

IT 05-1

Tax Type: Income Tax

Issue: Federal Change (Individual)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

*JOHN DOE,*

Taxpayer

No. 04 IT 0000  
SSN 000-00-0000  
Tax yrs.: 12/31/97; 12/31/99  
12/31/2000

Mimi Brin  
Administrative Law Judge

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**ORDER PURSUANT TO TAXPAYER'S MOTION FOR SUMMARY  
JUDGMENT AND THE DEPARTMENT'S CROSS MOTION FOR SUMMARY  
JUDGMENT**

**Appearances:** Mr. Sean Cullinan, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue; Mr. *John Doe*, *pro se*

**Synopsis:**

This matter comes on for hearing pursuant to *John Doe*' (hereinafter "*Doe*" or "Taxpayer") protest and request for hearing regarding a Notice of Deficiency (hereinafter "NOD") issued by the Illinois Department of Revenue (hereinafter "Department") wherein the Department proposed an assessment of tax, penalties and interest, for the tax years 1997, 1999 and 2000, based upon taxpayer's failure to file a personal income tax return and timely pay the required tax to the State of Illinois.

*Doe* appeared at the initial status conference set in this matter. At that time, he agreed that the sole issue to be decided herein is whether he is an Illinois taxpayer.

Order, December 1, 2004. He also agreed that he was not contesting the amount of the assessment proposed on the NOD. Id. Finally, he requested that his affidavits filed prior to the status conference serve as his legal position in this matter and that they be treated as a Motion For Summary Judgment. Id. In response, the Department filed a Department's Cross Motion For Summary Judgment And In Opposition To Taxpayer's Motion For Summary Judgment (hereinafter "Dept. Response"). Following a review of the record, it is recommended that this matter be resolved in favor of the Department.

**Findings of Fact:**

1. The Department issued to *John Doe* a Notice of Deficiency proposing income tax, penalties and interest, calculated through June 29, 2004, for the tax years ending 1997, 1999 and 2000. Dept. Response, Ex. A (Notice of Deficiency)
2. The Department's NOD is based upon information received from the Internal Revenue Service. Id.
3. Prior to the initial status conference, *Doe* filed the following documents: Notice and Request By Affidavit dated 1/12/04 (hereinafter "1/12/04 Affidavit"), Notice of Default-Second Chance To Rebut Or Correct IDR Records dated 9/9/04 (hereinafter "9/9/04 Affidavit") and Conditional Consent By Affidavit dated 11/17/04 (hereinafter "11/17/04 Affidavit"). These documents are the basis of *Doe*' Motion for Summary Judgment. Order, December 1, 2004
4. *Doe* did not file Illinois income tax returns for the years ending 1997, 1999 and 2000. Dept. Response, Ex. A; 9/9/04 Affidavit ¶3

**Conclusions of Law:**

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.* (hereinafter “Act”) provides, in pertinent part, that “[a] tax measured by net income is hereby imposed on every individual...on the privilege of earning or receiving income in or as a resident of this State. *Id.* at §5/201 The basis of the Illinois personal income tax is taxpayer’s federal adjusted gross income (*id.* at §5/203) with gross income defined by in the Internal Revenue Code (hereinafter “IRC”) as “all income from whatever source derived”, including labor and compensation for services rendered. 26 U.S.C.A. §61 The Act further mandates, *inter alia*, the filing of returns by specific dates (35 ILCS §5/505(2)) with payment of the amount shown due made at the time of filing. *Id.* at §5/601

In addition to the tax due, penalties are imposed as a result of taxpayer’s failure to file and timely pay his tax liability. Pursuant to the Uniform Penalty and Interest Act (35 ILCS 735/3-1 *et seq.*), penalties are mandated herein under sections 3-3 (a-5) and 3-3 (b)(1) for late filing and late payment, respectively.

Taxpayer herein argues in his affidavits that he is a “nontaxpayer” for purposes of federal and state income taxes. 1/12/04 Affidavit ¶¶ 5, 11, 15, 17; 9/9/04 Affidavit ¶ 1; He recites any number of reasons for his position including that the federal income tax is imposed only on income of federal employees via contract (1/12/04 Affidavit, *passim*; 11/17/04 Affidavit, *passim*), that he is not a federal employee (*id.*) and neither the federal government nor Illinois has authority to get any monies from him that are derived from

his labor or investments. Id. He also avers that the proof is placed on the taxing entities to prove his responsibility for the payment of any taxes. 11/17/04 Affidavit, *passim*

Mr. *Doe*' arguments are not newly presented for review. Courts have addressed arguments from persons challenging the legitimacy of the federal and Illinois income taxes for many years.

The sixteenth amendment of the United States Constitution was fully ratified on February 3, 1913. It provides that “[t]he Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.” USCA Const. Amend. XVI In reviewing federal taxing provisions, courts have upheld the propriety of the federal income tax. Specifically, and with attention to arguments made by this taxpayer, courts have found that: 1) Congress has the power to lay and collect income taxes; (Baird v. C.I.R., 256 F.2d 918 (7<sup>th</sup> Cir. 1958), *aff’d*, 360 U.S. 446 (1959)); 2) “[a]ll individuals, natural or unnatural, must pay federal income tax on their wages, regardless of whether they received any ‘privileges’ from the government;” (Lovell v. United States, 755 F.2d 517 (7<sup>th</sup> Cir. 1984), McLaughlin v. Commissioner of Internal Revenue Service, 832 F.2d 986 (7<sup>th</sup> Cir. 1987)); 3) money received in compensation for labor is taxable; (Cheek v. United States, 498 U.S. 192 (1991), Lovell v. United States, *supra*); and 4) federal income tax is neither contractual nor otherwise consensual in nature. McLaughlin v. Commissioner of Internal Revenue Service, *supra*. Thus, the federal government certainly can legally impose an income tax on the results of *Doe*' labors, and taxpayer's protestations that he is a “nontaxpayer” for federal income tax purposes based on the reasons he provides in his affidavits are without legal support.

As previously discussed, Illinois personal income tax is provided for by Illinois statute. 35 ILCS 5/101 *et. seq.* In the case, Thorpe et. al. v. Mahin, 43 Ill.2d 36 (1969), the Illinois Supreme Court held that ‘under section 2 of article IX of our [Illinois] constitution the General Assembly has the power to impose a tax on the privilege of earning or receiving income in or as a resident of Illinois. *Id.* at 45, Kawitt v. Mahin, 49 Ill.2d 73 (1971) The State’s power to tax is “founded upon the protection afforded to the recipient of income. The receipt of income by a resident of the taxing sovereignty is a taxable event and domicile itself affords the basis for such taxation.” Kawitt v. Mahin, *supra* at 75 Further, it is held in Illinois that “[c]ourts have recognized that the legislative intent in basing State income tax on Federal taxable income was to create a clear, objective criterion for assessing and collecting taxes.” (citation omitted) National Realty and Investment Co. v. Illinois Department of Revenue, 144 Ill. App.3d 541, 546 (2<sup>nd</sup> Dist. 1986) Thus, while Mr. *Doe* complains that neither the federal nor the Illinois income taxes are constitutional, and further, that the Illinois tax cannot be based upon a federal taxable income, he is incorrect on both counts, as a matter of law.

The Illinois legislature has provided that a Notice of Deficiency, like the one at issue herein, is “prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due.” 35 ILCS 5/904 (b) *Doe* has not challenged the correctness of the amounts of income the Department asserts are due, in fact, he specifically did not make that an issue in this matter. The question remains, then, whether *Doe* is a resident of Illinois, upon whom the state income tax applies.

Notwithstanding his protests to the contrary, it is *Doe*’ burden to show, by clear and convincing evidence, that he was not a resident of Illinois during the tax years at

issue. Balla v. Department of Revenue, 96 Ill. App.3d 293 (1<sup>st</sup> Dist. 1981) *Doe* has not denied in his affidavits or provided any other evidence that he was not a resident of Illinois during this time. To the contrary, he states that he had in the past made income tax filings to the Department, although he avers they were made in error for reasons other than residency. 11/17/04 Affidavit §4 In addition, in each of his affidavits, he provides a Chicago address as part of his affirmation. I must conclude, therefore, that *Doe* was an Illinois resident during the tax years at issue.

A motion for summary judgment is appropriate where the pleadings, affidavits and depositions on file, when viewed in a light most favorable to the non-moving party, show no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Busch v. Graphic Color Corp., 169 Ill.2d 325 (1996) The material facts in this matter are not at issue, therefore, the only determination to be made is whether *Doe* or the Department is entitled to a judgment, as a matter of law. Based upon a long history of legal precedents, I find that *Doe* is a taxpayer for Illinois income tax purposes for the years at issue, and, further, that the NOD is correct.

**IT IS THEREFORE ORDERED** that summary judgment be granted in favor of the Department and against the taxpayer. It is further ordered that the Notice of Deficiency for the years ending 1997, 1999 and 2000, be finalized, as issued.

Date: 2/24/2005

Mimi Brin  
Administrative Law Judge