

**IT 08-9**

**Tax Type: Income Tax**

**Issue: Disallowed General Deductions**

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

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

v.

**JOHN DOE,  
Taxpayer**

**No. 08-IT-0000  
SSN 000-00-0000  
Tax Year 2002**

**Ted Sherrod  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General Rick Walton on behalf of the Illinois Department of Revenue (hereinafter the “Department”); John Doe, *pro se*, on behalf of the taxpayer.

**Synopsis:**

This matter involves John Doe’s Illinois Amended Individual Income Tax Return, IL-1040-X, which was filed to claim a refund of income taxes paid for the taxable year ending December 31, 2002. At issue is whether a refund shown on his amended return was properly denied by the Department pursuant to the Illinois Income Tax Act, 35 ILCS 5/101 *et seq.* On February 27, 2008, John Doe (hereinafter the “taxpayer”) filed a timely protest of the Department’s denial of his refund claim and requested a hearing, which was held on September 15, 2008. Following a review of the testimony presented at the

hearing and documentation supplied by the taxpayer, it is recommended that the Department's denial of the taxpayer's refund claim be affirmed.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the Amended or Duplicate Filer Tax Letter (hereinafter "form LTR-405") issued by the Department on January 31, 2008 wherein the taxpayer's claim for refund as set forth in his Amended Individual Income Tax Return (form IL-1040-X) for 2002 was denied. Department Exhibit ("Ex.") 1.
2. On July 14, 2004, the taxpayer filed a federal form 1040 with the Internal Revenue Service ("IRS") for the tax year 2002. Taxpayer's Ex. 1.
3. The taxpayer filed with the Department an amended Illinois Income Tax Return, IL- 1040-X, for the tax year ending 2002 on November 28, 2007. Department Ex. 1 (form LTR-405 acknowledging receipt of 2002 form IL-1040-X dated November 28, 2007).
4. On his amended IL-1040-X, the taxpayer claimed a property tax credit (on line 20), an education expense credit (on line 21) and reported an increase in the number of the taxpayer's exemptions from 1 to 3 (on line 12). Department Ex. 2. Based on these changes, the taxpayer claimed a refund of taxes due to the taxpayer in the amount of \$523. *Id.* The Department disallowed all of the taxpayer's proposed refund adjustments. *Id.*

5. The taxpayer introduced into the record an Account Transcript prepared by the IRS showing that the taxpayer was allowed one exemption for federal income tax purposes for the tax year 2002. Taxpayer's Ex. 2.

**Conclusions of Law:**

On November 28, 2007, the taxpayer filed an IL-1040-X amending his income tax return for the tax year 2002 to reflect the following adjustments:

- A property tax credit;
- An education expense credit; and
- An increase in the number of the taxpayer's exemptions from one to three.

Department Ex. 2.

On January 31, 2008, the Department issued a form LTR-405 denying the taxpayer's refund claim. Pursuant to section 904(a) of the Illinois Income Tax Act ("IITA"), an LTR-405 is *prima facie* evidence of the correctness of the amount of refund due. 35 ILCS 5/904(a). Here, the LTR-405 issued by the Department established the correctness of the Department's decision to deny the refund of the amounts claimed by the taxpayer.

The manner in which the Department corrected the taxpayer's form IL-1040-X reflects its determination that the taxpayer was not entitled to: 1) any increase in the number of exemptions he claimed; 2) the property tax credit he claimed; or 3) an education expense credit. Department Ex. 1, 2. In support of his refund claim, the taxpayer has submitted his "Homeowner's Property Tax (PT) Worksheet" (taxpayer's Ex. 3) and his "Educational Expense (ED) Worksheet" (taxpayer's Ex. 4) both of which the taxpayer prepared in accordance with the instructions to form IL-1040. However, the

record contains no documents, records, or other information corroborating the taxpayer's claim that he actually incurred the expenses reflected in his worksheets.

As noted above, pursuant to Illinois statute, the LTR-405 is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of taxes due, as shown therein. 35 ILCS 5/904. In order to overcome this presumption of validity the taxpayer must produce competent evidence, identified with his books and records, showing that the Department's determination is incorrect. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1<sup>st</sup> Dist. 1988). Mere testimony is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1<sup>st</sup> Dist. 1991).

In the instant case, the only evidence presented to support the taxpayer's claim to a property tax credit and an education expense credit are the taxpayer's testimonial assertions that information contained in worksheets he prepared is correct. Tr. pp. 30, 31. The taxpayer has presented no tuition bills or invoices, and no cancelled checks or other similar documentation to show that any of the expenses shown on his education expense credit worksheet were amounts the taxpayer actually paid for educational purposes. Moreover, the taxpayer has presented no property tax bills or cancelled checks showing that the amounts shown on his property tax worksheet were actually paid for property taxes the taxpayer incurred. Consequently, I find the taxpayer's evidence that he is entitled to the tax credits claimed on his amended Illinois income tax return to be insufficient to rebut the Department's *prima facie* case. A.R. Barnes & Co., *supra*. Accordingly, I find that the Department properly determined that the taxpayer is not

entitled to any refund in the amounts claimed as property tax and education expense credits on his form IL-1040-X.

In support of his claim that he is entitled to additional exemptions claimed on line 12 of the taxpayer's IL-1040-X amended return, the taxpayer has submitted a divorce decree and an IRS transcript showing an earned income credit, both of which establish that the taxpayer had custody of two minor dependents during the tax period at issue. Taxpayer's Ex. 1, 2, 5. However, the IRS transcript the taxpayer has submitted also shows that the taxpayer was entitled to only one exemption for federal income tax purposes for the tax year at issue. Taxpayer's Ex. 2.

Pursuant to section 204 of the Illinois Income Tax Act, 35 **ILCS** 5/101 *et seq.* (hereinafter the "IITA"), the determination with respect to the allowance of deductions for personal exemptions in Illinois is based on the federal Internal Revenue Code, 26 U.S.C.A. section 1 *et seq.* (hereinafter the "IRC"), specifically section 151 therein. For this reason, the instructions for the IL-1040 require that the number of personal exemptions claimed in Illinois conform to the number of exemptions allowable for federal income tax purposes. See Form IL-1040 instructions, 2002, pp. 12-14.

The taxpayer provided a copy of his federal income tax transcript for the subject year at issue. Taxpayer's Ex. 2. This transcript from the IRS shows that he was allowed only one personal exemption. *Id.* Since Illinois law bases allowable personal exemptions for its purposes on what is accepted by the IRS, Illinois cannot accept the additional exemptions as provided by the taxpayer on his IL-1040-X. Illinois is, simply, legally bound by the IRS records with respect to this matter.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the Department's denial of the taxpayers' refund claim for the tax year 2002 be affirmed.

Ted Sherrod  
Administrative Law Judge

Date: October 17, 2008