

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

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

FINAL DECISION
Docket No. 2000-376

This matter was heard before the Assistant Secretary of Revenue of North Carolina, Michael A. Hannah, in the city of Raleigh on August 22, 2000, upon an application for a hearing by [Taxpayers, Husband and Wife], wherein they protested the proposed assessment of additional income tax and interest for the taxable year 1996. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1. The hearing was attended by Husband and W. Edward Finch, Jr., Administrative Officer in the Personal Taxes Division.

A Notice of Individual Income Tax Assessment for additional tax of \$420.00 and accrued interest of \$109.48 was mailed to Taxpayers on April 2, 2000. Taxpayers objected to the proposed assessment and filed a timely request for a hearing before the Secretary of Revenue.

ISSUE

The issues to be decided in this matter are as follows:

1. Is the individual income tax assessment proposed against Taxpayers for the taxable year 1996 lawful and proper?
2. Is the Secretary of Revenue authorized to waive accrued interest on tax?

EVIDENCE

Evidence presented by W. Edward Finch, Jr., Administrative Officer in the Personal Taxes Division, consisted of the following:

1. Memorandum dated April 18, 1996, from Muriel K. Offerman, Secretary of Revenue, to Michael A. Hannah, Assistant Secretary of Revenue, a copy of which is designated as Exhibit PT-1.
2. Taxpayer's North Carolina individual income tax return for the taxable year 1996, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Adjustment for the taxable year 1996 dated July 7, 1997, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Assessment for the taxable year 1996 dated April 2, 2000, a copy of which is designated as Exhibit PT-4.
5. Letter from Husband to the Department of Revenue dated April 14, 2000, a copy of which is designated as Exhibit PT-5.
6. Letter from Husband to the Department of Revenue dated April 14, 2000, a copy of which is designated as Exhibit PT-6.
7. Letter from W. Edward Finch, Jr., to Taxpayers dated May 25, 2000, a copy of which is designated as Exhibit PT-7.
8. Letter from Husband to W. Edward Finch, Jr., dated June 4, 2000, a copy of which is designated as Exhibit PT-8.
9. Letter from Michael A. Hannah to Husband dated July 18, 2000, a copy of which is designated as Exhibit PT-9.

Husband stated at the hearing that he does not object to the assessment of tax of \$420.00; however, he objects to the assessment of interest accrued on the tax.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. Taxpayers at all material times were natural persons, sui juris, and citizens and residents of North Carolina.

2. Taxpayers timely filed their North Carolina individual income tax return for the tax year 1996 requesting an overpayment of \$61.00. Taxpayers' federal taxable income for the tax year 1996 was \$36,996.00. Because federal taxable income on line 6 of the State return appeared to be \$30,996.00, that amount was entered by data entry personnel when the Department processed the return, causing the overpayment to increase from \$61.00 to \$481.63.
3. A Notice of Individual Income Tax Adjustment reflecting the corrected overpayment of \$481.63 and a refund check for \$487.21 which included interest of \$5.58 was mailed to Taxpayers on July 7, 1997. The Department subsequently received information from the Internal Revenue Service indicating that Taxpayers' federal taxable income for the tax year 1996 was \$36,996.00. Consequently, the Department increased Taxpayers' taxable income by \$6,000.00 (\$36,996.00 - \$30,996.00).
4. A Notice of Individual Income Tax Assessment for the tax of \$420.00 and accrued interest of \$109.48 was mailed to Taxpayers on April 2, 2000. Taxpayers objected to the proposed assessment and filed a timely request for a hearing before the Secretary of Revenue.
5. Taxpayers agree that their correct federal taxable income for the tax year 1996 is \$36,996.00, not \$30,996.00 as reflected on the Notice of Individual Income Tax Adjustment dated July 7, 1997. Taxpayers acknowledge that the amount they entered on line 6 of the State return as federal taxable income could be misread as \$30,996.00. Taxpayers contend, however, that since they computed the tax shown on the return on the basis of the correct federal taxable income of \$36,996.00, they are not liable for the accrued interest on that tax.

CONCLUSION OF LAW

Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. All assessments of tax are required to bear interest from the time the tax was due until paid.
2. The Secretary, in her discretion may waive or reduce any penalty. There is no provision in the law that will allow accrued interest on income tax to be waived regardless of the circumstances.
3. The proposed assessment for the taxable year 1996 was properly issued and is, under the facts, lawful and proper.

DECISION

The amount of income tax as calculated by the Department in the proposed assessment notice equals the tax determined by Taxpayers on their return and is not in dispute. Taxpayers contend that they should not be held liable for the accrued interest on the tax.

Taxpayers filed their State individual income tax return for the tax year 1996 requesting a refund of \$61.00. Instead, Taxpayers received a refund of \$487.21. Notwithstanding the enormous increase in their expected refund, Taxpayers did not inquire as to the cause of this sudden windfall. Had Taxpayers exercised a similar degree of diligence in determining the cause of the increase in refund as they have concerning the assessed tax and interest at issue, this matter could have been resolved sooner resulting in the accrual of less interest.

There is no provision in the law authorizing the Secretary to waive accrued interest on tax regardless of the circumstances. Consequently, the Assistant Secretary declines to waive the interest assessed.

It is the decision of the Assistant Secretary that the proposed assessment of tax and interest for the taxable year 1996 is lawful and proper in every respect and is hereby sustained in its entirety and is declared to be finally determined and immediately due and collectible as allowed by law.

Made and entered this 24th day of October, 2000.

Signature_____

Michael A. Hannah
Assistant Secretary of Revenue