

IT 95-89

Tax Type: INCOME TAX

Issue: Withholding Tax - Failure To File Return/Make Payment

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

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

v.)

TAXPAYER,)

Taxpayer(s))

No.)

James P. Pieczonka)

Administrative Law Judge)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely Protest by taxpayers (hereinafter referred to as the "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on December 27, 1990. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers had failed to file an Illinois 1040 Income Tax return for the year ended December 31, 1987. The Notice proposed a tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/804 and 5/1005 for failure to file an IL-1040 return, failure to make estimated tax payments and failure to pay the entire tax liability by the due date.

Taxpayers contended in their Protest that they timely filed an IL-1040 return for the year in question and remitted the balance due of \$72.00 at the time of filing. Taxpayers did not request a hearing in this matter but submitted an unexecuted copy of their 1987 return and another check for \$72.00 in an attempt to resolve the matter.

The issues to be resolved are:

(1) Whether taxpayers filed an IL-1040 return for the year ended December 31, 1987?

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

Following a review of the documents contained in the file, it is recommended that the Notice of Deficiency be upheld for the year ended December 31, 1987.

FINDINGS OF FACT:

1. For the taxable year ended December 31, 1987, taxpayers earned income and resided in Illinois. Dept. Ex. No. 1

2. Taxpayers did not file an original Illinois 1040 income tax return for the year ended December 31, 1987. Dept. Ex. No. 1

3. The Department issued a Notice of Deficiency for the subject taxable year on December 27, 1990. Dept. Ex. No. 1

4. Taxpayers' Protest submitted evidence of the filing of an original IL-1040 return, however it was not signed and did not have documentation to support a credit for real estate taxes paid or a W-2 form to show Illinois income taxes withheld. Dept. Ex. No. 2

5. The Department records did not show that an original IL-1040 return was filed or that a payment of \$72.00 was received by the Department with a timely filed return. However, the record did show receipt of a response to a Notice of Inadequate Protest and a \$72.00 payment on October 31, 1991.

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) On this record, taxpayers have not offered sufficient evidence of the filing of an original IL-1040 or Illinois taxes withheld. Taxpayers have failed to rebut the Department's prima facie case, therefore, the Notice of Deficiency must be upheld subject to a credit for the \$72.00 payment.

The record did not contain any evidence that an original return was filed, taxes paid or that Illinois income taxes were withheld for

taxpayers. Accordingly, taxpayers were subject to Illinois income taxes for the year ended December 31, 1987, required to timely file an original IL-1040 return and remit the correct taxes due pursuant to 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). Taxpayers have not met that burden on this record.

In addition to asserting a tax deficiency for 1987, the Notice proposes penalties pursuant to 35 ILCS 5/1001, 5/804 and 5/1005 for failure to file, failure to remit estimated taxes and failure to pay the entire tax liability by the due date. Having determined that taxpayers were Illinois residents in 1987, that they failed to file an original IL-1040 return, remit estimated tax payments and pay income taxes due with said return, the imposition of said penalties is justified.

RECOMMENDATION: It is my recommendation that the subject Notice of Deficiency be upheld subject to a credit of \$72.00 for the payment made on October 31, 1991.

James P. Pieczonka
Administrative Law Judge

October 25, 1995