

modified to reduce the amount due from \$5,978 to \$812. In support of this recommendation, the following “Findings of Fact” and “Conclusions of Law” are made.

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, 2001, the taxpayer failed to file an Illinois Income Tax Return. Department (“Dept.”) Exhibit (“Ex.”) 1.
2. Based upon information obtained from the Internal Revenue Service regarding the taxpayer’s federal income tax return for the taxable year at issue, the Illinois Department of Revenue determined the taxpayer’s adjusted gross income and net income. Dept. Ex. 1.
3. The Department issued a Notice of Deficiency to the taxpayer on March 17, 2005 setting forth tax, penalties and interest in the amount of \$5,978. The penalties proposed were for failure to timely file the income tax return and for failure to make timely estimated payments. Dept. Ex. 1.
4. Based upon a subsequent review of the taxpayer’s account, it was determined that the taxpayer did file its 2001 return; the Department’s original error was corrected when the Department determined that, unlike prior returns, the return for 2001 had been filed under the wife’s social security number rather than the husband’s social security number. Tr. pp. 13, 14, 19, 20; Dept. Ex. 2.
5. During its review of the taxpayer’s records to determine whether a return for 2001 had been filed, the Department determined that the taxpayer’s Federal taxable income was the subject of an Internal Revenue Service (“IRS”) review, and that for the

subject tax year, final changes were made to the taxpayer's federal adjusted gross income in 2003. Tr. pp. 13, 16-20; Dept. Ex. 4. The Department's records indicated that the taxpayer did not file a return to report this federal change. Tr. pp. 26, 27.

6. Based upon an Internal Revenue Service form 4549 dated May 9, 2003 (Dept. Ex. 4), the Department determined that the Federal changes the taxpayer failed to report decreased the deduction taken on the taxpayer's original 2001 Illinois Income Tax Return for "Retirement and Social Security" from \$23,374 to \$11,041¹, and decreased the deduction for exemptions taken on the taxpayer's original 2001 Illinois Income Tax Return from \$14,000 to \$6,000, resulting in an additional state income tax due for 2001, after credit for taxes withheld, in the amount, including interest, of \$812. Tr. pp. 13, 16, 19; Dept. Ex. 2, 4.

7. At hearing, the taxpayer submitted an Amended U.S. Individual Income Tax Return dated March 22, 2003 and a form 4549 dated March 7, 2003 indicating that the taxpayer's deduction for "Retirement and Social Security" should be reduced from \$23,374 to \$8,865, rather than to \$11,041 as determined by the Department, which would result in an amount of additional income tax due the state exceeding the amount of additional tax the Department determined. Tr. pp. 29, 30; Dept. Ex. 2; Taxpayer Ex. 1, 2.

Conclusions of Law:

Pursuant to § 904(a) of the Illinois Income Tax Act, a Notice of Deficiency ("NOD") is *prima facie* evidence of the correctness of tax and penalties due. 35 ILCS

¹ Illinois follows federal adjusted gross income as the starting point for computing a taxpayer's net income. However, a deduction is allowed for federally taxable retirement income, including social security benefits. 35 ILCS 5/203(a)(2)(F).

5/904(a). The NOD issued in this case indicated that the taxpayer failed to file an Illinois income tax return for the 2001 tax year and owed taxes (including interest and penalties) of \$5,978. Dept. Ex. 1. However, prior to the hearing, the Department determined that the taxpayer did timely file its return for 2001. The Department, accordingly, notified the taxpayer that it did not owe the amount shown to be due on the NOD. Tr. pp. 8, 9.

In the course of its review, the Department subsequently determined that the taxpayer failed to report federal changes to the taxpayer's adjusted gross income as reported to the Internal Revenue Service for 2001. Tr. pp. 25-27. The taxpayer was advised of this federal change in 2003. Tr. pp. 5-7; Taxpayer Ex. 1. Based on these federal changes, the Department determined that, while the taxpayer did not owe the amount shown on the NOD (\$5,978), it did owe \$812 in additional taxes for 2001 as a result of changes to its federal return. Dept. Ex. 2 (EDA-24, Auditor's Report). The Department's EDA-24, Auditor's Report was admitted into the record under the certificate of the Director, and like the NOD, constitutes prima facie proof that an additional amount of tax is due. 35 ILCS 5/904(b).

The taxpayer objects to the Department's determination of additional taxes due. Accordingly, the issue presented is whether the Department was authorized to determine an additional amount due as a result of federal changes it claims the taxpayer failed to report, and, if so, whether the amount of additional tax due was properly determined.

The Department's authority to assess additional taxes for failure to report federal changes is granted pursuant to section 905 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/905(d), which provides as follows:

- (d) Failure to report federal change. If a taxpayer fails to notify the Department in any case where notification is required ... or fails

to report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of deficiency may be issued ... at any time for the taxable year for which notification is required ... [.]

35 **ILCS** 5/905(d)

The Department claims that the taxpayer failed to report its 2001 federal changes received in 2003 to the Department as required by section 506(b) of the Illinois Income Tax Act, 35 **ILCS** 5/506(b), and that its determination of additional taxes due was therefore proper. Tr. pp. 16, 19, 25-27. It appears from the record that, if the taxpayer reported federal changes within a month of receiving notice of federal changes for 2001, as it maintains it did (Tr. p. 7), the Department would be barred from assessing additional taxes based upon the reported federal changes because it did not issue its EDA 24, Auditor's Report (Dept. Ex. 2) amending the original NOD for federal changes until August 8, 2005. See 35 **ILCS** 5/905(e) (limiting the period for the issuance of an NOD based upon a report of federal changes to two years from the date of the report).

The taxpayer disputes the Department's finding that it failed to report federal changes for 2001, and produced a copy of an IL-1040-X showing these changes that is dated March 22, 2003. Tr. p. 7; Taxpayer Ex. 2. However this evidence only indicates that an amended return was prepared. Taxpayer failed to produce any corroborating proof that an amended return was mailed, such as proof of mailing by the United States Post Office. See 5 **ILCS** 70/1.25(2) (discussing proof necessary to conclusively establish mailing). Accordingly, the only evidence that an amended return was ever filed is the taxpayer's oral testimony claiming that he mailed this return to Springfield on March 22, 2003. Tr. p. 7. Such oral testimony is insufficient to overcome the Department's

finding, implicit in its *prima facie* determination of additional tax due², that no such return was ever filed. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988); Mel-Park Drugs v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Moreover, taxpayer's oral evidence as to mailing was rebutted by the Department's evidence that, according to its computerized records, there is no record of any such filing. Tr. pp. 25-27.

Based on the foregoing, I conclude that the taxpayer failed to rebut the Department's presumptively correct determination that it properly computed a liability based upon the taxpayer's failure to report federal changes. Accordingly, the Department properly acted in accordance with its authority pursuant to section 905(d) of the IITA, 35 **ILCS** 5/905(d), in assessing the taxpayer based upon the taxpayer's failure to timely report federal changes.

The taxpayer also contends that the Department has overstated the amount of additional tax due as a result of unreported federal changes by relying upon a form 4549 report of federal changes differing from the one the taxpayer received. Tr. pp. 9, 10, 31, 32. The form 4549 the Department utilized is dated May 9, 2003, while the taxpayer's form 4549 reporting federal changes is dated March 7, 2003. Compare Dept. Ex. 4 and Taxpayer Ex. 1. In arriving at a tax liability, the Department allowed the taxpayer a deduction for social security benefits pursuant to 35 **ILCS** 5/203(a)(2)(F). The deduction the Department allowed was \$11,041, based upon the form 4549 it received from the IRS dated May 9, 2005. Dept. Ex. 2. The taxpayer claims that its federally taxable social

² See Branson v. Department of Revenue, 168 Ill. 2d 247, 261 (1995) (stating that the statutory presumption of correctness applies to all elements required for the issuance of an assessment).

security income for 2001 was \$8,865, the amount shown on its form 4549 dated March 7, 2003, and on the taxpayer's amended U.S. Individual Income Tax Return form 1040 for 2001 submitted as evidence at the hearing. Taxpayer Ex. 1, 2. Since Illinois law only allows a deduction for social security income to the extent it is taxed federally (see 35 ILCS 5/203(a)(2)(F)), if this amount were accepted by the Department, the taxpayer's deduction for social security benefits taxed by the federal government would be reduced to \$8,865, an amount less than the amount the Department has allowed (\$11,041). Since this was the only evidence the taxpayer presented, the taxpayer has failed to present any evidence that an amount less than the amount determined to be due by the Department is the correct amount of tax due.

The taxpayer also contends that it overstated its adjusted gross income on its original Federal form 1040 for 2001, and that it filed an amended federal form 1040-X reducing adjusted gross income with the IRS on March 22, 2003. Tr. pp. 30-37; Taxpayer Ex. 3. However the taxpayer presented no documentary proof to support its claim that an amended federal return was filed. Moreover, with the exception of the form 4549 presented by the taxpayer, showing an adjustment to adjusted gross income to reduce the portion of the taxpayer's taxable social security income, there is no evidence in the record to support any further reductions in adjusted gross income, or to show that any further adjustments were ever allowed by the IRS.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notice of Deficiency be finalized after it is modified to reduce the amount due from \$5,978 to \$812.

Date: November 4, 2005

Ted Sherrod
Administrative Law Judge