

IT 08-8

Tax Type: Income Tax

Issue: Federal Change (Individual)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN & JANE DOE

Taxpayers

**Docket # 04-IT-0000
SS # 000-00-0000
Tax Years 1999-2001**

RECOMMENDATION FOR DISPOSITION

Appearances: Ron Forman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John and Jane Doe, *pro se*.

Synopsis:

The Department of Revenue (“Department”) issued two Notices of Deficiency (“Notices”); one of the Notices was issued to John Doe (“taxpayer”), and the other was issued to his wife, Jane Doe (“taxpayer”). The Notices allege that the taxpayers did not timely notify the Department about a federal change, and the Notices also allege that the taxpayers owe additional Illinois income tax for the years 1999 through 2001. The taxpayers timely protested the Notices, and the case remained pending in these administrative proceedings while the Internal Revenue Service (“IRS”) reviewed the

taxpayers' federal income. After the IRS finalized the taxpayers' income for the years in question, an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On September 28, 2004, the Department issued a Notice of Deficiency to John Doe showing a deficiency in his Illinois income tax in the amount of \$24,484 for the tax years ending December 31, 1999 through December 31, 2001. (Dept. Ex. #2)
2. On September 28, 2004, the Department issued a Notice of Deficiency to Jane Doe showing a deficiency in her Illinois income tax in the amount of \$4,548 for the tax years ending December 31, 1999 through December 31, 2001. (Dept. Ex. #3)
3. For each Notice, the Department calculated the amount of tax owed based on the filing status "Married filing separately." (Dept. Ex. #2, 3)
4. Based upon information obtained from the IRS regarding the taxpayers' federal income for the years in question, the Department recalculated the tax owed based on the filing status "Married filing jointly." The Department determined that, as joint-filers, the taxpayers' owe the following additional tax, excluding interest and penalties: \$102 for the year ending December 31, 1999, \$3,479 for the year ending December 31, 2000, and \$85 for the year ending December 31, 2001. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Section 201(a) of the Illinois Income Tax Act (“Act”) (35 ILCS 5/101 *et seq.*) imposes a tax on the privilege of earning or receiving income in or as a resident of Illinois. 35 ILCS 5/201(a). The tax is measured by net income, which is calculated by starting with the taxpayer’s federal adjusted gross income. 35 ILCS 5/201(a); 203. If the Department determines that the amount of tax shown on the taxpayer’s Illinois income tax return is less than the correct amount, it issues a notice of deficiency to the taxpayer setting forth the amount of tax and penalties that it proposes to assess. 35 ILCS 5/904.

The findings of the Department concerning the correct amount of tax due are *prima facie* correct, and the Department’s certified record relating to the tax due is proof of such determination. *Id.*; 35 ILCS 5/914; PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33 (1st Dist. 2002); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981). Once the Department establishes its *prima facie* case by submitting a certified copy of its determination into evidence, the burden is placed on the taxpayer to introduce evidence to prove the legitimacy of his or her claim. PPG Industries at 33. The taxpayer has the burden of overcoming the *prima facie* case by presenting sufficient documentary evidence to support his or her claim. *Id.* The taxpayer’s testimony alone is not sufficient. *Id.*

The Department’s *prima facie* case was established in this matter when its certified record concerning the tax due was admitted into evidence. In response to this, the taxpayers did not present any evidence indicating that the Department’s determination was incorrect, and they were not able to dispute the Department’s calculations. The documents that the taxpayers offered concerning their pension and social security income and the amounts previously paid to the Department were taken into account when the

Department recalculated the amount owed by the taxpayers. Because the taxpayers have not presented any evidence to rebut the Department's *prima facie* case, the Department's determination must be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the Department's recalculation of the amount of tax owed for the years 1999, 2000, and 2001 be finalized.

Linda Olivero
Administrative Law Judge

Enter: September 17, 2008