

IT 95-86

Tax Type: INCOME TAX

Issue: Income Earned In Illinois/Individual Residency

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

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

v.)

No.)

XXXXX,)

Taxpayer(s))

James P. Pieczonka)

Administrative Law Judge)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: James P. Pieczonka, Administrative Law Judge, presided at the hearing of the subject matter and presented the Department's prima facie case. Taxpayer, appeared with his attorney of record.

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Request for Hearing by XXXXX, (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on November 7, 1994. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file Illinois Income Tax returns for the tax years ending December 31, 1988 through December 31, 1990. The Notice asserted tax liabilities, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

Taxpayer filed a timely Protest and requested a hearing. The hearing in this matter was held on June 22, 1995. The issues to be resolved are:

- (1). Whether the taxpayer failed to file Illinois income tax returns for the 1988-1990 tax years?

(2). Whether penalties should be assessed pursuant to 35 ILCS 5/1001, 5/1005 and 5/804?

Following a hearing on the merits and the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be reduced as per the recalculated taxes and payments based upon the IL-1040 returns filed by taxpayer on May 24, 1995; that the Section 804 penalties be upheld and that the Section 1001 and 1005 penalties for 1989 and 1990 be abated.

FINDINGS OF FACT:

1. For the subject taxable years, taxpayer was an Illinois resident, earned income in the State of Illinois as a self-employed fish tank lessor and maintenanceman. The Department did not have record of IL-1040 returns filed by taxpayer for the years in question as determined from receipt of federal information dated May 21, 1993. (Dept. Ex. No's. 1 and 2)

2. The Department of Revenue issued a Notice of Deficiency on November 7, 1994 for the subject taxable years. (Dept. Ex. No. 2)

3. Taxpayer filed a timely Protest. In his Protest, taxpayer requested additional time to file his returns. (Dept. Ex. No. 3)

4. On May 24, 1995, taxpayer filed IL-1040 returns for the years ended 12/31/88, 12/31/89 and 12/31/90. Said returns were prepared by an accountant and executed by taxpayer on April 19, 1993. (Dept. Ex. No. 4).

5. On June 20, 1995, Revenue auditor, Jesus Cruz, reaudited taxpayer's returns and gave him credit for Illinois property taxes paid for all three years and an IL-505 payment for 1989 in the amount of \$400.00 on March 30, 1989. (Dept. Ex. No. 5)

6. At the hearing, taxpayer did not contest the amounts of recalculated taxes, but did contest the proposed Section 804, 1001 and 1005 penalties due to his medical condition during the years in question. Taxpayer offered evidence of a virus strain that he contracted in Africa in

1983-85 which resulted in chronic fatigue syndrome (Epstein-Barr virus and cytomegalovirus). During 1985 through 1990, taxpayer was unable to work a regular day, bedridden at times and was treated with prosac for chronic depression and sleep apnea. (Taxpayer Ex. No.'s 6 and 7)

7. Finally, taxpayer contended that he relied on his prior accountant to file his returns for the years in question due to his medical condition. He first learned of the unfiled returns and unpaid taxes upon receipt of the notification from the Department on July 20, 1993. (Dept. Ex. No. 1)

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayer, as an Illinois resident earned income in this state or was compensated by an Illinois employer. Accordingly, he was subject to Illinois income tax and was required to timely pay and file returns under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayer has met that burden in this case in part.

The taxpayer presented evidence, consisting of his untimely filed IL-1040 returns prepared by his accountant for the years in question. Said returns were not filed with the Department until May 24, 1995. However, a reaudit of the federal information and taxpayer's returns resulted in a reduced tax amount and penalties to rebut the Department's returns and prima facie case in part.

Taxpayer presented evidence which is consistent, probable, and identified with his federal returns. *Fillichio v. Department of Revenue*,

15 Ill.2d 327 (1958) Accordingly, the taxpayer's IL-1040 returns are acceptable as filed subject to penalties. Therefore, the Department's prima facie case that no return was filed and no tax was paid for the years in question has been rebutted.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001 , 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively. Having determined that the taxpayer untimely filed his IL-1040 returns, and an estimated tax payment for 1988 was timely paid, the issue of imposition of these penalties must be addressed.

Taxpayer has not offered sufficient evidence of any exception to the 804 penalties to abate them for the years in question. Notwithstanding the \$400.00 payment for 1988, the estimated payment was not timely paid, therefore, the Section 804 penalty for 1988 was also justified. Consequently, the 804 penalties for 1988, 1989 and 1990 must be upheld in the recalculated amounts of \$42.00, \$61.00 and \$57.00 respectively.

As to the Section 1001 and 1005 penalties, taxpayer has offered sufficient evidence of reasonable cause to abate the subject penalties for all the years in question. Taxpayer presented credible testimony and documents as to the nature and extent of his medical condition that prevented him from managing his financial affairs during the years in question. Additionally, he offered evidence of reliance on his accountant to prepare and file his returns due to his medical condition for the subject years.

Consequently, taxpayer has offered evidence of reasonable cause sufficient to rebut the Department's case as to the imposition of the Section 1001 and 1005 penalties for the subject years.

It is my recommendation that taxpayer's IL-1040 returns dated April

19, 1993 and received by the Department on May 24, 1995 be accepted as filed and that the taxes and 804 penalties proposed in the Notice of Deficiency be upheld in the reaudit amounts. Additionally, the Section 1001 and 1005 penalties for 1989 and 1990 should be abated based upon reasonable cause.

James P. Pieczonka
Administrative Law Judge

September 6, 1995