

IT 07-4

Tax Type: Income Tax

Issue: Income Earned in Illinois/Individual Residency

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

DEPARTMENT OF REVENUE
STATE OF ILLINOIS

v.

JANE DOE a/k/a JANE DOE a/k/a
JANE DOE¹

} 00 IT 0000
000-00-0000
TYE: 12/31/1996;
12/31/1997; 12/31/1998
12/31/1999

} Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Ronald Forman, Special Assistant Attorney General, for the Illinois Department of Revenue; Jane Doe, pro se

Synopsis:

This matter comes on for hearing pursuant to the protest and request for hearing filed by Jane Doe (“taxpayer” or “Doe”) following her receipt of a Notice of Deficiency (“NOD”) dated February 14, 2006 issued to her by the Illinois Department of Revenue (“Department”) for the tax years ending 12/31/1996, 97, 98, and 99 (“tax years”). The NOD proposed assessments for income tax, penalties and accruing interest for those tax years. The taxpayer represented herself and offered both oral and documentary evidence

¹ The taxpayer acknowledged that at various times she has been known as Jane Doe and Jane Doe (a married name) and is currently known as Jane Doe, using her family name. Tr. pp. 5-6.

at the hearing on this matter. Following the submission of all evidence and a review of the record, it is recommended that the matter be resolved in favor of the Department and in support thereof, I make the following Findings of Fact and Conclusions of Law:

Findings of Fact:

1. On February 14, 2006, the Department issued a Notice of Deficiency proposing assessments for personal income tax against Jane Doe for the tax years 1996, 1997, 1998 and 1999. Department Group Ex. No. 1;
2. The NOD proposed assessments set forth, *inter alia*, tax, late or non-filing penalties and accrued statutory interest for each year. Id.;
3. The adjusted gross income reflected in the NOD for each year was: 1996-\$503,572; 1997-\$20,661; 1998-\$283,801; and 1999-\$9,887. Id.;
4. The adjusted gross income amounts set forth in the NOD are the same amounts that the federal Internal Revenue Service (“IRS”) records for this taxpayer for those same years. Taxpayer Group Ex. No. 1, section 10;
5. The Department concedes that Doe is entitled to a credit for the tax year ending 12/31/1996 for state withholding tax of \$1,075. Department Ex. No. 2 (Form W-2 Wage and Tax Statement 1996); tr. pp. 8-9.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.*, (“IITA” or the “Act”) requires, generally, that each resident of Illinois file an annual income tax return if that person files a federal income tax return. Id. at 5/502(a). IITA 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. Id. at 6/601. The Department's regulations require that individuals file their annual income tax returns by the 15th day of the fourth month following the close of the individual's taxable year. 86 Admin. Code ch. I, section 100.5000(a)(1). For most individuals that date is April 15th each year.

This income tax due from taxpayers to Illinois is measured by a taxpayer's net income (35 ILCS 5/201) with net income defined as base income allocable to Illinois (id. at 5/202). In turn, base income is defined, for purposes pertinent hereto, as adjusted gross income (id. at 5/203(a)) and adjusted gross income is defined, in part, as the amount of income reportable for federal income tax purposes for the specific taxable year (id. at 5/203(e)). Thus, the starting point for reporting taxable personal income in Illinois is the adjusted gross income as reported to the IRS.

In the instant matter, the IRS reported to Illinois that taxpayer's adjusted gross income for the tax year ending 12/31/1996 was \$503,572; for tax year ending 12/31/1997 the reported adjusted gross income was \$20,661; for tax year ending 12/31/1998 it was reported as \$283,801 and for 12/31/1999 it was reported to Illinois as \$9,887. Department Group Ex. No. 1. Based upon this information the Department issued the NOD at issue herein. Id. As noted on the NOD, the Department assessed, *inter alia*, in addition to the basic tax amount due, penalties for the late or non-filing of the particular income tax return and accrued statutory interest.

Doe defends against the NOD amounts by relying on 1040 returns for the taxable years she states she sent to the IRS. Taxpayer Group Ex. No. 1, section 4; tr. pp. 32, 44-45. Each of the returns is dated 10/26/04 (id.). These returns report an adjusted gross

income for 1996 of \$6575; adjusted gross income of \$51,761 for 1997; adjusted gross income of \$7,013 for 1998; and adjusted gross income of \$9,491 for 1999. Taxpayer Group Ex. No. 1, section 4. She also produced Illinois IL-1040's for the tax years at issue, all of which are also dated 10/26/04. Taxpayer Group Ex. No. 1, sections 5 (years 1997, 1998), 7 (years 1996, 1999). The adjusted gross incomes shown on these returns are the same as the adjusted gross incomes shown on the federal 1040's for those years that she offered into evidence. Id. at section 4. Taxpayer does not argue that any of these returns were timely filed.

On September 11, 2006, during the pendency of these proceedings regarding the NOD, Doe received a transcript from the IRS setting forth its record of her 1040 account. Taxpayer Group Ex. No. 1, section 10. As of that date, the IRS records her adjusted gross income as \$503,572 for 1996; \$20,661 for 1997; \$283,801 for 1998; and \$9,887 for 1999. Id. These are the same amounts shown as adjusted gross incomes for the pertinent years on the NOD. Department Group Ex. No. 1. From the date of the hearing on this matter, June 5, 2007, until the date that this recommendation was written, August 7, 2007, there has been no advisement from the taxpayer that the IRS has adjusted her 1040 returns for the years at issue to reflect anything other than what its records showed on September 11, 2006.

Despite this, Doe proffers that Department must accept her IL-1040's for the years at issue, as determinative of her actual tax liabilities for these years. *Tr. passim.* Unfortunately, the law does not allow this to occur, as the IITA sets forth quite clearly that the starting point for determining IL-1040 liability is the federal adjusted gross income for that year. 35 **ILCS** 5/201, 5/202, 5/203; see also Rockwood Holding Co. v.

Department of Revenue, 312 Ill. App. 3d 1120, 1124 (1st Dist. 2000) (“the [Illinois Income Tax] Act ‘piggy-backs’ onto the federal calculation of income and uses federal taxable income as the premise for tax liability.”). Therefore, until such time that the IRS acknowledges that it has accepted Doe’s 1040 returns, that she claims she filed after October, 2004 for the tax years of 1996, 1997, 1998 and 1999, and has changed her adjusted gross income for those years, Illinois, by law, cannot accept what Doe represents on her corresponding IL-1040’s as her adjusted gross income that she professes she also filed after October, 2004 for those same years.

The Department’s *prima facie* case is established by the introduction into evidence of copies of its records under the certificate of the Director. 35 ILCS 5/914; Balla v. Department of Revenue, 96 Ill. App. 3d 293 (1st Dist. 1981). The NOD issued in this cause is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a). The burden then shifts to the taxpayer to overcome the *prima facie* correctness of the NOD. Balla v. Department of Revenue, *supra*. This burden is not satisfied by taxpayer’s testimony, alone (*id.*) and most assuredly, it is not satisfied in light of her own evidence that the IRS supports, as adjusted gross income, the same amounts as set forth in the Department’s NOD. Taxpayer Group Ex. No. 1, section 10. In this case, in accord with statute and case law, Doe has failed to rebut the NOD issued in this matter.

WHEREFORE, for the reasons stated above, it is recommended that the Notice of Deficiency issued by the Department against Jane Doe a/k/a Jane Doe a/k/a Jane Doe for the tax years of 1996, 1997, 1998 and 1999 be revised in accordance with Department Ex. No. 2 for the tax year 1996, and as so revised, be finalized.

8/7/07

Mimi Brin
Administrative Law Judge