

IT 10-01
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
OF THE STATE OF ILLINOIS**

v.

**JANE DOE,
Taxpayer**

Ted Sherrod

No. 00-IT-0000
SSN XXX-XX-XXXX
Tax Years 1991, 1996, 1999,
2002, 2004, 2005

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Rebecca Kulekowskis on behalf of the Illinois Department of Revenue (“Department”); Jane Doe, *pro se*.

Synopsis:

This matter is before this administrative tribunal as a result of a timely protest by Jane Doe (“taxpayer”) to a Notice of Deficiency (“NOD”) issued to her on June 18, 2008. The basis of this NOD is the Department's determination that she failed to file an Illinois income tax return for the years ending December 31, 1991, December 31, 1996, December 31, 1999, December 31, 2002, December 31, 2004 and December 31, 2005 (

"taxable years"). The NOD proposed the assessment of tax, various penalties and interest for income earned during these years.

During a hearing on this matter held on October 23, 2009, the taxpayer stated that the returns for the tax years at issue were filed. The Department contends that it has no record that these returns were filed and that, in the absence of proof that they have been filed, the Department's determination must be affirmed. Following a review of the documentation and testimony presented at the aforementioned hearing, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation I make the following findings of fact and conclusions of law.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD which indicates that, with respect to the taxable years, the taxpayer failed to file Illinois income tax returns. Department Exhibit ("Ex.") number ("No.") 1.
2. Based upon information obtained from the Internal Revenue Service regarding the taxpayer's federal income tax returns for the taxable years, the Department determined the taxpayer's adjusted gross income and net income. *Id.*
3. The Department issued an NOD to the taxpayer on June 18, 2009, setting forth tax and penalties in the amount of \$7,248. *Id.*
4. Penalties proposed to be assessed were for failure to timely file income tax returns and failure to timely pay tax due as statutorily required, and for failure to make timely estimated tax payments. *Id.*

5. There has been no evidence of reasonable cause offered for the taxpayer's failure to timely file returns and timely pay taxes and her failure to pay estimated taxes that were due.

Conclusions of Law:

The Illinois Income Tax Act, 35 **ILCS** 5/101 et seq., provides in pertinent part as follows:

Section 904. Deficiencies and Overpayments.

(b) 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.

During hearing proceedings in this matter, the taxpayer stated that she thought she filed returns for the taxable years at issue. Hearing Transcript ("Tr.") pp. 5, 7. However, she presented no documentary evidence to support this claim. Tr. p. 15. Section 904 of the Illinois Income Tax Act, 35 **ILCS** 5/101 et seq., provides that the Department's *prima facie* case is established by the admission into evidence of the Department's determination of the correct amount of tax due and the Notice of Deficiency. 35 **ILCS** 5/904; Balla v. Department of Revenue, 96 Ill. App. 3d 293 (1st Dist. 1981). See also 86 Ill. Admin. code, ch. I, section 100.9300 ("When a taxpayer has failed to file a return and a Notice of Deficiency is issued to the taxpayer, the Department's determination shall be prima facie evidence of the correctness of the amount of tax due, penalties and interest.").

Therefore, the Department's *prima facie* case was established when it introduced into evidence the NOD dated June 18, 2008 showing the determination of the correct amount of tax.

To overcome Department's *prima facie* case the taxpayer must present consistent, probable evidence identified with its books and records. Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). In the instant case, the taxpayer has introduced no documentary evidence to overcome the Department's *prima facie* case. Therefore, the Department's *prima facie* case must stand. Accordingly, I find that the returns for the taxable years were not filed because the taxpayer has proffered no evidence to the contrary. However, the record contains evidence from the Internal Revenue Service ("IRS") which reduces the liability determination upon which the NOD is based. This evidence supports the modification of the NOD to allow the taxpayer an additional federal exemption for the tax year ending December 31, 2002. Tr. pp. 10, 11. The record also indicates that the taxpayer's adjusted gross income shown on her federal return for 2005 should be increased from the amount shown on the NOD (\$26,200) to \$31,708. Tr. p. 11.¹

The Uniform Penalty and Interest Act, 35 **ILCS** 735/3-1 *et seq.*, at 35 **ILCS** 735/3-8 provides for the abatement of penalties if the taxpayer shows that the failure to meet the state's compliance requirements was due to reasonable cause.² However, there

¹ From the record, it appears that the taxpayer had not filed a return with the IRS for 2005 at the time the NOD was issued, and that the IRS estimated her liability for that year. Tr. p. 11. Subsequently, after the issuance of the NOD, the taxpayer filed a 2005 return with the IRS. The increase in the taxpayer's AGI is based upon this subsequent IRS filing. *Id.*

² 35 **ILCS** 735/3-8 provides in part as follows:

The penalties imposed under the provisions of Section 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined

is no evidence in the record before me to suggest the taxpayer's failure to timely file her IL-1040s at issue, pay taxes and make estimated tax payments was due to reasonable cause. Therefore, the record provides no basis for the abatement of any penalties imposed pursuant to the NOD.³

Wherefore, based upon the evidence of record, it is my determination that the NOD at issue in this case, as modified to reflect information from the Internal Revenue Service received by the Department subsequent to the NOD and changes to the NOD made by the Department pursuant thereto, should be finalized and affirmed.

Ted Sherrod
Administrative Law Judge

Date: January 8, 2010

in each situation in accordance with the rules and regulations promulgated by the Department.

³ The Department has promulgated regulations enumerating examples of circumstances providing a basis for a finding of reasonable cause for the abatement of penalties at 86 Ill. Admin. Code, Ch. I, section 700.400.