

IT 95-8

Tax Type: INCOME TAX

Issue: Unreported/Underreported Income (Fraud Application)

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

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DEPARTMENT OF REVENUE	)
STATE OF ILLINOIS	) XXXXX
	) SS# XXXXX
v.	)
	) Mimi Brin
XXXXXX	) Administrative Law Judge
	)

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on July 22, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that he had failed to file an Illinois Income tax return for the year ending December 31, 1992 (hereinafter referred to as the "Taxable Year"). The Notice assessed tax, various penalties and interest for income earned that year.

In his protest to the Notice of Deficiency, this taxpayer stated that he did not work in Illinois during 1992, nor was he a resident of the State in that year. He also stated that he did not wish a formal hearing in this matter. Therefore, the following issues are being heard on the information provided by the taxpayer in his protest and on the Notice of Deficiency: 1) whether the taxpayer has overcome the prima facie correctness of the Notice of Deficiency with sufficient evidence to show that he was not a resident of Illinois during the year 1992 or that he did not earn income in the State during that year.

Following a review of the documentation, it is recommended that this matter be resolved in favor of the Department of Revenue.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which indicates that for the year ending December 31, 1992, this taxpayer had an adjustable gross income of \$7,140, with a net income of \$6,140. Dept. Ex. No. 1

2. This taxpayer failed to file an Illinois Income Tax return for the taxable year. Dept. Ex. 1

3. The taxpayer filed his Federal Income Tax return for the taxable period from an Illinois address. Taxpayer's Protest

4. The taxpayer filed a timely protest to this Notice, and asked that the matter not be heard at a formal hearing. Taxpayer's Protest

5. The taxpayer failed to provide the Department with any documentation showing that he was not an Illinois resident during the taxable year, or that he did not earn income in Illinois during that year.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides in pertinent part:

904 Deficiencies and Overpayments.

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(b) No return filed. 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)

In his letter of protest, the taxpayer chose not to have the matter heard by hearing. 35 ILCS 908(a) Therefore, the rebuttal to the Department's prima facie case in this cause is found in the taxpayer's

representations as found in his written protest. These assertions, without any supporting documentation, are not sufficient to overcome the prima facie correctness of the Department's Notice of Deficiency. See, *Copilevitz v. Department of Revenue*, 41 Ill.2d 154 (1968) (In order to overcome the prima facie correctness of the Department's correction of returns, taxpayer "must produce competent evidence, identified with their books and records" showing that the Department's returns are incorrect.) Oral testimony is not sufficient to overcome the prima facie correctness of the Department's determinations. *A.R. Barnes & Co. v. Department of Revenue*, 173 Ill. App.3d 826 (1st Dist. 1988)<sup>1</sup>

Therefore, based upon the evidence of record, it is my recommendation that the Notice of Deficiency issued in this cause be finalized, as issued.

Mimi Brin  
Administrative Law Judge

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1. Because there are no reported cases in Illinois addressing the taxpayer's burden of proof following the introduction into evidence of the Department's Notice of Deficiency with its statutorily provided for prima facie correctness, I look to other Illinois revenue statutes which also give prima facie correctness to Department notices of tax due. The Retailers' Occupation Tax, 35 ILCS 120/1 et seq., gives the Department's correction of returns and notices of tax liability prima facie correctness in situations, inter alia, wherein a person required to file a return with the Department fails to do so and the Department determines the amount of tax and penalty due based upon its best judgment and information. 35 ILCS 120/5