

IT 95-98  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

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

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DEPARTMENT OF REVENUE )  
STATE OF ILLINOIS )  
 )  
v. ) Docket:  
 )  
TAXPAYERS )  
 ) Hollis D. Worm  
 ) Administrative Law Judge  
Taxpayers(s) )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the 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 September 15, 1995. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers failed to advise the Department of a final federal change for the tax year ending December 31, 1991. The Notice asserted an increased tax liability, as well as a penalty pursuant to 35 ILCS 5/1005 for failure to pay the entire tax liability by the due date.

In their Protest, the taxpayers contend that they were unaware that income for retraining was taxable in the State of Illinois.

A formal hearing was held in this matter on November 3, 1995. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department of Revenue.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency, which indicates that a final change was made to the taxpayers' federal adjusted gross income which correspondingly increased their Illinois base income and resulted in increased Illinois income tax liability for the tax year ending December 31, 1991. Dept. Ex. No. 1

2. The taxpayers did not report the final federal change to the Department pursuant to 35 ILCS 5/506 (a) and (b).

3. The taxpayers filed a timely Protest to the Notice. Dept. Ex. No.2

4. The taxpayers failed to demonstrate that reasonable cause existed for failure to pay the entire tax liability by the due date.

CONCLUSIONS OF LAW: Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. 35 ILCS 5/506(a)(b). Here, there was such a final federal change which the taxpayers failed to report to the Department. Accordingly, the taxpayers are subject to additional tax for the subject tax year.

In addition to asserting a tax deficiency, the Notice proposes a penalty pursuant to 35 ILCS 5/1005 for failure to pay the entire tax liability by the due date. Penalties imposed under the provision of this statutory section, however, shall not apply if failure to pay the tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (Rorabaugh v. United States, 611 F.2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (Dumont Ventilation Company v. Department of Revenue, 99 Ill.App.3d 263 (3rd Dist. 1981)). The burden of proof is upon a taxpayer

to show by a preponderance of evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The taxpayers presented no evidence to support a finding that they made a good faith effort to determine their proper income tax liability. Consequently, the taxpayers have not met their burden of proof to show by a preponderance of evidence that they acted in good faith and exercised ordinary business care and prudence to pay their entire tax liability to the State of Illinois by the due date.

It is my recommendation that this matter be decided in favor of the Department of Revenue and the Notice of Deficiency be upheld in its entirety.

Hollis D. Worm  
Administrative Law Judge

November 7, 1995