

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of )  
Individual Income Tax for the Taxable Year 1997 )  
by the Secretary of Revenue of North Carolina )  
 )  
 )  
vs. )  
 )  
[Taxpayers] )

**FINAL DECISION**  
Docket No. 2000-343

This matter was heard before the Assistant Secretary of Revenue, Michael A. Hannah, in the city of Raleigh on August 8, 2000, upon an application for a hearing by [Taxpayers, Husband and Wife] wherein they protested the proposed assessment of additional income tax for the taxable year 1997. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1. The hearing was attended by W. Edward Finch, Jr., Administrative Officer in the Personal Taxes Administration Division. Neither the Taxpayers nor their representative attended the hearing.

Taxpayers timely filed their North Carolina individual income tax return for the taxable year 1997. The return reflected an overpayment of \$682.00 which was refunded to Taxpayers.

On September 9, 1999, Taxpayers filed an amended North Carolina individual income tax return to increase additions to federal taxable income from \$2,600.00 to \$20,403.00, for a lump-sum distribution from a pension or profit sharing plan of \$17,803.00. Taxpayers did not include payment of \$1,099.00 with the amended return for the additional tax due.

A Notice of Individual Income Tax Assessment was mailed to Taxpayers on November 13, 1999, proposing an assessment for the tax plus accrued interest. In error, the auditor did not assess the ten percent late payment penalty. Taxpayers timely protested the proposed assessment and requested a hearing before the Secretary of Revenue.

## **ISSUE**

The issue to be decided in this matter is as follows:

Is the individual income tax assessment proposed against Taxpayers for the taxable year 1997 lawful and proper?

## **EVIDENCE**

Evidence presented by W. Edward Finch, Jr., Administrative Officer in the Personal Taxes Division consisted of the attached Exhibits PT-1 through PT-10.

## **DECISION**

1. An assessment of tax is presumed to be correct.
2. The burden is upon a taxpayer who takes exception to an assessment to overcome that presumption.
3. Notice of the time and place of the hearing was mailed to Taxpayers' last known address by first-class mail, postage prepaid, on June 19, 2000, and has not been returned by the postal service.
4. Taxpayers received notice of the time and place of the hearing but neither Taxpayers nor anyone representing Taxpayers appeared at the hearing.
5. A penalty of 10 percent of the tax is required for failure to pay any tax when due. The penalty does not apply when the amount of tax shown due on an amended return is paid when the return is filed. Because Taxpayers did not pay the tax shown due on their amended return, the proposed assessment should be increased for the late payment penalty of \$109.90.
6. Taxpayers offered no evidence or argument at the hearing that would tend to contradict the assessment or overcome the presumption of correctness.

Wherefore, the assessment for the taxable year 1997, as herein modified to include the late payment penalty of \$109.90, is declared to be lawful and proper in every respect and is sustained in its entirety.

Made and entered this 18<sup>th</sup> day of September, 2000.

Signature \_\_\_\_\_

Michael A. Hannah  
Assistant Secretary of Revenue