

IT 95-38

Tax Type: INCOME TAX

Issue: Income Earned In Illinois/Individual Residency

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

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

v.)

No.)

XXXXX)

James P. Pieczonka)

Taxpayer(s))

Administrative Law Judge)

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 "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on November 4, 1994. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers had failed to file Illinois Income Tax returns for the years ended December 31, 1988 through December 31, 1990. The Notice proposed an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

In taxpayers' Protest they contended that they were not residents of Illinois during the years in question. Taxpayers did not request a hearing in this matter but submitted copies of W-2 forms from the State of Pennsylvania for the years ended December 31, 1988 and 1989. The issues to be resolved are:

(1) Whether taxpayers were residents of Illinois during some or all of the years in question?

(2) Whether penalties should be assessed pursuant to 35 ILCS 5/1001, 5/1005 and 5/804?

Following a review of the documents contained in the file, it is recommended that the Notice of Deficiency be withdrawn for 1988 and 1989 but upheld for 1990.

FINDINGS OF FACT:

1. For the taxable years ended December 31, 1988 and December 31, 1989, taxpayers were not residents of the State of Illinois and did not earn income from the State of Illinois. Taxpayers earned income and resided in Pittsburgh, Pennsylvania during these years. Dept. Ex. No. 2 and 3

2. Taxpayers were Illinois residents, earned income in Illinois and did not file an Illinois income tax return for the year ended December 31, 1990. Dept. Ex. No. 2

3. The Department issued a Notice of Deficiency for the subject taxable years. Dept. Ex. No. 1

4. In taxpayers' Protest, taxpayers alleged that they were not residents of Illinois for the 1988 and 1989 tax years and submitted W-2 forms for said years from an employer in Pittsburgh, Pennsylvania. Additionally, taxpayers did not contest the 1990 proposed assessment and stated that they moved to Illinois in late 1989 but did not earn income in Illinois until 1992. Dept. Ex. No. 2

5. The IRS federal change information for the years in question dated November 5, 1992 reflected an Illinois address. Dept. Ex. No. 3

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayers, admitted they became Illinois residents in late 1989, however, they did not earn income in this state until 1992. Federal change information, however, disclosed that taxpayers

earned income in 1990 and taxpayers did not show that said income was earned as a resident of any other state. Accordingly, taxpayers were subject to Illinois income taxes for the year ended December 31, 1990 and were required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayers have met that burden in this case only as to the years ended December 31, 1988 and 1989.

Taxpayers presented evidence consisting of copies of their W-2 forms from Shadyside Hospital in Pittsburgh, Pennsylvania reporting income earned in Pennsylvania. Additionally, the federal change information disclosed moving expenses during the years ended December 31, 1988 and 1989. Finally, credible evidence was offered in taxpayers' Protest that they were residents of Pennsylvania in 1988 and 1989. The taxpayers presented evidence in the form of their W-2 statements which is consistent, probable, and identified with the federal change information for 1988 and 1989. *Fillichio v. Department of Revenue*, 15 Ill.2d 327 (1958) Accordingly, the taxpayers overcame the Department's prima facie case that they were residents of Illinois in 1988 and 1989 and that no returns were filed and no taxes paid for the 1988 and 1989 tax years.

For the year ended December 31, 1990, however, the Department obtained federal information that taxpayers earned income. Taxpayers did not produce any evidence of residency in any other state in 1990 and did not deny that they were Illinois residents in 1990. In fact, taxpayers' stated

in their Protest that they moved to Illinois in late 1989. Consequently, taxpayers have failed to rebut the Department's prima facie case for the year 1990, therefore they were residents of Illinois in 1990 and subject to Illinois income taxes.

In addition to asserting a tax deficiency for 1990, the Notice proposes penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively. Having determined that the taxpayers were Illinois residents in 1990, and that they failed to file and pay income tax for the 1990 tax year, the imposition of said penalties is justified.

It is my recommendation that this case be decided in favor of the taxpayers for the years ended December 31, 1988 and 1989 and against the Taxpayers for the year ended December 31, 1990. Therefore, the Notice of Deficiency should be withdrawn for 1988 and 1989 and upheld for 1990.

James P. Pieczonka
Administrative Law Judge

May 10, 1995