

IT 95-11  
Tax Type: INCOME TAX  
Issue: Income Earned in Illinois/Individual Residency

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

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DEPARTMENT OF REVENUE	)
STATE OF ILLINOIS	) XXXXX
	) SS# XXXXX
v.	)
	) Mimi Brin
XXXXXX	) Administrative Law Judge
	)

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayer" or "XXXXX") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on July 22, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that he had failed to file an Illinois income tax return for the year ending 1992 (hereinafter referred to as the "Tax Year"). The Notice assessed tax, various penalties and interest for income earned that year.

The taxpayer's protest was filed on his behalf by the XXXXX, the guardian of the taxpayer's estate and his tax preparer. Prior to the hearing on the matter, a XXXXX representative contacted me and delivered an affidavit setting forth relevant facts in this matter.

Based upon this information, I recommend that the deficiency assessed herein be cancelled.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which

indicates that for the year ending December 31, 1992, this taxpayer had an adjusted gross income of \$27,788, with a net income of \$26,788. Dept. Ex. No. 1

2. This taxpayer failed to file an Illinois income tax return for the tax year. Dept. Ex. No. 1

3. The taxpayer's Federal income tax return for the tax year was filed from Chicago by the XXXXX as guardian of the taxpayer's estate, however, it was sent to the Texas office of the Internal Revenue Service. Taxpayer's Protest

4. Taxpayer was a resident of Texas during the tax year, and also, did not receive any income derived from Illinois during that time.

#### Affidavit

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides, inter alia, that a taxpayer shall file an Illinois income tax return if a resident of Illinois for all or part of the tax year or if he receives income derived from Illinois. 35 ILCS 5/301, 5/302, 5/303. In this case, the taxpayer was neither a resident for any of the tax year, nor did he receive any income earned in Illinois. The guardian of the taxpayer's estate is located in Illinois and has the duty of filing necessary income tax returns on taxpayer's behalf. This, however, does not create a duty on taxpayer to file an Illinois income tax return.

Therefore, for the reasons stated above, it is my recommendation that the Notice of Deficiency in this cause be cancelled.

Mimi Brin  
Administrative Law Judge