

IT 05-11

Tax Type: Income Tax

Issue: 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.

JOHN DOE,
Taxpayer

No. 05-IT-0000
SSN: 000-00-0000
TYE: 12/31/02

Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

This matter comes on for hearing pursuant to *John Doe's* (“*Doe*” or “Taxpayer”) protest of a Notice of Deficiency (“NOD”) issued against him for Illinois income tax and various penalties for the tax year ending 12/31/02. Taxpayer timely protested the NOD and he appeared at hearing. Prior to the hearing, and based upon documentation supplied by the taxpayer, the Department amended the NOD to reflect withholding tax paid on this account for the tax year at issue. After a review of the documents of record and the testimony provided, it is my recommendation that the taxpayer’s account be adjusted to reflect the appropriate withholding tax credit and that the late filing penalty be applied. In support of this recommendation, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Deficiency showing proposed income tax owed as well as penalties applied. Department Ex. No. 1
2. Withholding tax of \$623.00 was paid to the State on behalf of taxpayer for the tax year that was not reflected on the NOD. Department Ex. No. 2

Conclusions of Law:

Illinois residents, such as taxpayer, are required to file an income tax return with the State on or before April 15 following the close of the taxable year. 35 ILCS 5/505(2). Failure to timely file such a return results in the imposition of a penalty (35 ILCS 5/1001) with the calculation of the penalty made pursuant to section 3-3 of the Uniform Penalty and Interest Act. 35 ILCS 735/3-3 That statute provides, in pertinent part, that a penalty not to exceed \$250.00 shall be imposed for the failure to file the return timely, and, further, if the necessary return is not filed within 30 days of the Department's notice of non-filing, an additional penalty shall apply.

In this matter, the Department issued a Notice of Proposed Tax Due to taxpayer on April 8, 2005, advising taxpayer of an amount due of \$1,141 that included tax and penalties. Department Ex. No. 1. The taxpayer protested this proposed assessment and at hearing averred that he always filed his Illinois income taxes, and he did so timely for the year at issue. He testified that he made his filing by placing the return with the United States postal service that does not provide a receipt for mailing. Tr. pp. 10-12 Taxpayer

offered that his return for that year showed that he did not owe the State any further taxes, nor did the State owe him a refund. Tr. p. 11

Prior to the hearing in this cause, the taxpayer provided the Department with evidence of withholding tax payments made on his behalf for the tax year. Department Ex. No. 2 The Department did not find any evidence of an estimated tax payment of \$99.00 made by Mr. *Doe*, as he alleged. Id.

Unfortunately, taxpayer did not have any proof of filing for the 2002 tax year, such as a certified mail receipt from the United States Postal Service. See United States Postal Service website, <http://www.usps.com> (availability of certified mailing with notification of delivery for first class mail). Nor did taxpayer provide documentary evidence of his purported estimated payment, which could have been a cancelled check or money order receipt. Based upon this record, I must conclude that the imposition of the initial \$250.00 late filing penalty is appropriate.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's proposed income tax liability, as amended to show credit for withholding taxes paid, be affirmed, as well as the late filing penalty.¹

Date: 11/22/2005

Mimi Brin
Administrative Law Judge

¹ Since the tax liability is \$99.00 more than the withholding taxes paid, there is no penalty for failure to pay estimated taxes. 35 ILCS 5/803