

IT 11-09

Tax Type: Income Tax
Issue: Burden of Proof

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

THE DEPARTMENT OF REVENUE)	Docket No.	10-IT-0221
OF THE STATE OF ILLINOIS)	Tax Years	2005-2006
v.)		
JOHN AND JANE DOE,)	John E. White,	
Taxpayers)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared *pro se*, for himself and Jane Doe; Rickey Walton and Ralph Bassett, Jr., Special Assistants Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after John and Jane Doe (Taxpayers) protested two Notices of Deficiency (NODs) the Illinois Department of Revenue (Department) issued to them. The NODs proposed to assess Illinois income tax, late payment penalties, and interest regarding calendar years 2005 and 2006.

The hearing was held at the Department's offices on Chicago, Illinois. John Doe (John Doe) testified at hearing, and offered into evidence copies of federal statutes and regulations. After considering the evidence admitted at hearing, I am including in this recommendation findings of fact and conclusions of law. I recommend the NODs be finalized as issued.

Findings of Fact:

1. On February 5, 2010, the Department issued an NOD to Taxpayers regarding the

calendar year ending December 31, 2006. Department Ex. 1, pp. 3-4 (copy of NOD and form EDA-131 (titled, Examiner's Report)).

2. On April 28, 2010 the Department issued an NOD to Taxpayers regarding the calendar year ending December 31, 2005. Department Ex. 1, pp. 1-2 (copy of NOD and form EDA-131).
3. In each of the NODs, the Department notified Taxpayers, in pertinent part, as follows:

Based on information we received from the Internal Revenue Service, under authorization of the Internal Revenue Code, Section 6103(d), we are proposing the deficiency identified in this notice for the reporting period listed above. The attached EDA-131, Examiner's Report, shows the computation of your deficiency and the "amount to be paid".

Department Ex. 1, pp. 1, 3.

4. The Examiner's Report attached to each NOD detailed the changes the Department determined should be made to items Taxpayers previously reported on the original Illinois joint individual income tax return they filed for each year. Department Ex. 1, pp. 2, 4.
5. Regarding the NOD for 2005, the Department made the following pertinent changes to items Taxpayers originally reported on their Illinois return:
 - it increased, by \$42,435, the adjusted gross income (AGI) Taxpayers originally reported (\$46,551), for a corrected amount of \$88,986;
 - it increased, by \$2,616, the subtractions Taxpayers originally reported (\$31,696), for a corrected amount of \$34,686;
 - it increased, by \$39,445, the amount of Taxpayers' Illinois base income (\$14,855), for a corrected amount of \$54,300;
 - it increased, by \$39,445, the amount of Taxpayers' Illinois net income (\$9,855), for a corrected amount of \$49,300;
 - it increased, by \$1,183, the amount of Illinois income tax due on Taxpayers' correct net income of \$49,300.

Department Ex. 1, p. 2.

6. As a result of the changes described above, the Department determined that Taxpayers owed, and proposed to assess, an additional \$1,183 in Illinois income tax on Taxpayers' corrected Illinois net income of \$49,300. Department Ex. 1, pp. 1-2. It also proposed to assess a late payment penalty in the amount of \$118, an audit late payment penalty in the identical amount, plus statutory interest, regarding that deficiency. *Id.*
7. Regarding the NOD for 2006, the Department made the following pertinent changes to items Taxpayers originally reported on their Illinois return:
 - it increased, by \$58,960, the AGI Taxpayers originally reported (\$53,253), for a corrected amount of \$112,213;
 - it increased, by \$502, the subtractions Taxpayers originally reported (\$34,909), for a corrected amount of \$35,411;
 - it increased, by \$58,458, the amount of Taxpayers' Illinois base income (\$18,344), for a corrected amount of \$76,802;
 - it increased, by \$58,458, the amount of Taxpayers' Illinois net income (\$13,344), for a corrected amount of \$71,802;
 - it increased, by \$1,754, the amount of Illinois income tax due on Taxpayers' correct Illinois net income of \$71,802.

Department Ex. 1, p. 4.

8. As a result of those changes, the Department determined that Taxpayers owed, and proposed to assess, an additional \$1,754 in Illinois income tax on Taxpayers' corrected Illinois net income of \$71,802. Department Ex. 1, pp. 3-4. It also proposed to assess a late payment penalty in the amount of \$175, an audit late payment penalty in the identical amount, plus statutory interest. *Id.*

Conclusions of Law:

Section 904(a) of the Illinois Income Tax Act (IITA) provides:

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. If the Department finds that the tax paid is more than the correct amount, it shall credit or refund the overpayment as provided by Section 909. 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). When the Department introduced the NODs into evidence under the certificate of the Director, it presented prima facie proof that Taxpayers owed tax, penalties and interest due in the amount proposed. 35 ILCS 5/904(a); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981).

The Department's prima facie case is a rebuttable presumption. Branson v. Department of Revenue, 168 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995). After the Department introduces its prima facie case, the burden shifts to the taxpayer to establish that the Department's determinations are not correct. *Id.* To overcome the Department's prima facie case, a taxpayer must do more than just deny the accuracy of the assessments. Balla, 96 Ill. App. 3d at 296, 421 N.E.2d at 238. Instead, it must present documentary evidence to support its claims of error. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 34, 765 N.E.2d 34, 49 (1st Dist. 2002) (taxpayer had the burden of overcoming the Department's prima facie case through documentary evidence, meaning books and records, and not mere testimony.).

As indicated on the NODs, the Department's determinations here were based on the differences between certain items Taxpayers reported on their original Illinois individual income tax returns for 2005 and 2006, and information the Department obtained from the Internal Revenue Service (IRS) regarding its determinations regarding

items Taxpayers reported on their federal income tax returns for the same years. Department Ex. 1, pp. 1, 3. The Department also offered into evidence certain documents it obtained from the IRS regarding Taxpayers and the years at issue. Department Exs. 2-5, 7-12. John Doe identified all of those federal tax documents at hearing. Tr. pp. 20-41.

All of the federal tax documents consist of correspondence bearing the letterhead of the IRS, addressed to Taxpayers, either together or individually, and all of them pertain to the tax years at issue. Department Exs. 2-5, 7-12. Those exhibits are summarized within the following table:

Exhibit No.	From/To	Date	Title, Summary or Purpose of Correspondence	Attachments
2	IRS/Taxpayers	9/9/2010	Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320, regarding tax periods 12/31/2005 and 12/31/2006	Form 668(Y)(c), titled Notice of Federal Tax Lien
3	IRS/Jane Doe	9/14/2009	Notice of Penalty Charge for filing a frivolous return for tax year 12/31/2006	none
4	IRS/Jane Doe	4/12/2010	Notice of Penalty Charge for filing a frivolous return for tax year 12/31/2005	none
5	IRS/John Doe	5/17/2010	Notice of Penalty Charge for filing a frivolous return for tax year 12/31/2005	none
7	IRS/John Doe	12/4/2007	Form 12832 (cover letter to John Doe) with attachments regarding federal NOD to Taxpayers for tax years 12/31/2005	Letter 1912 Form 4959 – Examination Report Transfer to Appeals Request form Form 9465

8	IRS/Jane Doe	1/26/2009	Notice of intent to levy certain assets regarding tax year 2005	none
9	IRS/Jane Doe	1/26/2009	Notice of intent to levy certain assets regarding tax year 2006	none
10	IRS/John Doe	9/14/2009	Notice of intent to levy certain assets regarding tax year 2005	none
11	IRS/Jane Doe	4/10/2008	Form 12832 (cover letter to Janet) with attachments regarding federal NOD to Taxpayers for tax years 12/31/2005 and 12/31/2006	Letter 1912 Letter 531 (NOD) Form 4089-B Form 5278 Form 886-A Form 4959 – Examination Report Transfer to Appeals Request form Form 9465
12	IRS/Taxpayers	7/10/2008	Letter 3175C, notifying Taxpayers that their correspondence dated 5/6/2008 contained frivolous arguments	IRS Publication 2105 IRS Publication 1

Department Exs. 2-5, 7-12.

At hearing, Taxpayers offered no documentary evidence regarding the amount or the nature of any income they received, or of any other items taken into account when determining their Illinois income tax liability, for the years at issue. Nor did they offer any documentary evidence to show that the Department erred when determining that the information Taxpayers reported on their original Illinois joint individual income returns was not correct. Instead, after the Department rested, John Doe stated:

I would like to make some comments regarding all the documents that were brought into evidence.

Most of those documents were not signed, and they came from the Internal Revenue Service, and as I showed him and would like to present maybe as evidence Treasury Order 150-06, I believe it is.

I will be offering the Treasury Order that I discussed earlier as evidence, but it indicates the IRS is no longer in existence, the term, and therefore all the documents that we've reviewed earlier relative to penalties and levies and so on, none of them were signed, and they came, according to the title on them, from the IRS, which doesn't exist.

So I have a hard time believing with it being unsigned that it has any credibility; however, all of those were responded to.

Tr. pp. 43-44.

Additionally, in an attempt to show that the Department could not have properly obtained the relevant federal income tax information the Department reviewed prior to correcting Taxpayers' Illinois returns, John Doe cited to a federal regulation, 26 C.F.R § 31.3121(e)-1.¹ Tr. pp. 51-52. This particular regulation contains definitions of three terms ("State," "United States" and "citizen") that are used within federal statutes imposing federal employment taxes, that is, taxes imposed pursuant to the Federal Insurance Contributions Act (commonly called FICA). *See* 26 C.F.R § 31.0-1(b); 26 C.F.R. §§ 31.3101-1 to 31.3123-1; Wnuck v. Commissioner, 136 T.C. 24 (2011) (Tax

¹ This federal regulation section provides:

§ 31.3121(e)-1 State, United States, and citizen.

(a) When used in the regulations in this subpart, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Territories of Alaska and Hawaii before their admission as States, and (when used with respect to services performed after 1960) Guam and American Samoa.

(b) When used in the regulations in this subpart, the term "United States", when used in a geographical sense, means the several states (including the Territories of Alaska and Hawaii before their admission as States), the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. When used in the regulations in this subpart with respect to services performed after 1960, the term "United States" also includes Guam and American Samoa when the term is used in a geographical sense. The term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

26 C.F.R. § 31.3121(e)-1.

Court informing taxpayer there that § 31.3121(e)-1 “is not an income tax provision. It's an employment tax provision that really doesn't apply to your 1040 income tax return.”). John Doe, however, argued that this regulation must be construed to mean that, for federal *income* tax purposes, Illinois is not a state. Tr. pp. 51-54. This argument, I note, is expressly referred to within an IRS publication titled, “The Truth About Frivolous Tax Arguments” (hereafter, Frivolous Tax Arguments), the most recent version of which is dated January 1, 2011. Frivolous Tax Arguments, p. 26 (a .pdf copy is viewable at the IRS’ web site at: http://www.irs.gov/pub/irs-utl/friv_tax.pdf) (last viewed on October 12, 2011); *see also* Wnuck v. Commissioner, 136 T.C. 24 (2011), 2011 WL 2135394 (U.S. Tax Ct.), at *4 (referring to IRS’s Frivolous Tax Arguments publication). Taxpayers’ first argument (i.e., the IRS does not exist, Tr. pp. 43-44), is akin to another argument cited within that same publication. Frivolous Tax Arguments, p. 40 (The IRS is not an agency of the United States).

The most recent update to the IRS’s Frivolous Tax Arguments publication is over 80 pages long. *See* Frivolous Tax Arguments. For a more succinct assessment of such arguments, *see* Coleman v. C.I.R., 791 F.2d 68, 69 (7th Cir. 1986) (“Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. ‘Tax protesters’ have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead — so tax protesters think — to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.”). I will not address John Doe’s patently unserious arguments further, other than to dismiss them. The IRS exists (Department Exs. 2-5, 7-12; Wnuck, 136 T.C. 24 at

*8 (“The IRS is charged with the responsibility of assessing tax against taxpayers. Sec. 6201.”)), and Illinois is a state within the United States. Meadwestvaco Corp. v. Illinois Department of Revenue, 553 U.S. 16, 19, 128 S.Ct. 1498, 1502, 170 L.Ed.2d 404 (2008) (“We have been asked in this case to decide whether the State of Illinois constitutionally taxed an apportioned share of the capital gain realized by an out-of-state corporation on the sale of one of its business divisions.”); 1970 Ill. Const. pmb1.

During closing arguments, and in response to Department counsel’s argument that John Doe’s mere testimony was insufficient to rebut the Department’s prima facie case that Taxpayers owed tax in the amounts proposed, John Doe claimed to be insulted. Tr. pp. 76-80. Notwithstanding John Doe’s complaint, counsel’s argument accurately stated the effect of IITA § 904(a). 35 ILCS 5/904(a). The Illinois General Assembly granted prima facie correct status to the Department’s factual determinations in order to assist it in its burden to show, for example, that a particular taxpayer was subject to tax, or that the amount of tax proposed to be due was correct. Balla, 96 Ill. App. 3d at 296, 421 N.E.2d at 238. Illinois’ assignment of a statutory presumption of correctness to the state’s determinations in tax cases places the burden on the person best able to offer proof of disputed facts. Raleigh v. Illinois Department of Revenue, 530 U.S. 15, 21, 120 S.Ct. 1951, 1955, 147 L.Ed.2d 13 (2000); PPG Industries, Inc., 328 Ill. App. 3d at 34, 765 N.E.2d at 49.

If the Department erred when correcting Taxpayers’ returns, Taxpayers are in a better position to be able to point out and correct any inaccuracy the Department might have made. PPG Industries, Inc., 328 Ill. App. 3d at 34, 765 N.E.2d at 49. But John Doe did not, and as a matter of Illinois law cannot, rebut the Department’s prima facie case

merely by testifying that Taxpayers' returns were correct. PPG Industries, Inc., 328 Ill. App. 3d at 34, 765 N.E.2d at 49. Nor did he do so by arguing that the Department improperly relied on information obtained from the IRS when making its determinations. *E.g.*, Byrd v. Hamer, 408 Ill. App. 3d 467, 471-73, 943 N.E.2d 115, 121-23 (2d Dist. 2011) (affirming Department's correction of Taxpayers' Illinois income tax returns following comparison of entries on Taxpayers' Illinois returns with those on Taxpayers' federal income tax returns for same tax years).

Conclusion:

I recommend that the Director finalize the Notices of Deficiency as issued, with penalties and interest to accrue pursuant to statute.

October 14, 2011

John E. White
Administrative Law Judge