

IT 13-07

Tax Type: Income Tax

Tax Issue: Federal Change (Individual)

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

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

JOHN DOE,

TAXPAYER,

No. XXXX  
Letter ID: XXXX  
Account ID: XXXX  
Tax Year: 2009

Kenneth J. Galvin  
Administrative Law Judge

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**ORDER ON DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT**

This cause, coming on to be heard on the Department of Revenue's "Motion for Summary Judgment" filed on August 7, 2013 (hereinafter the "Motion"), the Department represented by Ralph Bassett and the Taxpayer appearing *pro se*. In an Order dated August 8, 2013, Taxpayer was given until September 27, 2013 to respond to the Motion. No response has been filed.

**IT IS HEREBY FOUND THAT:**

1. The purpose of a summary judgment motion is to determine the existence or absence of a genuine issue of material fact. Carruthers v. B.C. Christopher & Company, 57 Ill. 2d 376 (1974). The motion cannot be used to resolve an issue of material fact when one is found to exist. Addison v. Whittenberg, 124 Ill. 2d 287 (1988). Summary judgment is a drastic method of disposing of a case, and it should not be employed unless the pleadings, depositions and affidavits, if any, show that there is no genuine issue of material fact and

that the right of the moving party to judgment as a matter of law is free from doubt. Purtill v. Hess, 111 Ill. 2d 489 (1986).

2. Taxpayer filed a Form IL-1040-X, Amended Individual Income Tax Return, dated December 22, 2011, for the year 2009.
3. In response to the IL-1040-X, the Department issued a Notice of Claim Denial on March 20, 2012, in which it denied Taxpayer's claim for earned income credit and requested a "complete copy of the federal finalization notification you received from the Internal Revenue Service (IRS) stating that they accepted the changes on your U.S. Form 1040-X, Amended U.S. Individual Income Tax Return."
4. Taxpayer protested the Notice of Claim Denial on April 13, 2012.
5. As of today's date, Taxpayer has failed to provide the federal finalization notification showing that his amended federal return, U.S. Form 1040-X, has been accepted by the IRS.

#### **CONCLUSIONS OF LAW:**

Illinois courts have recognized summary judgment motions in administrative proceedings. "Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure." Bloom Township High School v. Illinois Commerce Commission, 309 Ill. App. 3d 163, 177 (1<sup>st</sup> Dist. 1999). "A summary decision is the administrative agency procedural analogue to the motion for summary judgment in the Code of Civil Procedure." Cano v. Village of Dolton, 250 Ill. App. 3d 130, 138 (1<sup>st</sup> Dist. 1993).

When an individual files an amended federal return claiming an earned income credit, an amended State of Illinois return claiming the credit should not be filed until after the federal

amendment is agreed to by the IRS, and then it should be filed within 120 days after the IRS has reached such a conclusion. 35 ILCS 5/506(b). There is no genuine issue of material fact that Mr. Dickerson filed his Illinois Form 1040-X without submitting a federal finalization notification to the Department, as of today's date, showing that the IRS accepted the changes on his U.S. Form 1040-X.

For the above reasons, it is my recommendation that the Department's Motion for Summary Judgment be granted, the Department's Notice of Claim Denial issued on March 20, 2012 should be finalized and all further proceedings in this case are cancelled and the case is closed.

October 18, 2013

Kenneth J. Galvin  
Administrative Law Judge