

IT 13-01

Tax Type: Income Tax

Tax Issue: Non-Filer (Failure To File Returns – Extends Limit)
Federal Change (Individual)

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JANE DOE,
Taxpayer

No. XXXX
Account ID XXXX
Letter ID XXXX
Tax Year 2007

Ted Sherrod
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Sean Cullinan on behalf of the Illinois Department of Revenue; Jane Doe, *pro se*.

Synopsis:

The Illinois Department of Revenue ("Department") issued a Notice of Deficiency for Individual Income Tax to Jane Doe in the amount of \$XXXX. The taxpayer timely protested this Notice of Deficiency and requested a hearing to consider this matter. At the hearing held October 25, 2012, the Department established its *prima facie* case and the taxpayer offered testimony, but presented no books or records on her behalf. After considering the evidence admitted at hearing, I recommend that the Notice of Deficiency be finalized as issued. In support of this recommendation, the following "findings of fact" and "conclusions of law" are made.

Findings of Fact:

1. On December 29, 2010, the Department issued to Jane Doe (“taxpayer”) a Notice of Deficiency for Individual Income Tax (“NOD”) regarding the calendar year ending December 31, 2007. Department Ex. 1.

2. In its NOD, the Department notified the taxpayer as follows:

Based on information we received from the Internal Revenue Service, under authorization of the Internal Revenue Code, Section 6103(d), we are proposing the deficiency identified in this notice for the reporting period listed above. The attached EDA-131, Examiner’s Report, shows the computation of your deficiency and the “amount to be paid.”

Id.

3. The Examiner’s Report attached to the NOD indicated that the taxpayer failed to file a return or pay tax for the tax year ended 12/31/07, and detailed the amount the taxpayer would have reported on her original Illinois return for that year. *Id.*

4. On its Examiner’s Report regarding the NOD for 2007, the Department:

- Indicated an adjusted gross income for the taxpayer in the amount of \$XXX; and
- Indicated a \$XXXX subtraction modification to adjusted gross income for an “exemption amount.” *Id.*

5. As a result of the changes described above, the Department determined that the taxpayer owed, and proposed to assess, a \$XXXX Illinois income tax on the taxpayer’s corrected Illinois net income of \$XXXX. *Id.* It also proposed to assess penalties in the amount of \$XXX plus statutory interest, regarding the deficiency. *Id.*

Conclusions of Law:

In the instant case, the taxpayer, Jane Doe, is contesting the Department’s determination that she failed to file her 2007 Illinois income tax return, and that she is liable for taxes for that

year in the amount shown to be due on the Department's Notice of Deficiency ("NOD") issued for that year. Section 904(a) of the Illinois Income Tax Act provides:

Examination of return. As soon as practicable after a return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, it shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. If the Department finds that the tax paid is more than the correct amount, it shall credit or refund the overpayment as provided by Section 909. The findings of the Department under this subsection shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due.
35 ILCS 5/904(a)

When the Department introduced its NOD into evidence under the certificate of the Director, it presented *prima facie* proof that the taxpayer owed tax, penalties and interest due in the amount proposed. 35 ILCS 5/904(a). Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295-296 (1st Dist. 1981).

The Department's *prima facie* case is a rebuttable presumption. Branson v. Department of Revenue, 168 Ill. 2d 247, 260 (1995). After the Department introduces its *prima facie* case, the burden shifts to the taxpayer to establish that the Department's determination is not correct. *Id.* To overcome the Department's *prima facie* case, a taxpayer must do more than just deny the accuracy of the assessment. Balla, supra at 296-297. Instead, it must present documentary evidence to support its claims of error. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 34 (1st Dist. 2002).

At hearing, the taxpayer offered no documentary evidence regarding the amount or nature of any income she received, or of any other items taken into account when determining her Illinois income tax liability, for the year at issue. Nor did she offer any documentary evidence to show that the Department erred when determining that the taxpayer failed to file an original

Illinois individual income tax return for the tax year in controversy. Instead, the taxpayer stated, as her sole basis for objecting to the Department's assessment, as follows:

According to [the] Notice of Deficiency, it states that the Internal Revenue Code Section 6103(d), which states specifically that there can only be records transferred from the Federal IRS to the Illinois Department of Revenue by letter. ... I did file several motions to have this matter terminated based on that issue alone, and it was denied, so here we are.

Tr. p. 4.

As noted by the taxpayer, the Department has admitted that it relied upon information it received from the Internal Revenue Service in determining the taxpayer's liability. Specifically, the Department's NOD states as follows:

Based on information we received from the Internal Revenue Service, under authorization of the Internal Revenue Code, Section 6103(d), we are proposing the deficiency identified in this notice for the reporting period listed above. The attached EDA-131, Examiner's Report, shows the computation of your deficiency and the "amount to be paid."

Department Ex. 1.

On May 26, 2011, the taxpayer filed a "Motion to Strike 'Poisoned Fruit' " ("Motion") seeking to negate the Department's NOD based upon the Department's alleged unauthorized use of the taxpayer's federal tax information.¹ The taxpayer resubmitted this motion on August 1, 2011, and the taxpayer's Motion was denied by order entered August 22, 2011. The taxpayer's Motion is based upon section 6103(d) of the Internal Revenue Code, 26 U.S.C. Section 6103(d), which provides in pertinent part as follows:

(d) Disclosure to State tax officials and State and local law enforcement agencies

(1) In general. Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 21, 23, 24, 31, 32, 44, 51 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body or commission, or its legal representative, which is charged under the laws of such State with the responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such

¹ This Tribunal takes judicial notice of the taxpayer's Motion which is included as part of the record of the proceedings in this case.

laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(2) Disclosure to State audit agencies

(A) In general

Any returns or return information obtained under paragraph (1) by any State agency, body, or commission may be open to inspection by, or disclosure to, officers and employees of the State audit agency for the agency, body, or commission referred to in paragraph (1).

(B) State audit agency

For purposes of subparagraph (A), the term “State audit agency” means any State agency, body, or commission which is charged under the laws of the State with the responsibility of auditing State revenues and programs.

26 U.S.C. Section 6103(d)

The taxpayer’s Motion avers as follows:

The federal law very clearly requires that before the Internal Revenue Service can lawfully release any information to the State of Illinois Department of Revenue auditing agencies concerning any person, it is first necessary for an authorized employee of the Illinois Department of Revenue to make a request in writing from the Internal Revenue Service for the specific release of such personal tax information, identifying therein the name of the Illinois Department of Revenue employee(s) to whom the federal tax information is to be released. ...

Without such request letter being issued by the Illinois Department of Revenue employees, the actions of the Internal Revenue Service employee, in releasing unrequested information to the State tax agencies, is patently illegal, and a clear violation of both federal law and Petitioner’s constitutional rights to due process and privacy, under both the federal and State Constitutions. Any such federal records or personal information so received by the Illinois Department of Revenue, without first making the prerequisite written request for the release of such information, would constitute “poisoned fruit”. Evidentiary “poisoned fruit” is/are not admissible as proper evidence in an honest legal proceeding, or in any evidentiary manner to a court of law under the controlling rules of evidence.

As is apparent from the foregoing, the taxpayer seeks to invalidate the Department's NOD on the grounds that it was based upon the unauthorized and therefore illegal disclosure of confidential information by the Internal Revenue Service to the Department. The taxpayer claims that the release of her federal tax information used in arriving at her state tax liability was not received pursuant to a written request from an authorized employee of the Department.

A hearing on the taxpayer's Motion was held on August 1, 2011. During this hearing, in response to the taxpayer's Motion, the Department produced an "Amended Implementation Agreement Between the Illinois Department of Revenue and the Internal Revenue Service" ("Amended Implementation Agreement").² This document indicates that the Internal Revenue Service and the Department have entered into an agreement whereby the Department's Director of Revenue has requested, and the Internal Revenue Service has authorized the release of certain audit, delinquent federal return and magnetic tape information regarding Illinois residents on an ongoing basis. During the hearing on the Motion, which was not transcribed, the Department contended that this agreement fully complied with the requirements of section 6103(d) of the Internal Revenue Code, and that the information issued pursuant to this agreement in the instant case was a type of information the Internal Revenue Service was expressly authorized to issue to the Department by this agreement. As noted in the transcript of the administrative hearing in this case (at p. 4 of the Transcript of the hearing held October 25, 2012), the type of information the Department contends it relied upon is a magnetic tape of federal income tax return information pertaining to Illinois residents that do not elect to itemize on their federal individual income tax returns. The release of this type of information by the Internal Revenue Service to the Department is authorized by item 5 on page 5 of the Amended Implementation Agreement.

² This Tribunal takes judicial notice of the Amended Implementation Agreement and is accordingly including this document as part of the record of the hearing proceedings in this matter.

The taxpayer's claim that the Department relied upon illegally obtained tax information, namely documentation that was not covered by the Amended Implementation Agreement or that was otherwise barred by section 6103(d) of the Internal Revenue Code is based solely upon the taxpayer's testimony and testimonial assertions contained in the taxpayer's Motion. The taxpayer produced no documentation, such as the federal return she filed for the tax year in controversy, which would allow an empirical analysis of her claim that her Federal return information was not covered by the Amended Implementation Agreement based upon documentary evidence. Nor did the taxpayer even attempt to show that the Amended Implementation Agreement was not duly promulgated in full compliance with the requirements of section 6103(d) of the Internal Revenue Code.

As previously noted, the Department's assessment determination is presumed to be correct. 35 ILCS 5/904(a). The Illinois General Assembly has granted *prima facie* correct status to the Department's factual determinations in order to assist it in its burden to show, for example, that a particular taxpayer was subject to tax, or that the amount of tax proposed to be due was correct. Balla, *supra* at 295-296. Illinois' assignment of a statutory presumption of correctness to the state's determination in tax cases places the burden squarely upon the person best able to offer proof of disputed facts. PPG Industries, Inc., *supra*. If the Department erred when determining a taxpayer's liability, the taxpayer is in a better position than the Department to be able to point out and correct any error the Department might have made. *Id.*

In the instant case, the taxpayer did not, and as a matter of Illinois law cannot, rebut the Department's *prima facie* case merely by testifying that the taxpayer's rights were violated. *Id.* at 34. Accordingly, the taxpayer did not rebut the Department's *prima facie* case by testifying and arguing that the Department relied upon information improperly obtained from the IRS when

making its determination without producing books and records to show that the information she provided to the Internal Revenue Service was not covered by the Amended Implementation Agreement, or to otherwise support her claim. PPG Industries, supra (taxpayer had the burden of overcoming the Department's *prima facie* case through documentary evidence, meaning books and records, and not mere testimony).

Conclusion:

WHEREFORE, for the reasons stated above I recommend that the Director finalize the Notice of Deficiency as issued, with penalties and interest to accrue pursuant to statute.

**Ted Sherrod
Administrative Law Judge**

Date: February 4, 2013