

IT 95-47

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         )
                           ) SS#
                           )
                           ) v.
                           ) Mimi Brin
XXXXXX                     ) 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 "Taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on February 9, 1995. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer failed to advise the Department of changes on his Federal income tax returns for the years ending December 31, 1990 and December 31, 1991 (hereinafter referred to as the "Tax Years"). The Notice assessed tax, various penalties and interest pursuant to the amendments to the Federal returns for those tax years.

In his protest to the Notice, the taxpayer avers that he does not owe the tax proposed by the Department. Therefore, the following issue was heard at the hearing in this cause: 1) whether the taxpayer can rebut the prima facie correctness of the Department's Notice of Deficiency.

Following a hearing in this matter, it is my recommendation that the matter be resolved in favor of the Department.

FINDINGS OF FACT:

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

indicated that the taxpayer's adjusted gross incomes were amended on his Federal income tax returns for the tax years. Dept. Ex. No. 1, 2

2. This taxpayer failed to advise the Department of these changes. Dept. Ex. No. 1

3. The taxpayer filed a timely protest to this Notice. Taxpayer's Protest

4. Taxpayer signed the Department of the Treasury-Internal Revenue Service Income Tax Examination Changes for the tax years which is the basis of the Department's Notice. Dept. Ex. No. 2

5. Taxpayer failed to provide any documentation which rebuts the correctness of the Notice.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides, inter alia, that in the event that there are any changes in the taxable income or the income tax liability in the federal income tax return of any person, that person must notify the Department of such amendments. 35 ILCS 5/506(a)(b) This taxpayer failed to do so, claiming at hearing that he believed that the federal changes are incorrect. He further asserted that he might consider reopening the matter with the Internal Revenue Service, but due to his progressive illness, that may be neither practical nor possible.

Taxpayer appeared to be sincere in his assertions. However, these assertions, without any supporting documentation, are not sufficient legally to overcome the prima facie correctness of the Department's Notice of Deficiency, especially in light of the fact that the taxpayer signed the document which sets forth the changes in taxpayer's Federal income tax returns for the tax years. See also, *Copilevitz v. Department of Revenue*, 41 Ill.2d 154 (1968)

Therefore, based upon the above, it is my recommendation that the Notice of Deficiency be finalized as issued.

Mimi Brin
Administrative Law Judge