

IT 96-6
Tax Type: INCOME TAX
Issue: Federal Change (Individual)

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

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

v.)
TAXPAYER,)

Taxpayer(s))

No.)
SSN:)

Daniel D. Mangiamele)
Administrative Law Judge)

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter is before this administrative tribunal as a result of a timely Request for Hearing by TAXPAYER (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on September 19, 1995 for the tax year ending December 31, 1990, 1991. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return for the year ending December 31, 1990 and 1991. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1005 and 5/804 for failure to pay the entire tax liability by the due date and failure to pay estimated tax respectively.

The hearing in this matter was held on December 1, 1995. The issues to be resolved are:

- (1) Whether the taxpayers failed to file an Illinois income tax return for the 1989 tax year?
- (2) Whether penalties should be assessed pursuant to 35 ILCS 5/1001, 5/1005, and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be upheld in its entirety.

Findings of Fact:

(1) For the subject taxable years 1990 and 1991 the taxpayer was an Illinois resident and earned income in the State of Illinois as a musician.

(2) The Department of Revenue issued a Notice of Deficiency for the subject taxable years. Dept. Ex. No. 1.

(3) Taxpayer did not file Illinois tax returns for the years 1990 and 1991.

(4) Taxpayer acknowledged he owes the tax, however, asks that penalties and interest be waived due to illness causing him not to be able to hold a job.

Conclusions of Law:

All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a). The taxpayer, as Illinois resident who earned income in this state, was accordingly subject to Illinois income tax and was required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 *et seq.*)

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.3d 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). The taxpayer has not met this burden in this case.

The taxpayers presented no evidence that the computation of additional tax due was incorrect. Taxpayer's only defense was that he was unable to hold a job because he has been ill.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001, 5/105 and 5/804 for failure to file, failure to pay the entire tax liability by the due date and failure to pay estimated tax, respectively.

Having determined that the taxpayer has failed to file and pay income tax for the 1990 and 1991 tax year, the issue of imposition of these penalties is proper.

It is my recommendation that this case be decided in favor of the department and against the taxpayer and the Notice of deficiency be finalized in its entirety.

Daniel D. Mangiamele
Administrative Law Judge