taxpayers’ earned \$88,858.90 (\$41,461.95 for Mrs. Doe and \$47,396.95 for Mr. Doe) in wages in 2004. Taxpayers Ex. No. 1 (Jane Doe’s 2004 W-2), Gr. Ex. No. 2 (John Doe’s 2004 W-2); Tr. pp. 10-12.
5. Taxpayer, Jane Doe, had Illinois income tax withheld from her wages during 2004 by her employer in the aggregate amount of \$1,124 (rounded from the documented amount of \$1,123.86). Taxpayers Ex. No. 1; Tr. pp. 8-9, 11.
6. Taxpayer John Doe had \$3,337 in North Carolina income tax withheld from his wages during 2004 by his employer. Taxpayers Gr. Ex. No. 2; Tr. pp. 10-12.
7. John Doe received \$2,130 in unemployment compensation for which no state income tax was withheld in 2004 from the Employment Security Commission of North Carolina. Taxpayers Gr. Ex. No. 2 (2004 “Statement for Recipient of Unemployment Compensation Payments”); Tr. p. 12.
8. On October 19, 2009, John Doe mailed his 2004 North Carolina Individual

Income Tax Return to the North Carolina Department of Revenue. Taxpayers Gr. Ex. No. 2 (“North Carolina Individual Income Tax Return 2004” and 10/19/2009 United States Postal “Certificate of Mailing”); Tr. pp. 10-11.

9. Taxpayers were Illinois residents in 2004. Taxpayers Ex. Nos. 1-2; Tr. pp. 9-10.

Conclusions of Law:

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

No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. 35 ILCS 5/904(b).

Section 601(b) of the Act also states:

Amount payable. In making payment as provided in this section there shall remain payable only the balance of such tax remaining due after giving effect to the following:

(1)Withheld tax. Any amount withheld...from compensation paid to a taxpayer shall be deemed to have been paid on account of any tax imposed...on such taxpayer for his taxable year beginning in such calendar year. 35 ILCS 5/601(b) (1).

(3)Foreign tax. The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by...this Act shall be credited against the tax imposed...for such taxable year. 35 ILCS 5/601(b) (3).

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 Department's NOD was entered into evidence under the certificate of the Director of Revenue, and as such, the Department's *prima facie* case was established, and the burden of proof shifted to Taxpayers to overcome the Department's *prima facie* case.

Taxpayers did not offer evidence to show that the Department's determination that Taxpayers did not file an Illinois income tax return for 2004 was incorrect. In fact, Taxpayers admit that they did not "dispute any of the facts as presented by the Department." Tr. p. 4. Thus, it must be concluded that the Department correctly determined Taxpayers failed to file a 2004 Illinois income tax return.

Taxpayers do not dispute the amounts the Department seeks in the NOD. The NOD however is based upon the "EDA-131 Examiner's Report" which reflects the

following:

11. Base Income		\$103,672

12b. Total Exemption amount		\$10,000
13. Net Income		\$93,672
14. Tax		\$2,810

Payments and Credits		

17. Illinois Income Tax withheld (W-2)		0

19. Tax credit from Schedule CR		0

26. Net tax due		\$2,810

Taxpayers placed in evidence, without objection from the Department, Mrs. Doe's 2004 W-2 which reflected that \$1,124 in Illinois income tax was withheld from her wages. This evidence bears upon the parties' first agreed issue of whether the NOD correctly determined Taxpayers' 2004 liability.

The Department's proposed assessment of tax includes no credit for the \$1,124 in Illinois state income tax that was withheld from Mrs. Doe in 2004 as evidenced by her 2004 W-2. Section 601(b) (1) of the Act requires Taxpayers be given credit for the Illinois income tax withheld on Mrs. Doe's behalf on Taxpayers' joint corrected 2004 Illinois return. 35 ILCS 5/601(b) (1). When this credit is applied (line 17 of the EDA-131 Examiner's Report) to Taxpayers, net tax due is reduced to \$1,686 (or \$2,810 minus \$1,124).

Taxpayers also seek credit for the North Carolina taxes withheld from Mr. Doe in 2004. Section 601(b) (3) of the Act provides a foreign tax credit to an Illinois resident who pays tax to another state on income that would be subject to Illinois income tax. 35 ILCS 5/601(b) (3). Moreover, "[a]ny person claiming such credit shall attach a statement

in support thereof in such manner and at such time as the Department shall by regulations prescribe.” *Id.*

Department regulations provide that a claim for the foreign tax credit be documented, lest “[n]o credit shall be allowed [and such documentation must be]...evidenced by...[a] copy of the tax return filed for taxes paid to the other state.” 86 Ill. Admin. Code Sec. 100.2197(g) (1). The Department has a “Schedule CR: Credit for Tax Paid to Other States” (“Schedule CR”) which provides guidance on how individuals are to determine the amount of their foreign tax credit. Schedule CR states one should file this schedule if:

- *you were either an Illinois resident or a part-year resident during the tax year; and
- *you paid income tax to another state on income you earned while you were an Illinois resident; and
- *the income subject to the other state’s tax is included in your Illinois base income; and
- *you did not deduct any income tax paid to the other state when you figured your federal adjusted gross income as shown on your IL-1040, Line 1. IL-1040 Schedule CR.

Mr. Doe admits to being an Illinois resident in 2004. Tr. pp. 9-10. His 2004 North Carolina W-2 and Individual Income Tax return reflect that he paid income tax to North Carolina. Taxpayers’ Illinois base income for 2004 as proposed in the NOD of \$103,672 clearly encompasses Taxpayers’ wages of \$88,858.90 and Mr. Doe’s unemployment compensation of \$2,130. Moreover there was no deduction for income tax paid another state when the Department figured Taxpayers’ federal adjusted gross income in the NOD. Thus, use of the Schedule CR is warranted.

Completion of the Schedule CR to the instant case would result in the following:

Schedule CR Credit for Tax Paid to Other States

Step 2: Figure your credit

1. Residents: Write your Illinois base income		\$103,672
2. Column A (Name of State)	Column B Illinois base income taxed by other state	Column C Income tax paid to other state
North Carolina	\$54,145 ¹	\$2,678 ²
3. Column C (totals)		\$2,678
4. Write your double-taxed base income from Column B		\$54,145
5. Write your Illinois tax due		\$2,810
6. Divide Line 4 by Line 1		.52227
7. Multiply Line 5 by Line 6		\$1,467
8. Compare the amounts on Lines 3, 5, and 7. Write the lesser amount here		\$1,467

Hence, Taxpayers are entitled to a foreign tax credit of \$1,467. When this credit is applied (line 19 of the EDA-131 Examiner's Report) to Taxpayers, the net tax due is further reduced to a rounded figure of \$219 (i.e. Illinois tax due of \$2,810 minus \$1,124 for Mrs. Doe's Illinois withholding credit minus \$1,467 for Mr. Doe's foreign tax credit).

Based upon Taxpayers' 2004 W-2's and Mr. Doe's North Carolina income tax return, the amount of tax proposed in the NOD should be revised to give credit for both the sum of \$1,124 in Illinois income tax withheld from Mrs. Doe's 2004 wages and a foreign tax credit of \$1,467 for the North Carolina income tax paid by Mr. Doe. After these revisions, the net tax amount due is \$219.

Taxpayers proffered no arguments or evidence, documentary or testimonial, as to the existence of any reasonable cause for abatement of the penalties assessed. There was also no argument raised or evidence presented that the interest assessed was improper.

¹ Computation derived by subtraction of Mr. Doe's total North Carolina income of \$49,526.95 (i.e. wages of \$47,396.95 plus unemployment compensation of \$2,130) from Illinois base income of \$103,672. While the actual figure is \$54,145.05, this number has been rounded.

² Line 18 of North Carolina return.

Hence, the penalties and interest were properly assessed but should be recalculated based on the revised tax amount.

Recommendation:

For the reasons stated above, it is recommended that the proposed tax, penalties and interest in the NOD be revised as stated in this recommendation. The NOD should then be finalized as revised, with interest to accrue pursuant to statute.

November 16, 2009
Date

Julie-April Montgomery
Administrative Law Judge