

IT 11-06
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

v.

JANE DOE,
Taxpayer

No. XXXXX
Account ID XXXXX
Letter ID# XXXXX
Tax Year XXXXX

Ted Sherrod
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

This matter involves Jane Doe' protest of a Notice of Deficiency ("NOD") the Illinois Department of Revenue ("Department") issued to her assessing a tax deficiency for the calendar year XXXX. The NOD was based upon the Department's determination that the taxpayer failed to report an adjustment to her federal income tax return increasing her federal adjusted gross income ("AGI") for that year.

A hearing in this matter before Administrative Law Judge Kenneth Galvin was held on June 23, 2011 at which both the Department and Jane Doe ("taxpayer") offered testimony and supporting documentation. I have reviewed the evidence presented in this case and I am including in this recommendation findings of fact and conclusions of law. I recommend that the NOD at issue 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 January 11, 2010 assessing the taxpayer \$1,197 in tax, penalty and interest for the tax year XXXX. Department Exhibit (" Ex.") 1.
2. Documentation accompanying the NOD (the Department's EDA-131 Examiner's Report) shows that the deficiency assessed pursuant to the NOD arose as a result of an Internal Revenue Service adjustment to the taxpayer's federal income tax return for XXXX. *Id.* The Internal Revenue Service adjustment increased the taxpayer's adjusted gross income by \$28,262 by reversing a business loss in this amount reported on line 12 of the taxpayer's original XXXX federal income tax return. Department Ex. 1, 4.
3. On November 4, 2010, the taxpayer signed a document entitled "Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, and Waiver of Suspension of Levy Action" pursuant to which she agreed that the Internal Revenue Service's adjustment to her XXXX federal return increasing her AGI was correct and further agreed not to contest the Internal Revenue Service's determination of liability. Tr. pp. 14-17; Department Ex. 3.
4. During calendar year XXXX, state income tax was withheld and reported to the Department by the taxpayer's employer in the amount of \$1,350.32. Taxpayer Ex. 1. The Department credited the taxpayer for the payment of this amount in its assessment determination reflected in the NOD. Department Ex. 1.

Conclusions of Law:

Pursuant to section 904 (a) of the Illinois Income Tax Act, an NOD is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 5/904(a). The NOD issued by the Department in the instant case proposes that the taxpayer owes \$1,197 in tax, plus penalties and interest. Department Ex. 1. In order to prevail, the taxpayer must rebut this *prima facie* correct determination. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). The Department's determination is rebutted only after a taxpayer produces evidence, which is consistent, probable and identified with the taxpayer's books and records, showing that the Department's determination is incorrect. Fillichio v. Department of Revenue, 15 Ill. 2d 327 (1958). Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determination. A.R. Barnes & Co. v. Illinois Department of Revenue, 173 Ill App 3d 826 (1st Dist. 1988).

The taxpayer does not dispute that the Internal Revenue Service made an adjustment to her return. Tr. p. 11. Moreover she does not deny that this adjustment increased her adjusted gross income and thereby caused a state income tax deficiency in the amount shown on the NOD. *Id.* Instead, the taxpayer's position is that the Internal Revenue Service's adjustment is incorrect. *Id.*

The record in this case shows that the taxpayer signed an agreement with the Internal Revenue Service entitled "Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination and Waiver of Suspension of Levy Action" pursuant to which she agreed that the Internal Revenue Service's determination of her AGI was correct and that she would not contest the Internal Revenue Service's determination in this matter. Department Ex. 3. The Illinois Income Tax Act clearly states that "a final determination pursuant to the Internal Revenue Code adjusting an item or items of income, deduction or exclusion for any taxable year shall be correct for purposes of this Act to the extent such item or

items enter into the determination of base income.” 35 ILCS 5/403(b). The Illinois Income Tax Act provides that federal AGI is the starting point in computing a taxpayer’s Illinois income tax liability. 35 ILCS 5/203(a); 35 ILCS 5/203(e). Accordingly, the Department is required by law to follow the Internal Revenue Service's final determination regarding the taxpayer's adjust gross income which the taxpayer agreed to when she signed the “Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, and Waiver of Suspension of Levy Action” pursuant to which she agreed that the Internal Revenue Service’s adjustment to her XXXX federal return increasing her AGI was correct and would not be contested. Department Ex. 3.

During the hearing, the taxpayer was repeatedly given the opportunity to present evidence showing that the Internal Revenue Service's adjustment increasing her AGI as originally reported was incorrect. Tr. pp. 10-12, 20. However, the taxpayer failed to make any such showing. Accordingly, even if the Internal Revenue Service’s determination in this case were not conclusive, the taxpayer would nevertheless fail to overcome the Department's *prima facie* case because she presented no evidence to rebut it. Copilevitz, supra; Fillichio, supra.

The taxpayer also argues that the Department’s Notice of Deficiency did not give her credit for taxes withheld from her XXXX income for state income taxes. Tr. p. 11. However, this contention is negated by the record which clearly shows that this amount was properly credited to her in arriving at the liability shown in the Department’s deficiency notice. Department Ex. 1; Tr. pp. 13, 21, 22.

WHEREFORE, for reasons stated above, I recommend that the Notice of Deficiency at issue in this case be finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: August 3, 2011