

IT 11-08

Tax Type: Income Tax

Issue: Non-Filers (Income Tax)

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

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

v.

**ABC BUSINESS,
Taxpayer**

**No. XXXXX
Account ID XXXXX
Letter ID XXXXX
Tax Years 1998-2003**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Mehpara Suleman on behalf of the Illinois Department of Revenue; John Doe *pro se*, on behalf of ABC Business

Synopsis:

This matter involves a protest filed by ABC Business ("taxpayer") protesting Notices of Deficiency ("NODs") the Illinois Department of Revenue ("Department") issued to it assessing tax deficiencies for calendar years 1998 through 2003. The NODs assessed tax, penalties and interest for the taxpayer's failure to file Illinois Corporation Income and Replacement Tax returns for these years.

A hearing in this matter what held at the Department's offices in Chicago, Illinois on August 11, 2011 at which the taxpayer's President and owner offered testimony. I

have reviewed the evidence and I am including in this recommendation findings of fact and conclusions of law. I recommend that the NODs at issue be finalized as issued.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the NODs issued on August 13, 2010 assessing the taxpayer \$1,290.50 in tax, penalty and interest for the tax years ending December 31, 1998 through December 31, 2003. Department Exhibit ("Ex.") 1.
2. The taxpayer is an Illinois registered corporation having its principal business address in Elmhurst, Illinois. Department Ex. 1, 2.
3. On August 13, 2010, the Department issued NODs to the taxpayer after determining that the taxpayer was required to file Illinois corporate income tax returns, and that it did not file such returns for the tax years ending December 31, 1998 through December 31, 2003. *Id.*
4. Laura Evans ("Evans") is an auditor employed by the Department. Department Ex. 2. During 2007 and 2008, Evans conducted an audit of the taxpayer. *Id.* Based upon information obtained from the Internal Revenue Service and estimates of tax liability based upon such information, she determined that the taxpayer failed to report: net taxable income for 1998 of \$2796, net taxable income for 1999 of \$2134, net taxable income for 2000 of \$2206, net taxable income for 2001 of \$2269, net taxable income for 2002 of \$2305 and net taxable income for 2003 of \$2358. *Id.* In addition to the liability for tax determined based upon the auditor's findings, the Department's NODs, in the statement

portion of the NODs, assessed late filing and the late payment penalties.

Department Ex. 1.

Conclusions of Law:

Section 904 of the Illinois Income Tax Act ("IITA") provides:

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amounts so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a Notice of Deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed.

35 ILCS 5/904 (b)

The *prima facie* correctness of the Department's determination that the taxpayer failed to file Illinois income tax returns, and that the tax due was in the amount proposed, was established when the NODs were introduced into evidence at the hearing. 35 ILCS 5/904; 35 ILCS 5/914. The taxpayer offered no evidence to show that the Department's determination that it did not file Illinois income tax returns for calendar years 1998 through 2003 was incorrect. Thus, I conclude that the Department correctly determined that the taxpayer failed to file original IL-1120, Corporation Income and Replacement Tax returns for the aforementioned tax years.

The taxpayer contends that the amounts shown as income on the NODs for the tax years at issue are in error. Transcript ("Tr.") pp. 16, 17. In support of this claim, the taxpayer's President and owner testified that the Internal Revenue Service audited the taxpayer's books and records and determined that it had no income tax liability for these tax years. *Id.* The taxpayer argues that, in light of the Internal Revenue Service's

determination of the taxpayer's liability, the liabilities determined by Department were not proper. Tr. pp. 19, 20.

The taxpayer asserts that the Internal Revenue Service conducted an audit of its books and records and determined that it had no income tax liability for the aforementioned tax years. Tr. pp. 16, 17. While the taxpayer could have easily corroborated this claim by producing at the hearing a copy of a federal transcript for each of the tax years in controversy showing that it had no federal income tax liability during the tax years at issue, it failed to produce this or any other similar documentation supporting its contention. As previously noted, the NODs issued in this case are *prima facie* evidence so long as the proposed assessments meet a minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill. App. 3d 210 (1983). In order to overcome the *prima facie* correctness of the Department's determination, the taxpayer has the burden of presenting competent documentary evidence that the proposed adjustments are not correct. Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978); Central Furniture Mart, Inc. v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Because the taxpayer has offered only uncorroborated, self-serving assertions to support its claim, and has not shown that the Department's determination was in any way unreasonable, it has not met the burden of proof incumbent upon it to rebut the Department's *prima facie* case. Moreover, for the reasons indicated below, I do not find credible the taxpayer's claim that the Internal Revenue Service found no tax liability to be due for the tax years at issue.

Illinois income tax is imposed upon the taxpayer's net income which is its base income for each tax year that is allocable or apportionable to Illinois less the Illinois net loss deduction and less the standard exemption. 35 **ILCS** 5/202; 86 IL Admin. Code, ch. 1, section 100.2050. The corporation's base income is its taxable income properly reportable for federal income tax purposes for each tax year with certain modifications. 35 **ILCS** 5/203(b); 5/203(e). Section 203(h) of the IITA, 35 **ILCS** 5/203(h), provides as follows:

(h) Legislative intention. Except as expressly provided by this section, there shall be no modifications or limitations on the amount of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income, or taxable income for federal income tax purposes for the taxable year, or the amount of such items entering into the computation of base income and net income under this Act for such taxable year...[.]

Pursuant to section 203(h), a taxpayer cannot modify or limit the amount of income, gain, loss or deduction taken into account in figuring its federal income tax when computing its Illinois tax liability for any tax year.

During the hearing on this matter, and through documentation submitted into the record, the Department established that the taxpayer's assessment was based on the taxpayer's federal taxable income as reported or otherwise determined for federal income tax purposes. Tr. p. 9; Department Ex. 1, 2 . As indicated by the foregoing, Illinois law bases a taxpayer's net income and base income on this amount. See also form IL -1120 Corporation Income and Replacement Tax Return Instructions, p. 3. Since Illinois law bases net income and base income for its purposes on what is accepted by the Internal Revenue Service, in order to support a modification to net income or base income, a taxpayer must prove that such a modification has been made by the Internal Revenue

Service. Absent such a showing, Illinois is legally bound by the Internal Revenue Service's determination with respect to this matter.

In accordance with the foregoing, absent proof to the contrary, I must conclude that the Department used the taxpayer's income as properly determined for federal income tax purposes in arriving at its assessment. In the instant case, the taxpayer produced no evidence to support its claim that the taxpayer's federal income, as determined for federal income tax purposes, was less than the amount of federal income used by the Department in arriving at the taxpayer's tax liability reflected in the NODs. Since the taxpayer failed to show any Internal Revenue Service determination that amounts the Internal Revenue Service used to compute the taxpayer's federal income tax differed from the amounts that the Department has shown as reported to it by the Internal Revenue Service and used by the Department in arriving at the taxpayer's tax liability, I do not find credible the taxpayer's claim that its Illinois income tax liability was not based upon the taxpayer's actual federal income tax liability as determined for federal income tax purposes.

Conclusion:

I recommend that the tax, penalties and interest proposed in the NODs be finalized, with interest to accrue pursuant to statute.

Ted Sherrod
Administrative Law Judge

Date: August 22, 2011