

IT 06-2

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.

**John and Jane Doe,
Taxpayer**

No. 00 IT 0000
SSN: 000-00-0000
TYE 2002

Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Shiel Gupta, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

This matter came on for hearing following the protest and request for hearing, filed by John and Jane Doe (“taxpayers”), to the Notice of Deficiency (“NOD”) issued on August 22, 2005 by the Illinois Department of Revenue (“Department”) for the tax year ending 12/31/02. Jane Doe appeared at the hearing on behalf of the taxpayers. 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, and in support thereof, I make the following findings of facts and conclusions of law:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Deficiency, dated August 22, 2005, issued to John and Jane Doe for the tax year ending 12/31/02, for a tax liability of \$125.00 and interest calculated to August 22, 2005 of \$13.00; Dept. Ex. No. 1
2. The tax deficiency is based upon the disallowance of a \$125.00 earned income credit; Id.

Conclusions of Law:

The Notice of Deficiency issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904 (a); Balla v. Department of Revenue, 96 Ill. App.3d 293 (1st Dist. 1981). The burden is then on the taxpayer to rebut the correctness of the notice. Id.

In this matter, taxpayers, appearing through Jane Doe, offered no oral or documentary evidence to rebut the NOD. Department's counsel, in her opening statement, explained that the IRS had disallowed taxpayers' claimed earned income credit, and had provided that information to the Department. The NOD does state that it is based upon information provided by the IRS. Dept. Ex. No. 1.

Ms. Towns did not dispute that the IRS disallowed the credit, and offered nothing further. It was explained to her that her failure to provide any evidence in support of taxpayers' protest would result in a finding for the Department because of the *prima facie* correctness accorded to the NOD by law, which, if un rebutted, allows judgment for the

Department. She said she understood and did not raise any objection to the closing of the hearing.

As a result of the above, it is recommended that the NOD issued to John and Jane Doe, dated August 22, 2005, for the tax year ending 2002, be finalized as issued.

Date: 3/17/2006

Mimi Brin
Administrative Law Judge