

IT 20-02

Tax Type: Income Tax

Tax Issue: Books and Records Insufficient; Statute of Limitations Application

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

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN DOE,

TAXPAYER.

No. XX-IT-XXX

**Kelly Yi
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Lori Jordan and Ms. Susan Budzileni, Special Assistant Attorneys General, appeared for the Illinois Department of Revenue; Mr. *John Doe* appeared *pro se*.

SYNOPSIS: This matter arose when Mr. *John Doe* (“Taxpayer”) timely protested a Notice of Deficiency the Illinois Department of Revenue (“Department”) issued to him to assess a tax deficiency for the tax year 2012. The Notice of Deficiency was based upon the Department’s determination that the Taxpayer failed to file an Illinois individual income tax return for the tax year at issue. On August 25, 2020, a formal administrative hearing was held with Taxpayer testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be affirmed.

FINDINGS OF FACT:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence, under the certificate of the Director,

the Notice of Deficiency, issued on May 13, 2019, assessing Taxpayer had a tax liability of \$XXXX plus \$XXX in interest for a total amount due of \$XXXX.

Dept. Ex. 1.

2. The Notice of Deficiency was issued based on information received from the Internal Revenue Service. Dept. Ex. 1.
3. Taxpayer's response to a set of interrogatories the Department propounded on him, answered under penalties of perjury, shows his income for the tax year at issue was \$XXXXX. Dept. Ex. 6.
4. The Department presented a certification of non-filing and non-payment of taxes at issue. Dept. Ex. 2-3.
5. Taxpayer did not produce any documentary evidence but testified that he "filed" the return along with a check for tax payment but admitted that the check was never cashed, and that the tax payment was never made. Recording; Dept. Ex. 4-5.
6. Taxpayer, however, argued that he shouldn't be "penalized" because he "filed" the return and that he's not at fault if the return was lost in the mail or the Department failed to properly process the return. Recording.
7. Taxpayer further argued that he was shielded from assessment of taxes at issue because the Department is barred from the statute of limitations under Section 505 of IITA past 3 years from the filing date. 35 ILCS 5/505. Recording.

CONCLUSIONS OF LAW:

The Illinois Income Tax Act (“IITA”), 35 ILCS 5/101 *et seq.*, requires that a tax return be filed by the fifteenth day of April following the close of the taxable year. 35 ILCS 5/505(2). Section 601 provides that every taxpayer required to file a return shall pay any tax due to the Department on or before the date fixed for filing such return. 35 ILCS 5/601(a). If a taxpayer failed to file a tax return, the Department shall determine the amount of the tax due and this amount shall be “*prima facie* evidence of the correctness of the amount due” 35 ILCS 5/904(b). Additionally, Section 904(a) of the Illinois Income Tax Act provides that a Notice of Deficiency is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a).

This is a case in which Taxpayer has produced no books, records or other documentary evidence in support of his claim that the Department's assessment of income tax liability under IITA, 35 ILCS 5/502 *et seq.*, for reporting period ending December 31, 2012 is erroneous. The Department's *prima facie* case is overcome, and the burden shifts to the Department to prove its case, only after the taxpayer presents evidence that is consistent, probable and closely identified with books and records, to show that the Department's determination was not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276 (1943). Oral testimony is not sufficient to overcome the *prima facie* correctness of the Department's determination. A.R. Barnes and Company v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988). It is well settled that a tax liability as prepared by the Department is a *prima facie* conclusive determination absent documentary evidence to the contrary. Copilevitz, supra; DuPage Liquor Store, supra; Masini v. Department of Revenue, 60 Ill.

App. 3d 11 (1st Dist. 1978); Howard Worthington, Inc. v. Department of Revenue, 96 Ill. App. 3d 1132 (2nd Dist. 1981).

The Department established its *prima facie* case by introducing the Notice of Deficiency and related documents into evidence. The burden thus shifted to Taxpayer to overcome the presumed correctness of the Department's determination. Masini, supra; Anderson v. Department of Revenue, 370 Ill. 225 (1938). However, Taxpayer, by his own admission, has offered no documentary evidence to overcome the Department's *prima facie* case. Recording. Pursuant to the aforementioned case law authority, I find that Taxpayer has presented insufficient evidence to overcome the *prima facie* correctness of the Department's Notice of Deficiency at issue.

Taxpayer is mistaken regarding the statute of limitations shielding him from tax assessment past 3 years from the filing date under Section 505 of IITA. Section 505 of IITA pertains to "Time and Place for Filing Returns," without any statutory language on the statute of limitations. 35 ILCS 5/505. Rather, Section 905 of IITA governs the "Limitations on Notices of Deficiency," which states in pertinent parts that:

- (a) In general. Except as otherwise provided in this Act:
 - (1) A notice of deficiency shall be issued not later than 3 years after the date the return was filed. 35 ILCS 5/905(a)(1).

- (c) No return or fraudulent return. If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by this Act, a notice of deficiency may be issued at any time. 35 ILCS 5/905(c).

Absent documentary evidence of proof of tax filing such as a U.S. certified mail receipt or a file stamped copy of the tax return, the Department had the statutory authority under Section 905(c) of IITA to issue the Notice of Deficiency as issued. Therefore,

Taxpayer is subject to the income tax, penalties and interest as assessed in the Notice of Deficiency.

Recommendation:

Wherefore, for the reasons stated above, it is recommended that the Notice of Deficiency dated May 13, 2019 be finalized as issued.

ENTER: September 28, 2020

Kelly K. Yi
Administrative Law Judge