

IT 13-04

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	)	Docket No.	XXXX
OF THE STATE OF ILLINOIS	)	Letter No.	XXXX
v.	)	Tax Year	2008
JOHN DOE,	)	John E. White,	
Taxpayer	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared, pro se; Jessica Arong O'Brien and Jennifer Kieffer, Special Assistants Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after John Doe (John Doe or Taxpayer) protested a Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to him. The NOD proposed to assess Illinois income tax, penalties and interest against Taxpayer, regarding calendar year 2008, after the Department determined that Taxpayer was a resident of Illinois, and had failed to file an Illinois income tax return for that year.

The hearing was held at the Department's offices in Chicago. Taxpayer testified at hearing, and offered into evidence copies of documents showing prior tax withholdings by employers and others, during the year at issue. After considering the evidence, I am including in this recommendation findings of fact and conclusions of law. I recommend the NOD be revised, as described more fully in this recommendation.

Findings of Fact:

1. The Department issued an NOD to Taxpayer on March 29, 2011. Department Ex. 1

(copy of NOD and attachments).

2. The NOD notified Taxpayer of the basis of the proposed deficiency, by providing, in pertinent part:

Based on information we received from the Internal Revenue Service, under authorization of the Internal Revenue Code, Section 6103(d), we are proposing the deficiency identified in this notice. The attached EDA-131, Examiner's Report, shows the computation of your deficiency and the "amount to be paid."

Department Ex. 1, p. 1.

3. The NOD included an attached Account Detail, which provided, in pertinent part:

You filed a federal return for the reporting period listed above. We have no record of receiving your Form IL-1040, Individual Income Tax Return, for that period.

Department Ex. 1, p. 3.

4. The NOD also included a form EDA-131, on which the Department identified the determinations it made when calculating the amount of Illinois income tax, penalties and interest due from Taxpayer, for 2008:

Filing Status (Single, Illinois Resident)	
Adjustable Gross Income	\$ 19,656
Subtractions Available	0
Base Income	\$ 19,656
Exemption(s) Available (1)	\$ 2,000
Illinois Net Income	\$ 17,656
Tax Due	\$ 530
Tax Credits Available (including tax withheld)	0
Late Filing or Non-Filing Penalty	\$ 11
Underpayment of Estimated Tax Penalty	\$ 48
Late Payment Penalty	\$ 5
Audit Late Payment Penalty	\$ 3
Interest, as of September 7, 2010	\$ 15
Total Due, as of September 7, 2010	\$ 612

Department Ex. 1, p. 2.

5. Taxpayer submitted documents obtained from five different employers/payors, showing that each withheld Illinois tax from amounts paid to Taxpayer, in the following amounts, during 2008:

An earnings statement from Business A, Inc., dated December 14, 2008, bearing Taxpayer's name and identification numbers, showing Year to Date Illinois withholding	\$73.74
Form 1099G for 2008 from the Illinois Department of Employment Security, bearing Taxpayer's name and identification numbers, showing state withholding	\$176.00
Form W-2 for 2008 from Business B, Inc., bearing Taxpayer's name and identification numbers, showing Illinois withholding	\$14.24
Form W-2 for 2008 from Business C, bearing Taxpayer's name and identification numbers, showing Illinois withholding	\$208.91
Form W-2 for 2008 from Business D, Inc., bearing Taxpayer's name and identification numbers, showing Illinois withholding	\$13.50

Taxpayer Group Ex. 1.

6. The documents admitted by Taxpayer show that a total of \$486.39 in Illinois tax had been withheld from Taxpayer's wages and/or other amounts of compensation paid to him in 2008. Taxpayer Group Ex. 1.

Conclusions of Law:

Section 904(b) of the Illinois Income Tax Act (IITA) provides that: "If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed." 35 ILCS 5/904(b). When the Department introduced the NOD into evidence under the certificate of the Director, it presented prima facie proof that Taxpayer owed

tax, penalties and interest in the amounts proposed. 35 ILCS 5/904(b); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981).

The Department's prima facie case is a rebuttable presumption. *See* Branson v. Department of Revenue, 168 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995). After the Department introduces its prima facie case, the burden shifts to the taxpayer to establish that the Department's determinations are not correct. *Id.* To overcome the Department's prima facie case, a taxpayer must present more than just testimony denying the accuracy of the Department's determinations; he must also present sufficient documentary support for his assertions. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002) (taxpayer had the burden of overcoming the Department's prima facie case through documentary evidence, meaning books and records, and not mere testimony.).

At hearing, Taxpayer testified that he had been employed by different persons in Illinois, and that tax had been withheld from his wages, during 2008. Tr. p. 8. To support that testimony, Taxpayer submitted documentary evidence, consisting of federal Forms W-2 and 1099G, and other documents. Taxpayer Group Ex. 1. Those documents provide credible evidence that Taxpayer was entitled to specific amounts that the IITA allows as credits against tax due. 35 ILCS 5/601(b)(1). Because Taxpayer had not filed an Illinois return, the Department did not know that Taxpayer was entitled to such credits, when using the best available information to calculate the Illinois tax due on his net income. *See* Department Ex. 1. After taking into account the documentary evidence Taxpayer offered, I conclude that the tax proposed due, in the amount of \$530, should be reduced by \$486.39, to show a corrected amount of tax remaining due in the amount of \$43.61.

At hearing, Taxpayer did not argue, nor did he offer any evidence to show, that any of them should be abated. *See* Tr. *passim*. Such penalties, however, must be recalculated to take into account the correct amount of tax remaining due. *See* 35 ILCS 735/3-3. And even though Taxpayer did not contest any of the penalties, given the evidence he offered, the applicable law requires me to conclude that the underpayment of estimated tax penalty should not be imposed.

Section 804 of the IITA imposes a penalty if required estimated taxes are underpaid. 35 ILCS 5/804; Hollinger International, Inc. v. Bower, 363 Ill. App. 3d 313, 323-34, 841 N.E.2d 447, 456 (1st Dist. 2005). Section 803 requires certain persons to make estimated tax payments, under certain conditions. 35 ILCS 5/803. More specifically, § 803(a) provides that “[e]very taxpayer other than an estate, trust, partnership, Subchapter S corporation or farmer is required to pay estimated tax for the taxable year, in such amount and with such forms as the Department shall prescribe, if the amount payable as estimated tax can reasonably be expected to be more than ... \$500 for taxable years ending on or after December 31, 2001” 35 ILCS 5/803(a). Section 803(b) defines estimated tax as the excess of the amount which the taxpayer estimates to be his tax for the taxable year, over the amount which he estimates to be the sum of any amounts to be withheld on account of or credited against such tax. 35 ILCS 5/803(b).

Because Taxpayer has documented that certain amounts of tax had been withheld from his compensation during 2008, Taxpayer’s estimated tax for 2008 was less than \$44. Taxpayer Group Ex. 1. Given the actual difference between the tax due and the taxes withheld, Taxpayer could not have reasonably expected his estimated tax for 2008 to be more than \$500. *Id.*; 35 ILCS 5/803(a). Pursuant to IITA § 803(a), he was not required to

make estimated tax payments. 35 ILCS 5/803(a). Therefore, I recommend that the penalty proposed for underpayment of estimated taxes be cancelled. *Id.*; 35 ILCS 5/804(a), (e), (g).

Conclusion:

I recommend that the Director revise the Notice of Deficiency to show the following: the amount of tax remaining due is \$43.61; the underpayment of estimated tax penalty is cancelled; the late filing or non-filing, the late payment, and the audit late payment penalties proposed have been recalculated, to correspond to the correct amount of tax remaining due. I recommend the NOD be finalized as so revised, with interest to accrue pursuant to statute.

August 8, 2013

John E. White
Administrative Law Judge



Illinois Department of Revenue
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THE DEPARTMENT OF REVENUE)	Docket No.	12-IT-0096
OF THE STATE OF ILLINOIS)	Letter No.	L 11779 54336
v.	)	Tax Year	2008
JOHN DOE,	)	John E. White,	
Taxpayer	)	Administrative Law Judge	

NOTICE OF DECISION

To:

John Doe
2947 Shamrock Circle
Elgin, IL 60124

Jennifer Kieffer
Illinois Department of Revenue
100 West Randolph Street 7th Floor
Chicago, Illinois 60601

YOU ARE HEREBY NOTIFIED that the attached Order or Recommendation for Disposition issued by the Office of Administrative Hearings in the above entitled cause has been adopted by the Director of Revenue as dispositive of the issues herein. Unless you otherwise request a rehearing pursuant to the provisions of Section 908(c) of the Illinois Income Tax Act, 35 ILCS 5/908(c), this determination shall become a final administrative decision 30 days from the date of issuance. Following expiration of the 30 days, or after issuance of a denial for rehearing, should one be requested, you may pursue your rights to administrative review by filing a complaint in the circuit court under the requirements of 735 ILCS 5/3-101 *et seq.* **PLEASE NOTE:** The Uniform Penalty and Interest Act, 35 ILCS 735/3-1 *et seq.*, may impose additional penalties on any tax liability owed pursuant to this determination.

August 16, 2013

Brian A. Hamer
Director