

IT 95-77

Tax Type: INCOME TAX

Issue: Income Earned in Illinois/Individual Residency

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

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

v.)

No.)

XXXXX)

James P. Pieczonka)

Taxpayer(s))

Administrative Law Judge)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Request for Hearing by XXXXX (hereinafter referred to as "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on March 3, 1995. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that an erroneous refund of \$1,594.62 was issued to taxpayers because their original return was not filed within the statutory period as provided by 35 ILCS 5/911(f) for the tax year ended December 31, 1988.

In the taxpayers' Protest, they did not agree with the Department's proposed tax assessment for 1988 because they filed their IL-1040 return timely. A hearing was requested in this matter and held on July 28, 1995.

The issues to be resolved are:

(1). Whether taxpayers failed to file an original IL-1040 income tax return for the 1988 tax year?

(2). Whether the Department issued an erroneous refund to taxpayers for the year ended 12/31/88?

Following the submission of all evidence and a review of the record,

it is recommended that the Notice of Deficiency be withdrawn.

FINDINGS OF FACT:

1. On August 15, 1989, taxpayers filed with the Department an IL-1040 return which requested a refund of \$1,560.00.

2. The Department records indicated that the subject return/claim was filed in 1992 and was paid by the Department subsequent to the statutory period of section 911(f), therefore the refund was erroneously issued. (Dept. Ex. No. 1)

3. On March 3, 1995, the Department issued a Notice of Deficiency to taxpayers in the amount of the claim for refund (Dept. Ex. No. 1).

4. On April 6, 1995, taxpayers timely filed a Protest to the Notice of Deficiency contending that they filed their original return timely.

5. At the hearing taxpayer, XXXXX presented a copy of an IL-1040 return for 1988 prepared by him and filed by him on August 15, 1989 with the Department. Taxpayer also offered credible testimony that he had valid extensions through August 15, 1992 and that he filed their returns in a timely manner each and every year. (Taxpayer Ex. No. 1)

CONCLUSIONS OF LAW: The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.2d 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist. 1978). On this record, taxpayers have met that burden.

The records of the Department are not completely without error. Taxpayers produced a copy of an IL-1040 return for the year ended 12/31/88 which was signed and dated 8/15/89. Additionally, XXXXX credible testimony showed that he consistently prepared and filed his IL-1040 timely each year including the year in question. On this record, taxpayers

offered sufficient evidence to rebut the Department's prima facie case. Accordingly, taxpayers timely filed their 1988 IL-1040 return and were

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entitled to the refund issued to them, therefore, the Notice of Deficiency must be withdrawn.

James P. Pieczonka
Administrative Law Judge

August 1, 1995