

IT 16-04

Tax Type: Income Tax

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.

JOHN AND JANE DOE,

TAXPAYERS.

No. XXXX

**Kelly Yi
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Susan Budzileni and Rebecca Kulekowskis, Special Assistant Attorneys General, appeared for the Illinois Department of Revenue; Mr. John Doe appeared *pro se*.

SYNOPSIS: This matter arose when John and Jane Doe (“Taxpayers”) timely protested a Notice of Deficiency (“NOD”) the Illinois Department of Revenue (“Department”) issued to them to assess a tax deficiency for the tax year 2009. The NOD was based upon the Department’s determination that the Taxpayers failed to report an adjustment to their federal income tax return increasing their federal adjusted gross income for that year. On January 28, 2016, a formal administrative hearing was held with Taxpayers testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be affirmed.

FINDINGS OF FACT:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence, under the certificate of the Director, the

NOD, issued on January 27, 2014, alleging that the Taxpayers had adjusted gross income of \$XXXX, rather than the \$XXXX that Taxpayers claimed on their 2009 IL-1040. The NOD assesses net tax due of \$XXX including penalty and interest. Dept. Ex. 1.

2. Taxpayers did not produce any documentary evidence but testified that they don't owe the income tax at issue as there is no proof of a credit card debt cancellation from Chase bank which increased their 2009 federal adjusted gross income by \$XXXX. Tr. 11, 21-22.
3. The Department produced the Internal Revenue Service ("IRS") records showing that Taxpayers received a Chase credit card debt cancellation of \$XXXX increasing their federal adjusted gross income by the same amount for tax year 2009, thereby causing a state income tax deficiency in the amount shown on the NOD. Dept. Exs. 1-4; Tr. 13-20.

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 failed 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).

This is a case in which Taxpayers have produced no books, records or other documentary evidence in support of their claim that the Department's assessment of liability for additional income tax under the Illinois Income Tax Act, 35 ILCS 5/506 *et seq.*, for reporting period ending December 2009 is erroneous. The Department's *prima facie* case is overcome, and the burden shifts to the Department to prove its case, only after the taxpayer presents evidence that is consistent, probable and closely identified with books and records, to show that the Department's determination was not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276 (1943). Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determination. A.R. Barnes and Company v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988). It is well settled that a tax liability as prepared by the Department is a *prima facie* conclusive determination absent documentary evidence to the contrary. Copilevitz, supra; DuPage Liquor Store, supra; Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978); Howard Worthington, Inc. v. Department of Revenue, 96 Ill. App. 3d 1132 (2nd Dist. 1981).

The Department established its *prima facie* case by introducing the NOD and related documents into evidence. The burden thus shifted to Taxpayers to overcome the presumed correctness of the Department's determination. Masini, supra; Anderson v. Department of Revenue, 370 Ill. 225 (1938). However, Taxpayers, by their own admission, have offered no documentary evidence to overcome the Department's *prima facie* case. Tr. 11. Pursuant to the aforementioned case law authority, I find that Taxpayers have presented insufficient evidence to

overcome the *prima facie* correctness of the Department's NOD at issue. Therefore, Taxpayers are subject to the additional income tax, penalties and interest as assessed in the NOD.

Moreover, even if Taxpayers had presented sufficient documentary evidence to shift the burden to the Department to prove its case, the Department presented ample documentary evidence to show that Taxpayers had indeed received a Chase credit card debt cancellation in the exact amount of increase in their federal adjusted gross income for tax year 2009, thus causing a state income tax deficiency in the amount shown on the NOD. Dept. Exs. 2-4.

Recommendation:

Wherefore, for the reasons stated above, it is recommended that the Notice of Deficiency issued January 27, 2014 be finalized as issued.

Kelly K. Yi
Administrative Law Judge

February 22, 2016