

IT 96-2  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

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

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THE DEPARTMENT OF REVENUE )	
OF THE STATE OF ILLINOIS )	Docket No.
	) SSN
v.	)
	) Administrative Law Judge
TAXPAYER,	) Mary Gilhooly Japlon
Taxpayers	)

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RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter is before this administrative tribunal as a result of a timely protest filed on behalf of Taxpayers (hereinafter "Taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on October 27, 1992. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that there was a deficiency in the amount of the taxpayers' income tax liability for the year ending December 31, 1990 (hereinafter referred to as the "taxable year"). The Notice proposed the assessment of tax, penalty and interest for income earned that year.

The Taxpayers indicated in their protest that they were not requesting a formal hearing in this matter. Therefore, this case is being decided on the information provided by the taxpayers in their protest, on additional information supplied subsequent to the protest and on the Notice of Deficiency.

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 with respect to the year ending December 31, 1990, these Taxpayers failed to report all of their taxable income, resulting in a tax deficiency.

2. The Department adjusted the Taxpayers' Illinois base income to include the federally tax exempt interest claimed on their Federal tax return for the taxable year at issue.

3. The Department issued a Notice of Deficiency to the Taxpayers on October 27, 1992, setting forth tax and penalty in the amount of \$1,195.00.

4. The Taxpayers timely protested the Notice, but did not request a formal hearing.

5. The penalty proposed to be assessed was for failure to pay the entire tax liability by the due date of the return.

6. During the course of these administrative proceedings, the taxpayers, through their attorney, reviewed Department of Revenue Publication 101 which sets forth certain bonds whose income is exempt from Illinois income tax.

7. Pursuant to a letter dated June 22, 1995, the taxpayers, through their attorney, conceded that of the 48 municipal bonds held by the Taxpayers during the taxable year at issue, only two are exempt from Illinois income tax.

8. The taxpayers subsequently provided further substantiation that the interest income from two of the bonds (Illinois Housing Development Authority bonds) is exempt from taxation.

9. There has been no evidence of reasonable cause proffered for the Taxpayers' failure to pay.

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides in pertinent part:

Sec. 904. Deficiencies and Overpayments.

\* \* \*

(a) Examination of return. As soon as practicable after a return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, it shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. ... The findings of the Department under this subsection shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a).

The deficiency proposed in the Notice arose from interest income that the taxpayers thought was exempt from Illinois income tax because it is exempt from federal income tax. However, 86 Admin. Code ch. I, Sec. 100.2470(f) provides that:

Interest from state and local obligations is not exempt from Illinois income tax except where authorizing legislation adopted after August 1, 1969, specifically provides for an exemption.

In addition, Illinois Department of Revenue Publication 101 - Income Exempt from Tax, enumerates at (f), the types of bonds that generate exempt income.

Subsequent to their protest, the taxpayers tendered an affidavit wherein they describe two particular bonds issued by the Illinois Housing Development Authority, and attest that they are the owners of said bonds which generated income that was included in the proposed deficiency. These two particular bonds are in fact enumerated in Publication 101; the income generated therefrom is therefore exempt from Illinois income tax.

In a letter dated June 22, 1995, the Taxpayer's representative concluded that the balance of the bonds at issue generate income that is in fact not exempt.

Recommendation:

Based upon the evidence of record and the law applied thereto, it is my recommendation that the Notice of Deficiency issued in this cause be revised in accordance with the evidence offered by the Taxpayers.

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Administrative Law Judge