

IT 14-06

Tax Type: Income Tax

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.

MR. AND MRS. DOE,

TAXPAYERS,

No. XXXX

NOD: XXXX

NOD: XXXX

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Synopsis:

On April 20, 2011, the Illinois Department of Revenue (hereinafter “the Department”) issued a Notice of Deficiency (hereinafter “NOD”) to Mr. and Mrs. Doe for tax year 2007. On March 27, 2012, the Department issued a NOD to Jack Doe for tax year 2009.¹ The basis of the NOD’s was the Department’s determination that the taxpayers had failed to file an Illinois income tax return for 2007 and 2009. The NOD’s proposed the assessment of taxes, penalties and interest.

Taxpayers filed a timely protest of the NOD’s and requested a hearing, which was held on June 25, 2013. Following a review of the testimony presented at the hearing, it is recommended that the NOD’s for 2007 and 2009 be finalized as issued.

Findings of Fact:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD’s, issued on April 20, 2011 for tax year 2007 and March 27, 2012 for tax year 2009, which indicate that the taxpayers filed a federal income tax return with an Illinois address but

¹ Mr. Doe’s name is “Jack Doe.” Tr. p. 3.

failed to file an Illinois income tax return for the years at issue. The NOD's proposed the assessment of taxes, penalties and interest. Tr. pp. 3-5; Dept. Ex. Nos. 1 and 3.

2. On April 29, 2011, Mr. Jack Doe protested the 2007 NOD. The protest does not mention a residency issue or that Mr. Jack Doe did not live in Illinois in 2007. The protest states that "we paid taxes through our employers." Tr. p. 4; Dept. Ex. No. 2.
3. Two W-2 "Wage and Tax Statements" for 2007 show wages paid to "Jack Doe." These W-2's do not show any state withholding tax deducted from his wages. Two W-2 "Wage and Tax Statements" for 2009 show wages paid to "Jack Doe" by Rainbow Corporation and wages paid to "Jack Doe" by "Tornado." The W-2 from Rainbow shows \$29.29 in "state income tax" and Mr. Jack Doe was given credit for this amount on the 2009 NOD. Tr. pp. 4-5; Dept. Ex. No. 5.
4. The 2009 W-2 showing wages paid to "Jack Doe" by Tornado (FEIN No. XXXX) shows Box 17, "state income tax" in the amount of \$9,152. However Box 15, "State" and "Employer's State ID Number" are blank. Revenue Tax Specialist III, Don Lippo, testified by Affidavit that he had searched the Department's records and determined that neither IL-941's nor W-4's were filed by any entity with FEIN No. XXXX in 2009. Tr. pp. 5-6; Dept. Ex. No. 5.

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). The NOD's issued in this case indicate that the taxpayers failed to file Illinois tax returns for 2007 and 2009.

A resident of Illinois is subject to Illinois income taxation even when he is absent from Illinois for lengthy periods of time. Coronet Insurance Co. v. Jones, 45 Ill. App. 3d 232 (1st Dist. 1977). The Illinois Income Tax Act defines “resident” as an individual who either is in the State for other than a temporary or transitory purpose during the taxable year or is domiciled in the State but is absent from the State for a temporary or transitory purpose during the taxable year. 35 ILCS 5/1501 (20)(A).

Tax Year 2007: At the hearing on June 25, 2013, Mr. Jack Doe admitted into evidence his 2007 “U.S. Individual Income Tax Return” showing his “home address” of Anywhere, Illinois. Taxpayer’s Ex. No. 1. At the hearing, Mr. Jack Doe testified that the address belonged to his mother. “When we were overseas back and forth and traveling, it was very difficult to maintain mail.” “My mom was in business in Anywhere for probably 40 some years in a bakery there, and she didn’t move. So we used that address. If that makes me liable for Illinois, then it was my error.” Tr. p. 11.

Pursuant to § 904(a) of the Illinois Income Tax Act, a NOD is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 5/904(a). The Department sent out the 2007 NOD based on information obtained from the Internal Revenue Service that an Illinois address was used on Mr. Jack Doe’s federal income tax return. In order to overcome the Department’s *prima facie* case, the taxpayer must present consistent and probable evidence identified with his books and records. A taxpayer’s testimony alone will not overcome the Department’s *prima facie* case. Central Furniture Mart v. Johnson, 157 Ill.App.3d 907 (1st Dist. 1987). Mr. Jack Doe failed to present any documentary evidence at the hearing proving either that he did not reside in Illinois in 2007 or that he resided in another state or another country in 2007, and accordingly, he has failed to overcome the Department’s *prima facie* case.

On April 29, 2011, Mr. Jack Doe protested the 2007 NOD. The protest does not mention a residency issue or that Mr. Jack Doe did not live in Illinois in 2007. The protest states only that “we

paid taxes through our employers.” Tr. p. 4; Dept. Ex. No. 2. However, Mr. Jack Doe’s W-2, “Wage and Tax Statements” for 2007 do not show any “state income tax” withheld. Dept. Ex. No. 5. Accordingly, I am unable to conclude that Mr. Jack Doe paid State of Illinois tax “through his employer” in 2007.

Tax Year 2009: Mr. Jack Doe admitted that he lived in Illinois in 2009. “My mother became ill, and we returned to the United States because of her illness, which became terminal and we never left.” Tr. p. 8. When asked whether the 2009 NOD was correct, Mr. Jack Doe answered “I would probably say it is just [because] I was in Illinois.” “I worked here.” Tr. p. 9. I conclude from his testimony that Mr. Jack Doe lived in Illinois in 2009.

The issue with the 2009 return is the withholding tax. Two W-2 “Wage and Tax Statements” for 2009 show wages paid to “John Jack Doe” by Rainbow Corporation and wages paid to “Jack Doe” by “Tornado.” The W-2 from Rainbow shows \$29.29 in “state income tax” and Mr. Jack Doe was given credit for this amount on the 2009 NOD. Tr. pp. 4-5; Dept. Ex. No. 5. The 2009 W-2 showing wages paid to “Jack Doe” by Tornado (FEIN No. XXXX) shows in Box 17, “state income tax” in the amount of \$9,152. However Box 15, “State” and “Employer’s State ID Number” are blank. Revenue Tax Specialist III, Don Lippo, testified by Affidavit that he had searched the Department’s records and determined that neither IL-941’s nor W-4’s were filed by any entity with the FEIN XXXX in 2009. Tr. pp. 5-6; Dept. Ex. No. 5. Under these circumstances, and with the “State” and “Employer’s State ID Number” not provided on the W-2 from Tornado, I am unable to conclude that Mr. Jack Doe should be given credit by Illinois for the \$9,152 in “state income tax” shown on the 2009 W-2.

WHEREFORE, for the reasons stated above, it is my recommendation that the NOD’s for 2007 and 2009 should be finalized as issued.

Ken Galvin
Administrative Law Judge

April 8, 2014