

IT 09-7

Tax Type: Income Tax
Issue: Non-Filer (Income Tax)

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

THE DEPARTMENT OF REVENUE)	Docket No.	08-IT-0000
OF THE STATE OF ILLINOIS)	Tax ID No.	000-00-0000
v.)	Tax Years	2003
JOHN DOE,)	John E. White,	
Taxpayer.)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared *pro se*; Sean Cullinan, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after John Doe (Taxpayer or Doe) protested a Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to him. The NOD proposed to assess Illinois income tax regarding calendar year 2003.

The hearing Taxpayer requested was held at the Department's offices on Chicago, Illinois. Taxpayer testified at hearing, and offered into evidence copies of federal statutes and regulations. After considering the evidence admitted at hearing, I am including in this recommendation findings of fact and conclusions of law. I recommend the NOD be finalized as issued.

Findings of Fact:

1. The Department issued an NOD to Taxpayer on October 1, 2008. Department Ex. 1 (copy of NOD, including a supporting Statement, and form EDA-24).
2. The Department notified Taxpayer of the basis of the proposed deficiency in the

Statement part of the NOD, which provided, in pertinent part:

Reason for deficiency

We obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d).

We determined your correct Illinois Income Tax because you did not file Form IL-1040 as required by Illinois law. [35 ILCS 5/502(a), 904(b)]

Penalties

We are imposing a late-filing or non-filing penalty because you did not file [a] processable return by the due date (including any extended due date). ***

[35 ILCS 735/5-3-3(a-10)]

We are imposing a late-payment penalty for underpayment of estimated tax because you did not pay the required amount of estimated tax payment by the payment due date. ***

[35 ILCS 735/5-3-3(b-15)(1)]

We are imposing a late-payment penalty because you did not pay the total tax you owe by the original due date of the return, even if you had an extension of time to file. ***

[35 ILCS 735/5-3-3(b-15)(1)]

Department Ex. 1, p. 2.

3. The form EDA-24 the Department included within its NOD consists of 2 pages. Department Ex. 1, pp. 4-5 (copy of form EDA-24). One page is the Auditor's Report, and one page is an Income Tax Interest Computation. *Id.*
4. The Auditor's Report sets forth a statement of items and amounts of income and deductions that the Department determined Taxpayer should have taken into account and reported on the return required to have been filed for calendar year 2003. Department Ex. 1, p. 5.
5. The Auditor's Report reflects that the Department made the following determinations

regarding Taxpayer and calendar year 2003: Taxpayer was an Illinois resident; Taxpayer's adjusted gross income (AGI) and base income was \$67,719; Taxpayer was entitled to a one exemption; Taxpayer's net income was \$65,719; that the Illinois income tax due on that amount of net income was \$1,972. Department Ex. 1, p. 5.

6. The Auditor's Report also reflects that the Department determined that Taxpayer owed a late-filing or non-filing penalty in the amount of \$289, a penalty for the underpayment of estimated tax in the amount of \$355, and a late-payment penalty in the amount of \$39. Department Ex. 1, p. 5. Finally, the Auditor's Report reflects that, at the time it was created, interest on the proposed deficiency was due in the amount of \$505. *Id.*
7. The NOD identified the deficiency as being \$2,655, plus interest in the amount of \$505. Department Ex. 1, p. 1.

Conclusions of Law:

Section 904(b) of the Illinois Income Tax Act (IITA) provides that: "If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed." 35 ILCS 5/904(b). When the Department introduced the NOD into evidence under the certificate of the Director, it presented prima facie proof that Taxpayer owed tax, penalties and interest due in the amount proposed. 35 ILCS 5/904(b); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981).

The Department's prima facie case is a rebuttable presumption. See Branson v. Department of Revenue, 168 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995). After the Department introduces its prima facie case, the burden shifts to the taxpayer to establish that the Department's determinations are not correct. *Id.* To overcome the Department's prima facie case, a taxpayer must present more than just testimony denying the accuracy of the assessments, he must also present sufficient documentary support for its assertions. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002) (taxpayer had the burden of overcoming the Department's prima facie case through documentary evidence, meaning books and records, and not mere testimony.).

At hearing, Taxpayer argued, among other things, that the Department's use of information received from the Internal Revenue Service (IRS) was in violation of § 6103(a) of the Internal Revenue Code (Code), and that he did not authorize anyone to disclose any federal return information provided to the Department. Hearing Transcript (Tr.), pp. 13-14, 41-42. But Code § 6103(d) expressly grants the Department of Treasury the authority to make "returns and return information ... open to inspection by, or disclosure to, any State agency, body, or commission, ... which is charged under the laws of such State with responsibility for the administration of State tax laws" 26 U.S.C. § 6103(d).

Taxpayer next "challenge[d] the [Department] to prove that any of [his] earnings for the year 2003 fit the tested description of gross income [under Code § 61]" Tr. p. 20. But by the time Taxpayer made this argument, the Department had already met Taxpayer's challenge simply by offering into evidence its prima facie case. Tr. p. 9

(Department Ex. 1 admitted); 35 **ILCS** 5/904(b). The Illinois General Assembly purposefully granted prima facie correct status to the Department's factual determinations in order to assist it in its burden to show, for example, that a particular taxpayer was subject to tax, or that the amount of tax proposed to be due was correct. 35 **ILCS** 5/904(b); Balla, 96 Ill. App. 3d at 296, 421 N.E.2d at 238. Therefore, once the Department offered the NOD into evidence, the burden shifted to Taxpayer to show that the Department's determinations were incorrect. Regarding Taxpayer's specific challenge here, the shifting of the burden meant that Taxpayer had to show that the earnings he acknowledged he realized in 2003 were not includable within the definition of gross income. Illinois courts have held that this statutory presumption of correctness places the burden on the person best able to offer proof of such facts. *E.g.*, Balla, 96 Ill. App. 3d at 296, 421 N.E.2d at 238.

Now, Taxpayer's burden to show that his earnings were not included within Code § 61's description of gross income is very high (26 U.S.C. § 61 ("gross income means all income from whatever source derived, including (but not limited to) the following items: ...")), although it is possible to meet. *See* 26 U.S.C. §§ 101-139A (describing items of income that are expressly excluded, or excludable, from gross income). But Taxpayer clearly is in a much better position than the Department to know the specific nature, source(s), and the extent of his own earnings during 2003. After all, ordinarily, the Department will first obtain knowledge about the myriad different types of income a taxpayer might possibly have realized during a given year when the taxpayer actually files a return on which he reports having earned or received such income. But Taxpayer filed no Illinois return for 2003. Department Ex. 1, p. 2. Similarly, if the Department

erred in its determinations, Taxpayer is in a better position to be able to point out and correct any inaccuracy the Department might have made. *See* Coleman v. C.I.R., 791 F.2d 68, 71 (7th Cir. 1986) (“People must make an honest report of their income to the government. If they fail to do this, they must establish any inaccuracies in the Commissioner's reconstruction of their income.”); *accord* PPG Industries, Inc., 328 Ill. App. 3d at 33, 765 N.E.2d at 48.

The evidence Taxpayer did offer consists of copies of federal statutes, regulations and other materials copied from books or from internet web sites. Taxpayer Exs. 1-11. These exhibits, however, do not show that any of the Department factual determinations were wrong. Nor do they show, as Taxpayer seemed to suggest in his presentation, that he was not subject to Illinois income tax. Section 203(a) of the IITA imposes a “tax measured by net income ... on every individual, ... on the privilege of earning or receiving income in or as a resident of [Illinois]” 35 **ILCS** 5/201(a). Other sections of the IITA define the terms net income and base income (35 **ILCS** 5/202 – 5/203), and § 904(b)’s statutory presumption of correctness presumes that the Department properly calculated Taxpayer’s base income, net income and the deficiency proposed here. 35 **ILCS** 5/904(b). I conclude, therefore, that Taxpayer has failed to rebut the presumed correctness of the Department’s determination that he owed Illinois income tax in the amount set forth in the NOD. 35 **ILCS** 5/904(b).

Conclusion:

I recommend that the Director finalize the Notice of Deficiency as issued, and the tax proposed be assessed, with interest to accrue pursuant to statute.

July 15, 2009
Date

John E. White, Administrative Law Judge