

IT 96-3
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

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

DEPARTMENT OF REVENUE
STATE OF ILLINOIS

v.

TAXPAYERS

Taxpayer(s)

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Docket:

Wendy S. Paul
Admin. Law Judge

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter comes on for hearing pursuant to the taxpayers' timely protests of Amended Notices of Deficiency issued by the Department on July 28, 1995. At issue are the questions whether taxpayers are liable for tax deficiencies and for penalties pursuant to 35 ILCS 5/1001; 5/1005 and 5/804. A hearing was held on November 17, 1995. At the hearing TAXPAYER testified on behalf of the taxpayers. 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 on all issues.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Amended Notices of Deficiency. (Dept. Ex. Nos. 1; 2)

2. Taxpayers were required to but failed to file Illinois income tax returns and timely pay their tax liabilities for calendar years 1987 through 1991. (Dept. Ex. Nos. 1; 2)

3. The line items reflected on the Department's Notices of Deficiency were derived from information obtained by the Department of Revenue from the Internal Revenue Service regarding a final federal change for the tax years at issue and accepted by taxpayers in July, 1993. (Dept. Ex. Nos. 1; 2; 4)

4. In their Protest and at the hearing, taxpayers did not dispute their failure to have filed tax returns or their failure to timely pay their taxes, including estimated taxes to the state of Illinois for the years at issue. They disputed, however, the Department's computations, based upon amended federal

returns which they stated were filed with the Internal Revenue Service after the final federal change referred to in Paragraph 3. (Dept. Ex. No. 3; Testimony of Taxpayer)

5. Taxpayers presented an offer in compromise with the Internal Revenue Service covering the tax years at issue. (Taxpayer Ex. No. 1)

6. Taxpayers failed to present proof that the amended federal returns which they filed were ever accepted by the Internal Revenue Service.

7. Taxpayers failed to present proof sufficient for abatement of penalties imposed pursuant to 35 ILCS 5/1001, 1005 and 804.

Conclusions of Law:

On examination of the record established, taxpayers have failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's *prima facie* case.

Taxpayers are not contesting the facts that they failed to file tax returns and timely pay taxes, including estimates, for the tax years at issue. They are solely contesting the amounts of the tax deficiencies and the imposition of penalties pursuant to 35 ILCS 5/1001; 1005; and 804.

Regarding the amount of the tax deficiencies, taxpayers contend that the line items upon which the Notices of Deficiency were based are incorrect. According to taxpayers, the line items should be based upon certain federal amended returns which they filed with the Internal Revenue Service subsequent to the final federal change which formed the basis for the Department's Notices. The amended federal returns increased their federal Schedule C deductions and accordingly decreased their adjusted gross income. Taxpayers, however, have failed to provide evidence that their amended returns were accepted by the Internal Revenue Service. One possible reason for the lack of acceptance is that taxpayers had submitted an offer in compromise to the Internal Revenue Service, and that once the offer process was begun, neither taxpayers nor the Service were concerned about the acceptance of the amended returns.

Regardless of whether or not such returns were necessary at the federal level, a proper determination of an individual taxpayer's Illinois state income tax liability cannot be made without a federal determination of adjusted gross income. For an individual taxpayer, base income is defined as an amount equal to the taxpayer's federal adjusted gross income for the taxable year, with certain modifications not here relevant. 35 ILCS 5/203(a). Here, the Department's computations were based upon the latest available computations from the Internal Revenue Service, which had been accepted by taxpayers.

Since there was no evidence that these computations had been changed federally, as by acceptance of taxpayers' amended federal returns, the Department has no alternative but to accept them. Should taxpayers pursue an attempt to have their federal amended returns accepted federally, then they may, within one year of payment of the tax, file a timely claim for refund with the Department. 35 ILCS 5/911(a)(1).

At the hearing, TAXPAYER testified about certain business reverses which got out of control when, in 1987, he left his salaried position as a sales manager and formed his own company. While this was an unfortunate situation, I do not find that it constituted a basis for taxpayers' failure to timely file returns and/or pay their tax liabilities.

Accordingly, it is recommended that the Amended Notices of Deficiency be upheld in their entirety.

Date: January 9, 1996

Wendy S. Paul
Administrative Law Judge