

IT 06-4

Tax Type: Income Tax

Issue: Federal Change (Individual)

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

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

v.

**John and Jane Doe
Taxpayer**

A.H. Docket # 00-IT-0000

SS # 000-00-0000 0

Track # 000000

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue; Mr. John Doe, Attorney at Law

Synopsis:

The Illinois Department of Revenue (hereinafter the "Department") issued a Notice of Deficiency on May 6, 2004 to John and Jane Doe (hereinafter the "Taxpayers") in the amount of \$1,330. The basis of the Notice of Deficiency was a finalized federal change about which the Taxpayers did not timely notify the Department. The Taxpayers timely protested and requested a hearing in the matter. After a thorough review of the facts and law presented, it is my recommendation that the Notice of Deficiency be upheld in its entirety. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements was established by admission into evidence of the Notice of Deficiency dated May 6, 2004, proposing a deficiency based upon a finalized federal change. (Dept. Ex. No. 1; Tr. p. 8)

2. Pursuant to information received from the Internal Revenue Service, the Department increased Taxpayers' adjusted gross income for the tax year 1996 from \$2,941 to \$24,966. (Dept. Ex. No. 1)

3. A "Department of the Treasury – Internal Revenue Service STATEMENT - - INCOME TAX CHANGE Form 5278 Settlement computation" for the period ending 12/31/96 for the Taxpayers shows total adjustments of \$22,025.14. It is dated July 31, 2002. An accuracy related IRC 6662 penalty was imposed in the amount of \$1,150.54. (Dept. Ex. No. 1)

CONCLUSIONS OF LAW:

The Illinois Income Tax Act, 35 ILCS 5/1-1 *et seq*, provides that a taxpayer must report to the Department any change made to its federal income tax return within 120 days after such change has been agreed to or finally determined. *Id.* at 5/506 (b) This is the basis of the Notice of Deficiency at issue herein. 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 penalty 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.* Mr. Doe appeared at the hearing and requested to brief the issue of why the "Notice of Deficiency and Adjustment Hearing must be dismissed."

In his memorandum Mr. Doe stated that the Department submitted:

an alleged *prima facie* case for making the adjustments to the

alleged taxes due and owing. The State presented no live witnesses. The State has no knowledge of the validity of the documents submitted. The State has presented no law with respect to the underlying issues. More importantly, the statutory reference contained in the transcript, 35 ILCS para. 5/94, does not exist, raising additional issues concerning the validity of admitting the documents in question.

The State asked that the court admit the *prima facie* documents, which themselves demonstrate that the State has no knowledge of the validity of the documents. The State merely relied upon what it says are in its files, which it says were obtained from the Internal Revenue Service. The Court granted the motion over the strenuous objections of the Respondents. The complaint must be dismissed.

(Taxpayer's Memo.)

The memo goes on to assert that the State has the burden to show and demonstrate a legal requirement to file a state income tax return based upon a legal requirement to file a federal income tax return. The memo cited no authority for these assertions other than "35 ILCS para. 5/502(a)(2) the filing requirement."

In this matter, based upon the Department's Ex. 1, the Taxpayers filed a federal return. The Department obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d) that a finalized change in taxpayer's adjusted gross income had occurred. 35 ILCS 5/502 states that "A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:"

35 ILCS 5/904 entitled Deficiencies and Overpayments states:

(a) Examination of return. As soon as practicable after a return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, it shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. If the Department finds that the tax paid is more than the correct amount, it shall credit or refund the overpayment as provided by Section 909. The findings of the Department under this subsection shall be *prima facie* correct and shall be *prima facie* evidence of the

correctness of the amount of tax and penalties due.

Therefore Mr. Doe is incorrect. The statute states that the Department establishes a *prima facie* case with its notice of deficiency and in this case the Taxpayers have produced no evidence to overcome it. It is therefore recommended that the Notice of Deficiency issued to the Taxpayers on May 6, 2004 in the amount of \$1,330 be upheld in its entirety.

Barbara S. Rowe
Administrative Law Judge
February 21, 2006