

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Additional)
Income Tax and Interest for the)
Taxable Year 1997 by the)
Secretary of Revenue of North Carolina)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2001-216

This matter was heard by the Acting Assistant Secretary of Administrative Hearings, Marilyn R. Mudge, in the city of Raleigh on March 15, 2001, upon an application for hearing by [Taxpayer,] wherein he protested the proposed assessment of additional income tax and interest for the taxable year 1997 and the setoff of his 1999 overpayment. The hearing was held under the provisions of G.S. 105-260.1 and was attended by Taxpayer and Nancy R. Pomeranz, Director of the Personal Taxes Division.

ISSUE

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

1. Is the individual income tax assessment proposed against Taxpayer for the taxable year 1997 lawful and proper?
2. Is the setoff of Taxpayer's overpayment for the taxable year 1999 lawful and proper?

EVIDENCE

Evidence presented by Nancy R. Pomeranz, Director of the Personal Taxes Division, consisted of the following:

1. Memorandum from E. Norris Tolson, Secretary of Revenue, to Marilyn R. Mudge, Acting Assistant Secretary of Administrative Hearings, dated March 13, 2001, a copy of which is designated as Exhibit PT-1.
2. Taxpayer's North Carolina individual income tax return for the taxable year 1997, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for the taxable year 1997 dated August 20, 2000, a copy of which is designated as Exhibit PT-3.
4. A paper extract of information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 1997, a copy of which is designated as Exhibit PT-4.
5. Letter from Taxpayer to the Department of Revenue dated September 6, 2000, with related attachment, copies of which are collectively designated as Exhibit PT-5.
6. Letter from C. H. Harrelson, Administrative Officer in the Office Services Division, to Taxpayer dated October 18, 2000, a copy of which is designated as Exhibit PT-6.
7. Letter from Taxpayer to C. H. Harrelson dated November 7, 2000, a copy of which is designated as Exhibit PT-7.
8. Letter from W. Edward Finch, Jr., Administrative Officer in the Personal Taxes Division, to Taxpayer dated December 13, 2000, with related attachment, copies of which are collectively designated as Exhibit PT-8.
9. Final Notice of Individual Income Tax Assessment for the taxable year 1997 dated December 5, 2000, a copy of which is designated as Exhibit PT-9.
10. Letter from Marilyn R. Mudge to Taxpayer dated February 28, 2001, a copy of which is designated as Exhibit PT-10.
11. Notice to Debtor of Determination to Claim State Income Tax Refund from the Employment Security Commission of North Carolina to Taxpayer dated September 7, 2000, a copy of which is designated as Exhibit PT-11.

Taxpayer stated at the hearing that he agreed with the proposed assessment for the taxable year 1997 but objected to the setoff of his 1999 overpayment. Taxpayer contends that the Department of Revenue should have applied a portion of his 1999 overpayment

to the 1997 assessment and then setoff the remainder to the alleged debt owed to the Employment Security Commission.

FINDINGS OF FACT

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

1. Taxpayer is and at all material times was a natural person, sui juris, and a citizen and resident of North Carolina.
2. A Notice of Individual Income Tax Adjustment for the taxable year 1999 was mailed to Taxpayer on August 23, 2000, reflecting that his overpayment of \$404.00 plus interest of \$7.88 was set off against his indebtedness to the Employment Security Commission.
3. The Department of Revenue received information from the Internal Revenue Service indicating that Taxpayer's 1997 federal income tax return was adjusted to increase federal taxable income from \$2,294.00 to \$4,969.00. The Internal Revenue Service disallowed one personal exemption of \$2,650.00 and a deduction of \$25.00 for miscellaneous expenses.
4. A Notice of Individual Income Tax Assessment for the taxable year 1997 was mailed to Taxpayer on August 29, 2000, reflecting the increase in federal taxable income.
5. Taxpayer objected to the proposed assessment for the taxable year 1997 and to the setoff of his overpayment for the taxable year 1999. He timely requested a hearing before the Secretary of Revenue.
6. The Employment Security Commission submitted a claim to the Department of Revenue against Taxpayer's State income tax refund.
7. Taxpayer agrees with the proposed assessment for the taxable year 1997. Taxpayer contends, however, that he is not indebted to the Employment Security Commission and did not receive any notification from that agency regarding its claim against his refund.
8. The Employment Security Commission provided the Department of Revenue with a copy of its notice to Taxpayer (Exhibit PT-11).

CONCLUSIONS OF LAW

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

1. For residents of this State, North Carolina taxable income is defined as federal taxable income, adjusted for differences in State and federal law.
2. Because North Carolina uses federal taxable income as the starting point for computing State income tax, the adjustment to increase Taxpayer's federal taxable income for the taxable year 1997 is lawful and proper.
3. A claimant agency seeking to attempt collection of a debt through setoff of a taxpayer's State income tax refund must notify the Department of Revenue and supply information to identify the debtor taxpayer.
4. If the Department of Revenue determines that a debtor specified by a claimant agency qualifies for a refund, the Department must set off the debt against the refund to which the debtor would otherwise be entitled.
5. A State agency that receives a refund of a debtor must send the debtor written notice that the agency has received the debtor's refund.
6. The setoff of Taxpayer's overpayment for the taxable year 1999 to his alleged debt with the Employment Security Commission is lawful and proper.
7. The assessment proposed for the tax year 1997 is lawful and proper.

DECISION

Taxpayer stated at the hearing that he did not object to the basis for the proposed assessment for the taxable year 1997. Therefore, the assessment is hereby sustained in its entirety and declared to be finally determined and immediately due and collectible as allowed by law.

With respect to the setoff of Taxpayer's 1999 refund, the facts show that the setoff was processed just prior to the proposed assessment for the taxable year 1997. However, the timing appears to be coincidental. I believe the Department would have much preferred to collect its debt from the Taxpayer's refund rather than send the entire refund to another State agency.

Unfortunately, the federal information upon which the 1997 assessment is based was not

matched with State information until after the setoff was effected. Nonetheless, the setoff of Taxpayer's overpayment for the taxable year 1999 is lawful and proper and any recovery of the overpayment is between Taxpayer and the Employment Security Commission.

Made and entered this 1st day of May, 2001.

Signature_____

Marilyn R. Mudge
Acting Assistant Secretary of Administrative Hearings