

IT 04-3

Tax Type: Income Tax

Issue: Net Operating Loss (General)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

| | | |
|------------------------------------|---|------------------------------|
| THE DEPARTMENT OF REVENUE |) | |
| OF THE STATE OF ILLINOIS |) | |
| |) | Docket No. 03-IT-0000 |
| v. |) | |
| |) | FEIN 00-0000000 |
| ABC, INC. d/b/a THE OLD ABC |) | |
| |) | |
| Taxpayer |) | |

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Howard L. Snowden of Snowden & Snowden for ABC, Inc. d/b/a The Old ABC.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Deficiency (“Notice”) to ABC, Inc. d/b/a The Old ABC (“taxpayer”) for Illinois income tax for 1999. The taxpayer timely protested the Notice. An evidentiary hearing was held during which the taxpayer argued that the Department incorrectly disallowed a deduction for net operating losses (“NOL”) from previous years. After reviewing the record, it is recommended that the Department’s determination be upheld.

FINDINGS OF FACT:

1. The taxpayer filed a 1999 Illinois income tax return, Form IL-1120, which shows the taxpayer's federal taxable income as \$40,466. (Taxpayer Ex. #5)

2. The 1999 Illinois income tax return also shows a deduction for an NOL carryforward from previous years in the amount of \$40,466. (Taxpayer Ex. #5)

3. The taxpayer's address on the 1999 Illinois income tax return is Anywhere, Iowa. (Taxpayer Ex. #5)

4. During the years 1988 through 1997, the taxpayer filed income tax returns in the state of Iowa. The Iowa returns show losses for most of the years. (Dept. Ex. #2)

5. In 2002, the taxpayer filed Illinois income tax returns for the years 1988 through 1997 that showed the same amount of losses that were shown on the Iowa returns. (Dept. Ex. #2)

6. The taxpayer is incorporated under the laws of Iowa. On October 30, 1998, the state of Illinois issued a Certificate of Authority to the taxpayer to transact business in this State. (Taxpayer Ex. #1)

7. In 1999, the taxpayer began operating a bookstore and novelty shop in Anywhere, Illinois. (Tr. pp. 15-16)

8. On February 6, 2003, the Department issued a Notice of Deficiency to the taxpayer showing a deficiency in the amount of \$2,834, plus interest, for the tax year 1999. A copy of the Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Section 201(a) of the Illinois Income Tax Act (“Act”) (35 ILCS 5/101 *et seq.*) imposes a tax on the privilege of earning or receiving income in or as a resident of the state of Illinois. (35 ILCS 5/201(a)). The tax is measured by net income, which is calculated by starting with the taxpayer’s federal taxable income. (35 ILCS 5/201(a); 203(b)). The findings of the Department concerning the correct amount of tax due are *prima facie* correct, and the Department’s certified record relating to the tax due is proof of such determination. (35 ILCS 5/904, 914; Balla v. Department of Revenue, 96 Ill.App.3d 293, 295 (1st Dist. 1981)).

The Department’s *prima facie* case was established in this matter when its certified record concerning the tax due was admitted into evidence. In response, the taxpayer contends that the Department should have allowed the taxpayer to deduct net operating losses that were carried forward from previous years. The Department disallowed the deduction because the losses were originally claimed on the Iowa returns, and the Department contends that the losses were not incurred in Illinois. The taxpayer claims that it has only done business in Illinois and has never conducted business in Iowa.

There are certain requirements that a foreign corporation must follow in order to conduct business in Illinois. These include procuring a certificate of authority to transact business in this State under the Illinois Business Corporation Act (See 805 ILCS 5/13.05), and registering with the Department. (See IT 03-0037-GIL) The taxpayer failed to fulfill either of these requirements during the time period of 1988 through 1997. The certificate of authority that the taxpayer presented at the hearing was issued by this

State on October 30, 1998. Although the taxpayer's owner testified that the certificate shows that the taxpayer was authorized to do business in Illinois since July 1, 1984 (Tr. p. 13), this testimony is not accurate. It is clear from the face of the certificate that the reference on the certificate to July 1, 1984 is a reference to when the Business Corporation Act of Illinois became effective.¹ The effective date for the certificate is, in fact, the date that it was issued, October 30, 1998. Because the taxpayer did not include the application for the certificate as part of its evidence, this is the only reasonable conclusion I can make based on the language that is on the face of the certificate. Furthermore, there is no evidence indicating that the taxpayer registered with the Department during the years 1988 through 1997.

From 1988 through 1997, the taxpayer did not register with either the State of Illinois or the Department of Revenue. The taxpayer did not file Illinois income tax returns for those years until 2002. The taxpayer has not indicated that it amended its Iowa income tax returns for those years. The oral testimony of its owner was the only evidence presented by the taxpayer to show that it conducted business in Illinois from 1988 through 1997. The inconsistency between the testimony concerning the certificate and the actual certificate warrants a finding that this testimony was not credible. Because the taxpayer did not present sufficient evidence indicating that it did business in Illinois during the years 1988 through 1997, it cannot be found that it has overcome the Department's *prima facie* case.

¹ The language on the certificate, in relevant part, is as follows: "Whereas application for certificate of authority to transact business in this state of ABC, Inc. incorporated under the laws of the state of Iowa has been filed in the office of the Secretary of State as provided by the Business Corporation Act of Illinois, in

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Deficiency be upheld.

Linda Olivero
Administrative Law Judge

Enter: March 8, 2004

force July 1, A.D. 1984.” (See Illinois Business Corporation Act, 805 ILCS 5/1.01 *et seq.*; P.A. 83-1025, eff. July 1, 1984.)