

IT 19- 04

Tax Type: Income Tax

Tax Issue: Properly determined AGI for individual taxpayer

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

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN & JANE DOE

Taxpayers

Docket #
Acct ID:
Letter ID:
Claim for Credit or Refund
Reporting Period: 12/16

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

On October 4, 2017, JOHN & JANE DOE (“taxpayers”) filed a Form IL-1040-X, Amended Individual Income Tax Return (“amended return”), for the year 2016 that requested a refund of an overpayment of their taxes in the amount of \$XXX. On January 19, 2018, the Department of Revenue (“Department”) issued a Notice of Claim Denial (“Notice”), which denied the taxpayers’ claim for a refund, and the taxpayers timely protested the Notice. An evidentiary hearing was held during which the taxpayers argued that the Department should have granted credit because the Department improperly included a portion of Mrs. DOE’S OTHER STATE wages as sourced in Illinois. The

Department argued that the credit was properly denied because the taxpayers failed to present the correct documentation to support their claim. After reviewing the record presented by the parties, it is recommended that this matter be resolved in favor of the taxpayers.

FINDINGS OF FACT:

1. The taxpayers reside in CITY A, Illinois, which is not far from the border with OTHER STATE. (Dept. Ex. #1, p. 2)
2. During the whole year of 2016, Mrs. DOE worked for EMPLOYER in CITY B, OTHER STATE. Mrs. DOE did not work in Illinois during 2016. (Dept. Ex. #1, p. 27; Recording)
3. On October 4, 2017, the taxpayers filed a Form IL-1040-X, Amended Individual Income Tax Return, for the year 2016. The amended return included a Schedule CR, Credit for Tax Paid to Other States. The amended return seeks a refund in the amount of \$XXX. (Dept. Ex. #1, pp. 13-19)
4. On Schedule CR, the taxpayers reported \$XX,XXX as the total non-Illinois portion of their income. \$XX,XXX is the total income that Mrs. DOE earned while working at EMPLOYER in OTHER STATE. (Dept. Ex. #1, pp. 17, 27, 32)
5. After reviewing the amended return, the Department determined that the \$XX,XXX should be reduced by \$XX,XXX, which is the amount of Mrs. DOE' income that the Department determined Mrs. DOE earned in Illinois during 2016. (Dept. Ex. #1, pp. 13, 32)
6. On January 19, 2018, the Department issued a Notice of Claim Denial that denied the taxpayers' claim for refund in the amount of \$XXX on the basis that the

taxpayers' non-Illinois income should be reduced by \$XX,XXX. (Dept. Ex. #1, pp. 10-11)

CONCLUSIONS OF LAW:

Section 909 of the Illinois Income Tax Act (“Act”) (35 ILCS 5/101 *et seq.*) concerns credits and refunds and provides, in relevant part, as follows:

Sec. 909. Credits and Refunds.

(a) In general. In the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, ... and shall refund any balance to such person or credit any balance to that person...

...

35 ILCS 5/909(a).

The taxpayers timely filed their claim for refund, which included a Schedule CR that showed \$XX,XXX as the total non-Illinois portion of their income. The Department determined that the \$XX,XXX should be reduced by \$ XX,XXX because the Department believed that is the amount of income that Mrs. DOE earned in Illinois.

The disagreement between the parties is based on a W-2 filed by Mrs. DOE' employer that, on its face, is clearly inaccurate. During 2016 Mrs. DOE worked for EMPLOYER, and during the middle of 2016 EMPLOYER was purchased by COMPANY 1, Inc., which is the company that issued the W-2. COMPANY 1 provided four copies of Mrs. DOE' W-2, and each copy shows total “Wages, tips, and other compensation” as \$ XX,XXX. The inaccuracy with the W-2 concerns the amounts that are shown as state income. On one W-2 it shows only OTHER STATE income in the amount of \$XX,XXX. On another W-2 it shows only Illinois income in the amount of

\$XX,XXX. On the remaining two W-2s, it shows both OTHER STATE income as \$XX,XXX and Illinois income as \$XX,XXX.

The problem, as the taxpayers pointed out, is that the amount of state wages cannot exceed the amount of federal wages. If Mrs. DOE' total wages were \$XX,XXX, then she could not have earned both \$XX,XXX in OTHER STATE and \$XX,XXX in Illinois. During the hearing, the Department stated that "It's pretty clear that the W-2s don't make a lot of sense," and "It's pretty clear that there seems to be some form of mistake somewhere." The Department had informed the taxpayers that they needed to get either a corrected W-2 or a statement from the employer, on company letterhead, stating the correct amount of wages sourced to Illinois. The taxpayers asked COMPANY 1 for either a statement on company letterhead or a W-2c, but the company refused to provide either one.

The only document that COMPANY 1 provided to the taxpayers was Mrs. DOE' final pay stub for the year 2016. The final pay stub shows total wages for the year as \$XX,XXX. It also shows the location where Mrs. DOE worked as CITY B. In addition, it shows "IL State Income Tax (Residence)" and "OTHER STATE State Income Tax (Work)." (Dept. Ex. #1, p. 27)

The final pay stub supports Mrs. DOE' testimony that she only worked at the EMPLOYER in CITY B, OTHER STATE for the entire year of 2016 and made a total of \$XX,XXX. She testified that she had no idea where COMPANY 1 came up with \$XX,XXX as Illinois wages. She also testified that she worked in OTHER STATE because there was no local EMPLOYER near her home. The closest other EMPLOYER locations were in Springfield and Chicago, so it would have been impossible for her to

work at a EMPLOYER in Illinois while also working in OTHER STATE. She testified that the issue in this case concerns her employer's incompetence because COMPANY 1 has refused to provide the information that the Department is seeking. The evidence presented by the taxpayers (the facially inaccurate W-2, the final pay stub, and Mrs. DOE' testimony) supports a finding that the taxpayers are entitled to the refund.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayers receive a refund in the amount of \$XXX for the tax year 2016.

Linda Olivero
Administrative Law Judge

Enter: June 25, 2019