

IT 17-02
Type of Tax: Income Tax
Issue: Properly determined AGI for individual taxpayer

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE AND JANE DOE
Taxpayers

No. 15-IT-XXX
Account ID XXXXXXXXX
Letter ID XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Tax Years 2004, 2005, 2006, 2009,
2010
Ted Sherrod
Administrative Law
Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Jonathan Pope on behalf of the Illinois Department of Revenue; Muhammad Alvi, *pro se* on behalf of John Doe and Jane Doe.

Synopsis:

This matter comes on for hearing pursuant to a protest and request for hearing filed by John and Jane Doe (“Taxpayers”) following their receipt of Notices of Deficiency (“NODs”) dated November 6, 2014 issued to them by the Illinois Department of Revenue (“Department”) for the tax years ending 12/31/04, 12/31/05, 12/31/06, 12/31/09 and 12/31/10 (“tax years”). The

NODs proposed assessments for income tax, penalties and accruing interest for each of those tax years. A hearing to consider this matter was held on January 13, 2016. John Doe appeared *pro se* on behalf of the Taxpayers and offered both oral testimony and documentary evidence at the hearing. The Department also submitted documentary evidence. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, the following findings of fact and conclusions of law are made.

Findings of Fact:

1. John and Jane Doe (“Taxpayers”) were, during the tax years 2004 through 2006, 2009 and 2010, residents of Illinois residing in The State of, Illinois. Department Exhibit (“Ex.”) 1-5; Taxpayers’ Ex. 1-5.
2. On November 6, 2014, the Department issued Notices of Deficiency (“NODs”) proposing assessments for personal income tax against the Taxpayers for the tax years 2004, 2005, 2006, 2009 and 2010 (“tax years”). Department Ex. 1-5. The NODs proposed set forth *inter alia*, tax, late filing and late payment penalties and accrued statutory interest for each year. *Id.*
3. The adjusted gross income (“AGI”) reflected in each of the NODs for each year was: 2004 - \$XX,XXX 2005 - \$XX,XXX; 2006 - \$XX,XXX ; 2009 - \$XX,XXX; 2010 - \$XX,XXX. *Id.*
4. The Department obtained the Taxpayers’ federal income tax records from the Internal Revenue Service under authorization of section 6103(d) of the Internal Revenue Code and used these records to prepare the Taxpayers’ NODs. Tr. pp. 6, 7, 55-58; Department Ex. 1-6. The adjusted gross income amounts set forth in the NODs for the tax years are the same

amounts that the federal Internal Revenue Service (“IRS”) recorded for the Taxpayers for those same years. *Id.*

5. The Taxpayers submitted amended returns for each of the tax years in controversy. Tr. pp. 7, 32-34; Taxpayers’ Ex. 1-5. The Department reviewed these amended returns and determined that the AGI shown on each of these amended returns did not match the AGI shown by the Internal Revenue Service’s records. Tr. pp. 6, 7, 55-58; Department Ex. 6.
6. At the request of the Administrative Law Judge, both parties agreed to keep the record in this case open for 180 days from the date of the hearing in this case, January 13, 2016, to allow the Taxpayers time to obtain and submit to this tribunal Federal transcripts for the Taxpayers’ 1040 accounts for each of the tax years in controversy showing AGI for each of these years as finally determined by the IRS. Tr. pp. 57-67. The Taxpayers have failed to submit any such Federal transcripts to this tribunal.

Conclusions of Law:

The Illinois Income Tax Act, 35 **ILCS** 5/101 *et seq.* (“IITA” or “Act”) requires, generally, that each resident of Illinois file an annual income tax return if that person files a federal income tax return. *Id.* at 5/502(a). IITA section 601 provides that every taxpayer required to file a return shall pay any tax due to the Department on or before the date fixed for filing such return. *Id.* at 5/601. The Department’s regulations require that individuals file their annual income tax returns by the 15th day of the fourth month following the close of the individual’s taxable year. 86 Ill. Admin. Code, ch. I, section 100.5000(a)(1). For most individuals that date is April 15th each year.

The income tax due from taxpayers to Illinois is measured by a taxpayer’s net income (35 **ILCS** 5/201) with net income defined as base income allocable to Illinois (*id.* at 5/202). In turn,

base income is defined, for purposes pertinent hereto, as adjusted gross income (*id.* at 5/203(a)) and adjusted gross income is defined as the amount of adjusted gross income properly reportable for federal income tax purposes for the specific taxable year (*id.* at 5/203(e)). Thus, the starting point for reporting taxable personal income in Illinois is adjusted gross income (“AGI”) as finally determined by the IRS.

In the instant matter, the IRS reported to Illinois the Taxpayers’ federal adjusted gross income for the tax years. Tr. pp. 6, 7, 55-58; Department Ex. 1-6. Based upon this information the Department issued the NODs in controversy herein. *Id.* As noted on the NODs, the Department assessed, *inter alia*, in addition to the basic tax amount due, penalties for late filing and late payment and accrued statutory interest.

The Taxpayers defend against the NODs by relying on amounts shown in the following documents: 1) IRS Forms 4549 issued to the Taxpayers by the IRS for the tax years 2004, 2005 and 2010; 2) W-2s issued to the Taxpayers by the IRS for the tax years 2006, 2009 and 2010, and T.C. Summary Opinion 2010-79 issued by the United States Tax Court in the case of John Doe v. Commissioner, Docket No. 15XXX-XXX, dated June 21, 2010. Taxpayers’ Ex. 1-5. The Taxpayers contend that they filed amended returns for each of the tax years in controversy and that the AGI shown on these amended returns is based upon the aforementioned documentation. Tr. pp. 14-30. However, none of this documentation indicates the Taxpayers’ adjusted gross incomes for any of the tax years in controversy.

During the hearing in this matter, the administrative law judge asked the Taxpayers’ representative, JOHN DOE, to obtain Federal transcripts from the IRS setting forth the most current record of the Taxpayers’ 1040 accounts for the tax years in controversy. Tr. pp. 57-67. At the behest of the administrative law judge, the parties agreed to keep the record in this case

open for 180 days after the hearing to allow the Taxpayers time to obtain these records. *Id.* However, from the date of the hearing in this matter, January 13, 2016, until the date this recommendation was written, there has been no advisement to reflect anything other than what is shown by the Department's records from the IRS used to determine amounts reflected in the NODs.

Despite the foregoing, the Taxpayers proffer that the Department must accept their amended returns for the years at issue, as determinative of the Taxpayers' actual liabilities for these years. *Tr. passim.* The Department objects on the grounds that none of the documentation upon which these returns are purportedly based bears any indication that it reflects the Department's final determination of the Taxpayer's AGI for any of the tax years at issue. Department Ex. 6.

The IITA sets forth quite clearly that the starting point for determining IL-1040 liability is the federal adjusted gross income for each year. 35 ILCS 5/201, 5/202, 5/203; see also Rockwood Holding Co. v. Department of Revenue, 312 Ill. App. 3d 1120, 1124 (1st Dist. 2000) ("the [Illinois Income Tax] Act 'piggy-backs' onto the federal calculation of income and uses federal income as the premise for tax liability."). Therefore, until such time that the IRS acknowledges that the AGI shown on the amended returns the Taxpayers have submitted is correct by issuing a current Federal transcript showing numbers differing from those the IRS reported to the Department, and acknowledges that it has changed the Taxpayers' adjusted gross income for those years, Illinois, by law, cannot accept what the Taxpayers represent on their corresponding Illinois amended returns as their adjusted gross income for those same years.

The Department's *prima facie* case is established by the introduction into evidence of copies of its records under the certificate of the Director. 35 ILCS 5/914; Balla v. Department of

Revenue, 96 Ill. App. 3d 293 (1st Dist. 1981). The NODs issued in this cause are *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a). The burden then shifts to the taxpayer to overcome the *prima facie* correctness of the NODs. Balla, *supra*. This burden is not satisfied by Taxpayer's evidence which is negated by evidence that the IRS records show, as adjusted gross income, the same amounts set forth in the Department's NODs. Tr. pp. 6, 7, 55-58; Department Ex. 1-6. Consequently the Taxpayers have failed to rebut the *prima facie* correctness of the NODs issued in this matter.

WHEREFORE, for the reasons stated above, it is recommended that the NODs issued by the Department against the Taxpayers for the tax years at issue be finalized as issued.



Ted Sherrod
Administrative Law Judge

Date: July 12, 2016