

IT 95-101

Tax Type: INCOME TAX

Issue: Income Earned in Illinois/Individual Residency

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

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DEPARTMENT OF REVENUE )  
STATE OF ILLINOIS )

v. )

TAXPAYERS, )

Taxpayer(s) )  
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Docket:

James P. Pieczonka  
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: James P. Pieczonka, Administrative Law Judge, presided at a hearing in the instant matter and presented the Department's prima facie case at the hearing. Taxpayers, TAXPAYERS, (hereinafter referred to as "Taxpayers") appeared at the hearing in their own behalf pro-se to rebut the Department's case.

SYNOPSIS: The instant case arose from an audit by the Department of Taxpayers' IL-1040 return for the year ended 12/31/90 based upon final federal audit change information. The federal information received by the Department pertained to adjustments to Taxpayers' 1990 adjusted gross income. Taxpayers failed to notify the Department pursuant to 35 ILCS 5/506(b) of the final federal changes that increased their adjusted gross income for the year 1990. On March 2, 1995, the Department issued the subject Notice of Deficiency in the amount of \$138.00. Said Notice of Deficiency proposed additional taxes of \$112.00 and a Section 1005 penalty in the amount of \$26.00 at the rate of 6% per annum upon the tax underpayment due to the federal changes.

After protest and an administrative hearing, the Notice of Deficiency

was upheld.

The issue(s) presented for review in this case are as follows:

1. Whether Taxpayers were liable for additional Illinois Income taxes due to final federal changes to their adjusted gross income for the year ended 12/31/90?

2. Whether Taxpayers offered sufficient evidence of reasonable cause to abate the Section 1005 penalty for their failure to pay their entire tax liability on the due date of their return for the year in question?

FINDINGS OF FACT:

1. On April 5, 1991, Taxpayers filed an IL-1040 return for 1990 which reported a refund of \$135.00. (Dept. Ex. No. 1) The refund was paid to Taxpayers on June 18, 1991.

2. The Department was notified of final adjustments to Taxpayers' 1040 return for 1990. The IRS reduced a deduction for IRA contributions in the amount of \$3,740.00 (\$1,870.00 for husband and \$1,870.00 for the wife) which increased Taxpayers' adjusted gross income for 1990. (Dept. Ex. No.'s 1-3)

3. The Department requested Taxpayers to complete and forward IL-1040-X return for the year in question to report said changes pursuant to Section 506(b) of the Act. (Dept. Ex. No. 2)

4. On April 17, 1994, Taxpayers informed the Department that they agreed with the IRS disallowance of their IRA deduction in the amount of \$3,740.00. However, Taxpayers reported the adjustment to their 1990 return on their 1993 1040 and IL-1040 returns and paid the tax due thereon with their 1993 returns. (Dept. Ex. No.'s 3,7)

5. On February 6, 1995, Taxpayers stated that they paid the taxes regarding the IRA disallowance with their 1993 return. However, they remitted a check in the amount of \$50.66 (\$20.57 1005 penalty and \$30.09 as interest). Department records showed that the \$50.66 was returned and

refunded to Taxpayers on March 7, 1995. (Dept. Ex. No. 7)

6. On March 2, 1995, the Department issued a Notice of Deficiency to taxpayers for the year ended 12/31/90 in the amount of \$138.00. (Dept. Ex. No. 6)

7. On May 19, 1995, a hearing was held before Administrative Law Judge, James P. Pieczonka in Chicago (Dept. EX. No. 9). At the hearing, Department Exhibits 1-9 were admitted as the Department's prima facie case. Taxpayers appeared and testified to facts as stated in their Protest.

CONCLUSIONS OF LAW: The Administrative Law Judge finds that the IRA deduction of \$3,740.00 disallowed by the IRS in the 1990 tax year was included and reported incorrectly by Taxpayers on their 1993 1040 return and thereby incorrectly reported to the Department on their 1993 IL-1040. Taxpayers have failed to report the final federal change to their 1990 adjusted gross income, therefore, the notice of Deficiency must stand.

The theory of the presumption of the Department's determination of additional tax due as being prima facie correct is also contained in the Illinois Retail Occupation Tax Act, Chapter 120, Para 443, Illinois Revised Statutes, (1983) and has been upheld by courts of this State. It provided that if the Department examines and corrects a return, it shall do so to its best judgment and information. A return so corrected shall be prima facie correct and shall be prima facie evidence of the correctness of the amount due as shown therein. There is a statutory burden upon the taxpayer to establish by competent evidence that the corrected return of this Department is not correct and until the taxpayer provides such proof, the corrected returns are presumptively correct *Copilevitz v. Department of Revenue* (1965) 41 Ill. 2d 154. See also *Vitale v. Illinois Department of Revenue* (1965) 41 Ill. (1983) 118 Ill. App. 3d 210 setting out the minimum standards of reasonableness in preparing a corrected return. Accord: *Puleo v. Department of Revenue* (1983) 117 Ill. App. 3d 260, *Fillichio v.*

Department of Revenue (1958) 15 Ill. 2d 327, 155 N.E. 2d. 3.

The case of Quincy Trading Post, Inc. v. Department of Revenue (1983) 12 Ill. app. 3d 720 citing with approval Copilevitz said at p. 730-731.

"In Copilevitz (41 Ill. 2d 154, 156), the Supreme Court said that the Act and its regulations are "explicit in its demand for documentary evidence\*\*\*." The language of that case indicates that evidence corroborating statements of the taxpayer and other supporting data is necessary.

A taxpayer has all of his books and records, so, if wrongfully assessed, he could easily overcome the prima facie case of the Department at the hearing procedures provided.

On this record, Taxpayers' own records and returns have shown that they have incorrectly reported the final federal change to their 1990 adjusted gross income. Taxpayers have reported said change to their 1993 returns not their 1990 IL-1040-X return as required by Section 506(b). Although Taxpayers attempted to report and pay the taxes due to the 1990 federal change, the manner of reporting did not properly reflect the 1990 federal adjustments and their 1990 adjusted gross income. Accordingly, the Notice of Deficiency must be upheld in the amount of \$112.00 as tax, and \$31.00 as a 1005 penalty through 11/30/95 plus the applicable interest. Additionally, Taxpayers' 1993 IL-1040 return is incorrect and an IL-1040-X return should be filed to request a refund of the improperly reported increase in their adjusted gross income for 1993 due to the 1990 final federal change.

RECOMMENDATION: The Director of Revenue should uphold the Notice of Deficiency in its entirety for the year ended 12/31/90.

James P. Pieczonka  
Administrative Law Judge

Dated