

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Additional)
Individual Income Tax for the Taxable)
Year 1996 by the Secretary of Revenue)
of North Carolina)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2000-371

This matter was heard before the Assistant Secretary of Revenue, Michael A. Hannah, on September 7, 2000, upon an application for hearing by [Taxpayer], wherein he protested the proposed assessment of a late payment penalty for the taxable year 1996. The hearing was held by the Assistant Secretary of Revenue under the provisions of G.S. 105-260.1 and was attended by Gregory B. Radford, Assistant Director of the Personal Taxes Division. Neither Taxpayer nor anyone representing Taxpayer attended the hearing.

Taxpayer timely filed his 1996 North Carolina individual income tax return. He claimed a filing status of single, reported federal taxable income of \$8,616.00, and asked the Department of Revenue to complete the return. Based on the wage and tax statements and other information submitted by Taxpayer, the Department calculated North Carolina taxable income to be \$7,666.00 and North Carolina income tax for the year to be \$461.00. The wage and tax statements provided by Taxpayer reflected North Carolina income tax withheld of \$260.07, resulting in additional tax due of \$201.93. A Notice of Individual Income Tax Assessment for the additional tax plus interest totaling \$210.98 was mailed to Taxpayer on October 5, 1997. Taxpayer subsequently paid the liability in full.

On December 8, 1999, the Department of Revenue received information from the Internal Revenue Service reflecting adjustments to Taxpayer's 1996 federal income tax return. Upon examination, the Department increased Taxpayer's North Carolina taxable income by \$14,472.00 for unreported income, identical to the federal adjustment. Pursuant to G.S. 105-159 and G.S. 105-241.1, a Notice of Individual Income Tax Assessment reflecting additional tax and interest of \$1,188.31 for the taxable year 1996 was mailed to Taxpayer on January 17, 2000.

Taxpayer did not pay the assessment nor request a hearing in writing within thirty days; therefore, the assessment became final and collectible. A Notice of Penalty Assessment

proposing a penalty of \$96.00 equal to ten percent of the unpaid tax for failure to pay the tax when due was mailed to Taxpayer on March 19, 2000. Taxpayer objected to the late payment penalty and timely requested a hearing before the Secretary of Revenue.

ISSUE

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

Is the assessment of a late payment penalty for the taxable year 1996 lawful and proper?

EVIDENCE

The evidence presented by Gregory B. Radford, Assistant Director of the Personal Taxes Division of the Department of Revenue consisted of the attached Exhibits PT-1 through PT-11.

DECISION

1. An assessment of tax or additional tax is presumed to be correct.
2. The terms “tax” and “additional tax” include penalties and interest as well as the principal amount.
3. The burden is upon a taxpayer who takes exception to an assessment to overcome that presumption.
4. Notice of the time and place of the hearing was mailed to Taxpayer’s last known address by first class mail, postage prepaid, on August 7, 2000, and has not been returned by the postal service.
5. Taxpayer received notice of the time and place of the hearing but neither Taxpayer nor anyone representing Taxpayer appeared at the hearing.
6. Taxpayer offered no evidence or argument at the hearing to contradict the assessment or overcome the presumption of correctness.

Wherefore, the assessment of a late payment penalty for the taxable year 1996 is sustained in its entirety and is declared to be final and immediately due and collectible.

Made and entered this 9th day of October, 2000.

Signature_____

Michael A. Hannah
Assistant Secretary of Revenue