

IT 09-5
Tax Type: Income Tax
Issue: Federal Change (Individual)

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

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

v.

JOHN DOE

Taxpayer

Docket # 08-IT-0000
SS # 000-00-0000
Track # 000000
Tax Year 2004

RECOMMENDATION FOR DISPOSITION

Appearances: Mehpara Angelia Suleman and Jessica Arong O'Brien, Special Assistant Attorneys General, for the Department of Revenue of the State of Illinois; *John Doe, pro se.*

Synopsis:

The Department of Revenue ("Department") issued a Notice of Deficiency ("Notice") to *John Doe* ("taxpayer") alleging that the taxpayer did not timely file a Form IL-1040 for the tax year ending December 31, 2004 and that the taxpayer owes Illinois income tax plus interest and penalties. The taxpayer timely protested the Notice, and both parties have filed Motions for Summary Judgment. The taxpayer argues that during

2004 he sold stock from a mutual fund, which created a capital gain that is only taxable by the federal government and is not taxable by the State of Illinois. The taxpayer contends that under section 1 of the Stock, Commodity, or Options Transaction Tax Exemption Act (35 ILCS 820/1 *et seq.*), the Department cannot tax the sale of his stock. The taxpayer, therefore, contends that the Notice should be dismissed. At the hearing on the motions, both parties agreed that the facts are not disputed, and the matter should be resolved based on the documents submitted. After reviewing the motions and documents, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On September 21, 2007, the Department sent a letter to the taxpayer stating that, based on information received from the Internal Revenue Service (“IRS”), the taxpayer owed Illinois income tax for the year 2004. The letter included a Form EDA-131, Examiner’s Report, showing net tax due in the amount of \$2,583. (Dept. Ex. #2)
2. On October 4, 2007, the taxpayer responded to the Department’s letter stating that he did not owe tax for the year 2004 because, although he resided in Illinois from January 1, 2004 through September 25, 2004, he did not earn income during that time period. He stated that from September 27, 2004 through January 2, 2005, he earned income and maintained residency in another state. (Dept. Ex. #3)
3. On April 17, 2008, the Department sent a letter to the taxpayer stating that because he was a part year resident of Illinois, he was required to file a 2004 IL-1040 and a Schedule NR. (Dept. Ex. #4)

4. On May 27, 2008, the Department sent a letter to the taxpayer with an enclosed Form EDA-24, Auditor's Report, and Schedule NR, which showed a computation of the taxpayer's liability based on information supplied by the IRS and the New York State Department of Taxation and Finance. (Dept. Ex. #5)
5. On June 27, 2008, the taxpayer sent a 2004 Form IL-1040, Schedule NR, and Schedule M to the Department. On Schedule M, Other Additions and Subtractions, the taxpayer wrote on line 8 as other income, "State Tax Exempt Mutual fund." The amount shown on line 8 was \$74,924. Also on Schedule M, the taxpayer showed a subtraction on line 29 in the amount of \$74,924. Line 29 allows a subtraction for interest on certain obligations of Illinois state and local government. (Dept. Ex. #6)
6. On July 2, 2008, the Department issued a Notice of Deficiency to the taxpayer showing tax due for the year ending December 31, 2004. The Notice includes a Form EDA-24, Auditor's Report, showing net tax due in the amount of \$2,088, plus interest and penalties. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Under section 2-1005(c) of the Code of Civil Procedure, a party is entitled to summary judgment under the following circumstances:

[I]f the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
735 ILCS 5/2-1005(c).

The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine issue of material fact exists. Gilbert v. Sycamore Municipal Hospital,

156 Ill. 2d 511, 517 (1993). The parties in the present case have agreed that the facts are not in dispute.

Section 201(a) of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*) imposes a tax on the privilege of earning or receiving income in or as a resident of Illinois. 35 ILCS 5/201(a). The tax is measured by net income, which is calculated by starting with the taxpayer's federal adjusted gross income. 35 ILCS 5/201(a); 203. Modifications to the taxpayer's federal adjusted gross income, which include subtractions for income that is exempt from taxation by the State of Illinois, are included in section 203. 35 ILCS 5/203; 86 Ill. Admin. Code §100.2470.

If the taxpayer fails to file a tax return, the Department must determine the amount of tax due according to its best judgment and information. 35 ILCS 5/904(b). If a return is filed and the Department determines that the amount of tax shown on the return is less than the correct amount, the Department shall issue a notice of deficiency to the taxpayer setting forth the amount of tax and penalties that it proposes to assess. 35 ILCS 5/904(a). The findings of the Department shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount due. *Id.* When the taxpayer seeks to take a deduction from his income for purposes of calculating the tax, the burden of proof is on the taxpayer. Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981). In order to meet his burden of proof, the taxpayer's testimony alone is not sufficient. *Id.* at 296. The taxpayer must presenting sufficient documentary evidence to support his claim. *Id.*

In the present case, the taxpayer claims that he is entitled to a deduction from his income in the amount of \$74,924, which is the capital gain from the sale of his mutual

fund stock. He contends that this deduction is allowed under section 1 of the Stock, Commodity, or Options Transaction Tax Exemption Act (“Stock Act”), which provides as follows:

No unit of local government shall levy any tax on stock, commodity or options transactions. 35 ILCS 820/1.

The Department argues that the term “unit of local government” in this section does not refer to the State of Illinois. The Department notes that “unit of local government” is defined in section 1 of Article VII of the Illinois Constitution, which provides as follows:

“Municipalities” means cities, villages and incorporated towns. “Units of local government” means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts. Ill. Const. 1970, Art. VII, §1.

The Department also points out that under section 203(h) of the Income Tax Act, no modification of the taxpayer’s federal adjusted gross income is allowed unless expressly provided in section 203. 35 ILCS 5/203(h). The Department states that under section 203(a)(2)(N), a subtraction is allowed for an amount that would otherwise be included in base income if taxation of the amount is prohibited by the U.S. Constitution, a federal statute or treaty, the Illinois Constitution, or an Illinois statute. The Department contends that the taxpayer’s stock transaction is not exempt under this provision. The taxpayer believes that section 1 of the Stock Act applies to the State of Illinois because local governments are only allowed to tax property; therefore, this section must apply to the State of Illinois.

The Department’s arguments are persuasive. The cardinal rule of statutory construction is to ascertain and give effect to the true intention of the legislature. Solich

v. George & Anna Portes Cancer Prevention Center of Chicago, Inc., 158 Ill. 2d 76, 81 (1994). The plain language of the statute is the best indicator of the legislature’s intent. Lulay v. Lulay, 193 Ill. 2d 455 (2000). Section 1 of the Stock Act prohibits units of local government from levying a tax on stock transactions, but the State of Illinois is not a unit of local government. The term “unit of local government” is defined in the Illinois Constitution, and the definition does not include the State of Illinois. If the legislature had intended section 1 to apply to the State of Illinois, it would have specifically stated that in the statute.

Furthermore, subsection (h) of section 203 of the Income Tax Act is titled “Legislative intention,” and it states that no modifications shall be allowed to the taxpayer’s income except as expressly provided by section 203. 35 ILCS 5/203(h). The taxpayer has not presented any documentation to show that the modification that he included on his Schedule M is allowed under section 203. The Department’s determination must, therefore, be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the Department’s Motion for Summary Judgment be granted and the taxpayer’s Motion for Summary Judgment be denied.

Linda Olivero
Administrative Law Judge

Enter: June 17, 2009