

IT 08-11

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)	Case No. 08 IT 0000
)	
)	SSN: 000-00-0000
v.)	
)	Tax Year 2005
JOHN DOE,)	
TAXPAYER)	
)	Administrative Law Judge
)	Kenneth J. Galvin

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John Doe, appearing *pro se*; Mr. Rickey Walton, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

On January 2, 2008, the Illinois Department of Revenue (hereinafter "Department") issued a Notice of Deficiency (hereinafter "NOD") to John Doe (hereinafter "taxpayer"). The basis of the NOD was the Department's determination that the taxpayer had failed to report to the Department a federal change in the number of allowable exemptions for 2005. The NOD proposed the assessment of taxes and interest.

Taxpayer subsequently filed a timely protest of the NOD and requested a hearing, which was held on October 2, 2008, with Mr. Doe testifying. Following a review of the

evidence and the arguments made at the hearing, it is recommended that the NOD be finalized as issued.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NOD, issued on January 2, 2008. The NOD indicated that taxpayer had claimed four exemptions on his Illinois-1040 for 2005, whereas a final federal change allowed only one exemption. The NOD assessed a net tax due of \$313 plus penalties and interest. Dept. Ex. No. 1.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.*, requires that a tax return be filed by the fifteenth day of April following the close of the taxable year. 35 ILCS 5/505(2). 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. 35 ILCS 5/601(a). If a taxpayer fails to file a tax return, the Department shall determine the amount of the tax due and this amount shall be "*prima facie* evidence of the correctness of the amount due." 35 ILCS 5/904(b). Additionally, Section 904(a) of the Illinois Income Tax Act provides that a NOD is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a).

Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any federal change which affects the computation of such person's base income. 35 ILCS 5/506(a)(b). In the instant case, taxpayer failed to notify the Department of a federal change in the number of allowable

exemptions for tax year 2005, which increased taxpayer's net tax due to Illinois by \$313. The NOD also assessed penalties and interest.

Taxpayer has apparently disputed the federal change in the number of exemptions but had not received a response from the Internal Revenue Service, as of the date of the evidentiary hearing. Tr. p. 12. To overcome the Department's *prima facie* case, the taxpayer must present consistent and probable evidence identified with book and records. Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Taxpayer has provided no documentary evidence to rebut the *prima facie* case of the Department. Accordingly, it is my conclusion that taxpayer is subject to the additional income tax.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Deficiency issued January 2, 2008 be finalized as issued.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

December 16, 2008