

IT 05-2

Tax Type: Income Tax

Issue: Income Earned In Illinois/Individual Residency

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	No. 04-IT-0000
)	
)	SSN: 000-00-0000
v.)	TYE: 2001
)	
JOHN & JANE DOE,)	
)	
Taxpayers)	Administrative Law Judge
)	Kenneth J. Galvin

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General, Ralph Bassett, on behalf of the Department of Revenue of the State of Illinois; Jane Doe, *pro se*, on behalf of John and Jane Doe.

Synopsis:

On February 2, 2004, the Illinois Department of Revenue (hereinafter “the Department”) issued an LTR-405, “Amended Income Tax Letter” to John and Jane Doe (hereinafter “taxpayers”). The basis of the Letter was the Department’s denial of taxpayers’ claim for a refund for overpayment of Illinois income tax for tax year 2001. On March 22, 2004, taxpayers filed a protest of the Letter and requested a hearing, which was held on January 19, 2005. Following a review of the testimony and evidence presented at the hearing, it is recommended that the Department’s Amended Income Tax Letter be finalized as issued.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the LTR-405, "Amended Income Tax Letter," dated February 2, 2004, which denied the taxpayers' claim for a refund for tax year 2001. Tr. pp. 5-7; Dept. Ex. No. 1.
2. Taxpayers filed their U.S. 1040 "Individual Income Tax Return" for tax year 2001 with the filing status of "married filing joint return." Tr. pp. 5-7; Dept. Ex. No. 1.
3. Taxpayers filed their IL-1040 "Individual Income Tax Return" for tax year 2001 with the filing status of "married filing jointly." Tr. pp. 5-7; Dept. Ex. No. 1.
4. On October 27, 2003, taxpayers filed an IL-1040-X, "Amended Individual Income Tax Return" for tax year 2001 noting that their "filing status or residency has changed." The IL-1040-X for tax year 2001 excluded Jane Doe's income earned in Florida. Tr. pp. 5-7; Dept. Ex. No. 1.

Conclusions of Law:

The Illinois Department of Revenue's Instructions for filing IL-1040-X state that "[Y]ou must file your Illinois return using the same filing status as on your federal return." "There is one exception to this rule." If one spouse is an Illinois resident and the other is a nonresident, taxpayers can file "married filing separately," unless they elect to file a joint return. If taxpayers elect to file a joint return, they can revoke this election "at any time prior to the extended due date of the return by filing Form IL-1040-X." The extended due date for 2001 returns was October 15, 2002.

In the instant case, taxpayers filed their U.S. 1040 for 2001 as "married filing joint return." Taxpayers then filed their IL-1040 as "married filing jointly." After filing

in Illinois as “married filing jointly,” taxpayers apparently wished to revoke this election. Dept. Ex. No. 1. The Instructions for filing an IL-1040-X state that this election can be revoked, but it must be revoked prior to October 15, 2002. Taxpayers filed their IL-1040-X for tax year 2001 on October 27, 2003. Dept. Ex. No. 1. This filing is obviously beyond the extended due date. Taxpayers have not suggested, and my research does not indicate, any Illinois case where an extended due date had been further extended to allow taxpayers who have filed a joint return to revoke their election and file as “married filing separately.” Illinois law does not permit any discretion in this matter and requires that the extended due date be strictly adhered to.

Even if I had the discretion to extend the extended due date of October 15, 2002, I am unable to conclude that taxpayer, Jane Doe, was in fact a resident of Florida in 2001. Mrs. Doe testified that she had an Illinois Driver’s License in 2001 and still has an Illinois driver’s license today. She maintains an Illinois driver’s license because her children still live in Illinois. Tr. p. 17. Mrs. Doe was registered to vote in Illinois in 2001, although she testified that she did not vote that year. Tr. p. 19. Mrs. Doe maintains a joint bank account with her mother in Illinois. Her mother resides in Illinois. Tr. pp. 19-20.

The Illinois Income Tax Act defines a resident as an individual who “is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year...” 35 ILCS 5/1501(a)(20)(A). The Illinois income tax regulations, 86 Ill. Admin. Code § 100.3020(d), define a “domicile” as “the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent.” The regulations state further that “[I]f an

individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere.” *Id.* Clearly, a taxpayer remains an Illinois domiciliary, and is therefore an Illinois resident, until he establishes a new domicile in some other state or foreign country. An individual who is domiciled in Illinois can give up his domicile by “locating elsewhere with the intention of establishing the new location as his domicile, and by abandoning any intention of returning to Illinois.” *Id.* In 2001, Mrs. Doe had an Illinois driver’s license, an Illinois bank account, and was registered to vote in Illinois. Because of this, I am unable to conclude that she abandoned Illinois in 2001, without any intention of returning.

The Illinois Legislature has made the Department’s determination following the review of a taxpayer’s amended return claiming a refund *prima facie* correct. 35 ILCS 5/904(a). Once the Department’s *prima facie* case is established, the burden rests with the taxpayer to present evidence closely identified with books and records to show that the Department’s determination is incorrect. PPG Industries v. Department of Revenue, 328 Ill. App. 3d 16 (1st. Dist. 2002). Based on the evidence presented at the evidentiary hearing, I conclude that taxpayers have failed to rebut the Department’s *prima facie* case.

WHEREFORE, for the reasons stated above, it is my recommendation that the Amended Income Tax Letter dated February 2, 2004, should be finalized as issued.

Kenneth J. Galvin
Administrative Law Judge

Date: March 28, 2005