

IT 18-03

Tax Type: Income Tax

Tax Issue: Non-Filers (Income Tax)

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE

Taxpayer

Docket # XX-IT-XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, *pro se*

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Deficiency (“Notice”) to JOHN DOE (“taxpayer”) alleging that he owes Illinois income tax, plus interest and penalties, for the tax year ending December 31, 2010. The Notice was issued pursuant to the Illinois Income Tax Act (“Act”) (35 ILCS 5/101 *et seq.*). The taxpayer timely protested the Notice. An evidentiary hearing was held during which the taxpayer argued that the Notice should be dismissed for lack of jurisdiction because he is not a resident of “this State” and is not required to file a return. The taxpayer also argued that the Department’s documents were not admissible as evidence because the Department

did not lawfully obtain his confidential information regarding his 2010 income from the Internal Revenue Service. After reviewing the record, it is recommended that this matter be resolved partially in favor of the taxpayer.

FINDINGS OF FACT:

1. The taxpayer resides in CITY, Illinois and lived there during the year 2010. (Dept. Ex. #1; Tr. p. 13)
2. The taxpayer did not file an Illinois income tax return for the year 2010. (Dept. Ex. #1)
3. On May 13, 2015, the Department issued a Notice of Deficiency to the taxpayer showing tax due for the year ending December 31, 2010. The Notice includes a Form EDA-24, Auditor's Report, showing net tax due in the amount of \$[], plus interest and penalties. The tax due was calculated based on the taxpayer's filing status being Single. The Notice was admitted under the certificate of the Director of the Department. (Dept. Ex. #1)
4. The taxpayer was married during the year 2010. (Taxpayer Ex. #1; Tr. p. 28)

CONCLUSIONS OF LAW:

Section 201(a) of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*) provides, in relevant part, as follows:

A tax measured by net income is hereby imposed on every individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. 35 ILCS 5/201(a).

Net income is calculated by starting with the taxpayer's federal adjusted gross income.

35 ILCS 5/201(a); 203.

If the taxpayer fails to file a tax return, the Department must determine the amount of tax due according to its best judgment and information. 35 ILCS 5/904(b). The findings of the Department shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount due. *Id.* When the taxpayer seeks to take a deduction from his income for purposes of calculating the tax, the burden of proof is on the taxpayer. Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981). In order to meet his burden of proof, the taxpayer's testimony alone is not sufficient. *Id.* at 296. The taxpayer must presenting sufficient documentary evidence to support his claim. *Id.*

The taxpayer argues that the Notice should be dismissed for lack of "geographical jurisdiction" because the taxpayer is not a resident of "this State." (Tr. p. 7) The taxpayer claims that the word "State" in section 201(a) is spelled with a capital S, which indicates that the word is a proper name. The taxpayer contends that in the context of section 201, "State" is the proper name of a particular place where earning or receiving income in or as a resident of can be prohibited or permitted as a privilege. The taxpayer believes that Illinois is the proper name of a place where earning or receiving income in or as a resident of cannot be prohibited. According to the taxpayer, this distinction establishes the fact that "State" and "Illinois" are two different places with different and separate legal jurisdictions.

In the taxpayer's view, the Illinois legislature describes "State" as a place that cannot be construed to include Illinois. The taxpayer believes that it requires inference to conclude that Illinois is "this State." The taxpayer refers to section 102 of the Act, which provides as follows:

Sec. 102. Construction.

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year. 35 ILCS 5/102.

The taxpayer believes that the term “expressly provided” means that there is no inference. According to the taxpayer, only the word “Illinois” would expressly provide that section 201(a) applies to Illinois. Section 102 states that if any of the terms are different than they are in the Internal Revenue Code, then they have to be expressly provided.

The taxpayer also argues that the Department’s documents should not have been admitted into evidence because the Department improperly received his confidential information from the IRS. The taxpayer claims that under section 6103(d) of the Internal Revenue Code, the Department may only receive confidential information from the IRS if it is used to locate someone who is entitled to a refund. The taxpayer believes that it is unlawful for the Department’s employees to see his confidential IRS information.

The taxpayer’s arguments are without merit. With respect to the word “State,” the cardinal rule of statutory construction is to ascertain and give effect to the true intention of the legislature. Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc., 158 Ill.2d 76, 81 (1994). The statute’s plain language is the best indicator of the legislature’s intent. Lulay v. Lulay, 193 Ill.2d 455 (2000). When the language is clear, it will be given effect without resort to other aids for construction. Petersen v. Wallach, 198 Ill.2d 439 (2002). It is only when the statutory language is ambiguous that it is appropriate to resort to extrinsic aids, such as legislative history. Kunkel v. Walton, 179 Ill.2d 519 (1997).

The language in the statute is not ambiguous; the word “State” means the State of Illinois. Although the taxpayer believes that “State” and “Illinois” are two different places, he has not indicated where “State” is located or how a person can be a resident there. Considering the context in which it is used, the Illinois legislature clearly intended the word “State” to mean the State of Illinois. Nothing in section 201(a) indicates that the “privilege” of earning or receiving income in Illinois is something that can be prohibited.

In addition, the taxpayer’s claim concerning section 6103(d) of the Internal Revenue Code is not accurate. Section 6103(d) provides, in relevant part, as follows:

(d) Disclosure to State tax officials and State and local law enforcement agencies.—

(1) In general.--Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, and 52 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws *for the purpose of, and only to the extent necessary in, the administration of such laws*, including any procedures with respect to locating any person who may be entitled to a refund. . . . (emphasis added) 26 U.S.C. §6103(d).

The Department is allowed to use information from the IRS in the administration of Illinois tax laws. Using the information to locate someone who is entitled to a refund is just one example of the uses that are permitted under this section. Furthermore, it is worth noting that under another subsection of section 6103, the term “State” means “any of the 50 States...” 26 U.S.C. §6103(b)(5)(A).

During the hearing, the taxpayer expressed concerns about being treated fairly. He said that he knew the Department’s information was wrong because, for example, it

indicated that he was single. The taxpayer also said that most of his income is from pensions or retirement income, which is not taxable in Illinois. When the Department's counsel noted that the taxpayer did not provide any documents or information to try to correct the Department's findings prior to the hearing, the taxpayer said, "I corrected it to the degree that I told you it was wrong." (Tr. p. 22) The taxpayer indicated that he wanted to see the information that the Department received from the IRS before he confirmed anything with the Department.

Nothing that the taxpayer has said has indicated that the Department has treated the taxpayer differently than any other resident of Illinois who has not filed an Illinois income tax return. The Department receives information from the IRS, and the Department's employees follow strict rules to maintain the confidentiality of that information. When an Illinois resident fails to file a tax return, the Department determines the amount of tax due according to its best judgment and information, which may include information obtained pursuant to section 6103(d) of the Internal Revenue Code. The findings of the Department are *prima facie* correct. 35 ILCS 5/904(b). The taxpayer bears the burden of presenting evidence to overcome the Department's determination. Balla, *supra*.

During the hearing, the taxpayer said he did not file a 2010 Illinois return because he was not required to file one, but he did provide a copy of what he said was an amended federal income tax return for the year 2010.¹ He admitted that he did not previously provide a copy of the federal return to the Department. The adjusted gross income (AGI) on the federal return is \$XXXXXX, which is the same AGI on the

¹ The taxpayer provided a federal Form 1040 for the year 2010 with the word "amended" at the top, and a blank Form 1040X, which he said was "like a cover sheet for it." (Tr. p. 31)

Department's calculations. (Taxpayer Ex. #1; Dept. Ex. #1) The taxpayer stated that he does not dispute that figure; he is only disputing the Department's legal authority to have that number. Both the taxpayer and his wife signed the federal return, which shows a filing status of Married Filing Jointly with two exemptions. The federal return shows income from pensions in the amount of \$XXXXXX and social security benefits in the amount of \$XXXXXX, but the taxpayer did not provide documents to verify these amounts. Although the return shows that the taxpayer is entitled to a refund, the taxpayer did not know whether the IRS had accepted the return. (Tr. pp. 29-30)

The fact that the taxpayer was married during 2010 warrants a recalculation of the amount of Illinois tax due based on the filing status Married Filing Jointly with two exemptions. With respect to the deductions for pension and social security income, the taxpayer has unfortunately failed to present sufficient documentary evidence to support the deductions. When a matter is set for an evidentiary hearing, it is incumbent upon the taxpayer to present documentary evidence, other than a self-prepared tax return, to show that he is entitled to the deductions. The taxpayer bears the burden of overcoming the Department's determination. Without documentation to verify the amount of pension and social security income, the deductions cannot be allowed.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's tax for the year 2010 be recalculated based on the filing status Married Filing Jointly with two exemptions. The remainder of the deficiency must be upheld.

Linda Olivero

Administrative Law Judge

Enter: November 17, 2016

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

<p>THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS</p> <p style="text-align:center">v.</p> <p>JOHN DOE</p> <p style="text-align:right">Taxpayer</p>	}	<p>Docket # XX-IT-XXXX</p>
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RECOMMENDATION FOR DISPOSITION

This cause coming on to be heard after the taxpayer’s request for a rehearing was granted in part. The rehearing was granted for the sole and limited purpose of allowing the Department to examine and consider the 1099-R’s and Form SSA-1099’s for tax year 2010 that were attached to the taxpayer’s request for rehearing.

After the Department examined and considered these documents, the Department determined that the taxpayer’s tax for the year 2010 should be reduced to \$XXXX plus penalties and interest. A status conference was held on June 29, 2017 during which the taxpayer agreed with the Department’s recalculation of the amount of the tax. The taxpayer stated that he disagreed with the penalties.

The sole purpose of the rehearing has been accomplished. The issue of whether the penalties should be abated was not raised at the initial hearing or in the request for a rehearing. Because the issue was not raised and was not authorized as part of the partial grant of the rehearing, it cannot be addressed in this rehearing.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's tax for the year 2010 be reduced to \$XXXX, plus penalties and interest.

Linda Olivero
Administrative Law Judge

Enter: July 30, 2017