

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1995)
through 2001 by the Secretary of Revenue)
of North Carolina)
vs.)
)
)
[Taxpayer])

FINAL DECISION
Docket No. 2003-220

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on June 4, 2003, upon an application for hearing by [Taxpayer], wherein he protested the proposed assessments of additional income tax for the taxable years 1995 through 2001. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by Taxpayer and W. Edward Finch, Jr., Assistant Director of the Personal Taxes Division.

Taxpayer did not file North Carolina individual income tax returns for any year. Upon examination, the Department determined that Taxpayer had been a resident of North Carolina since at least January 1, 1995. The Department determined Taxpayer's North Carolina taxable income and North Carolina individual income tax liability for the tax years 1995 through 2001 based on Taxpayer's federal income tax returns for those years. Pursuant to G.S. 105-241.1, assessments proposing additional tax, penalties, and interest for the tax years 1996, 1997, and 1998 were mailed to Taxpayer on November 12, 2002. An assessment proposing additional tax, penalties, and interest for the tax year 1999 was mailed to Taxpayer on November 26, 2002. Assessments proposing additional tax, penalties, and interest for the tax years 1995, 2000, and 2001 were mailed to Taxpayer on April 8, 2003.

Taxpayer filed a timely protest to the proposed assessments and requested a hearing before the Secretary of Revenue.

ISSUE

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

1. Was Taxpayer a resident of North Carolina for income tax purposes during tax years 1995 through 2001?
2. Are the assessments for additional income tax proposed against Taxpayer for the taxable years 1995 through 2001 lawful and proper?

EVIDENCE

The evidence presented by W. Edward Finch, Jr., Assistant Director of the Personal Taxes Division, consisted of the following:

1. Memorandum from E. Norris Tolson, Secretary of Revenue, to Eugene J. Cella, Assistant Secretary for Administrative Tax Hearings, dated May 16, 2001, a copy of which is designated as Exhibit PT-1.
2. Notice of Individual Income Tax Assessment for the taxable year 1996 dated November 12, 2002, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for the taxable year 1997 dated November 12, 2002, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Assessment for the taxable year 1998 dated November 12, 2002, a copy of which is designated as Exhibit PT-4.
5. Notice of Individual Income Tax Assessment for the taxable year 1999 dated November 26, 2002, a copy of which is designated as Exhibit PT-5.
6. Notice of Individual Income Tax Assessment for the taxable year 1995 dated April 8, 2003, a copy of which is designated as Exhibit PT-6.
7. Notice of Individual Income Tax Assessment for the taxable year 1996 dated April 8, 2003, a copy of which is designated as Exhibit PT-7.
8. Notice of Individual Income Tax Assessment for the taxable year 1997 dated April 8, 2003, a copy of which is designated as Exhibit PT-8.
9. Notice of Individual Income Tax Assessment for the taxable year 1999 dated April 8, 2003, a copy of which is designated as Exhibit PT-9.
10. Notice of Individual Income Tax Assessment for the taxable year 2000 dated April 8, 2003, a copy of which is designated as Exhibit PT-10.
11. Notice of Individual Income Tax Assessment for the taxable year 2001 dated April 8, 2003, a copy of which is designated as Exhibit PT-11.
12. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 1995, a copy of which is designated as Exhibit PT-12.
13. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 1996, a copy of which is designated as Exhibit PT-13.
14. Federal income tax return detail 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-14.

15. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 1998, a copy of which is designated as Exhibit PT-15.
16. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 1999, a copy of which is designated as Exhibit PT-16.
17. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 2000, a copy of which is designated as Exhibit PT-17.
18. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 2001, a copy of which is designated as Exhibit PT-18.
19. Letter from L. M. Holland, Revenue Tax Auditor, to Taxpayer dated August 19, 2002, a copy of which is designated as Exhibit PT-19.
20. Letter from Taxpayer to L. M. Holland, a copy of which is designated as Exhibit PT-20.
21. Letter from L. M. Holland to Taxpayer dated October 15, 2002, a copy of which is designated as Exhibit PT-21.
22. Letter from Taxpayer to L. M. Holland dated October 30, 2002, a copy of which is designated as Exhibit PT-22.
23. Letter from Taxpayer to Secretary of Revenue dated December 2, 2002, with related attachment, a copy of which is designated as Exhibit PT-23.
24. Letter from W. B. McQuade, Revenue Tax Auditor, to Taxpayer dated January 27, 2003, a copy of which is designated as Exhibit PT-24.
25. Letter from Taxpayer to W. B. McQuade dated February 24, 2003, with related attachments, a copy of which is designated as Exhibit PT-25.
26. Letter from Patrick G. Penny, Administrative Officer in the Personal Taxes Division, to Taxpayer dated April 1, 2003, a copy of which is designated as Exhibit PT-26.
27. Response from Taxpayer to Patrick G. Penny dated April 4, 2003, copy of which is designated as Exhibit PT-27.
28. Letter from Eugene J. Cella to Taxpayer dated April 30, 2003, a copy of which is designated as Exhibit PT-28.
29. Letter from Patrick G. Penny to [a Manager of an apartment building in North Carolina], dated March 21, 2003, with reply from [Manager of the apartment building], a copy of which is designated as Exhibit PT-29.
30. Taxpayer's vehicle registration information obtained from the North Carolina Department of Motor Vehicles, a copy of which is designated as Exhibit PT-30.

31. Taxpayer's driver license history detail obtained from the North Carolina Department of Transportation Division of Motor Vehicles, a copy of which is designated as Exhibit PT-31.
32. Taxpayer's Motor Vehicle Tax Billing information obtained from the [a North Carolina County Tax Office's] website, a copy of which is designated as Exhibit PT-32.
33. Taxpayer's telephone listing taken from [a telephone company's] August 2002, [North Carolina] telephone book, a copy of which is designated as Exhibit PT-33.
34. Facsimile from [an out-of-state] Department of Water & Sewers to Patrick G. Penny dated May 12, 2003, a copy of which is designated as Exhibit PT-34.
35. Record of Taxpayer's conveyance of his [out-of-state] house to [the purchaser] on February 1, 1994, obtained from the [Out-of-State] County Clerk of Courts website, a copy of which is designated as Exhibit PT-35.
36. Letter from Patrick G. Penny to [an out-of-state] Department of Financial Services, Office of Insurance Regulation dated May 12, 2003, a copy of which is designated as Exhibit PT-36.
37. Facsimile from [an out-of-state] Department of Financial Services, Bureau of Agent and Agency Licensing to Patrick G. Penny dated May 14, 2003, a copy of which is designated as Exhibit PT-37.

Taxpayer presented the following evidence at the hearing:

1. Photocopy of the fronts of 6 checks with various dates in 1999, made payable to [a city located in another state], a copy of which is designated as Exhibit TP-1.
2. Photocopy of the fronts of 5 checks with various dates in 1999 with 3 of the checks made payable to [an out-of-state power company] and 2 of the checks made payable to Department of Water and Sewers, a copy of which is designated as Exhibit TP-2.
3. Photocopy of the backs of the 5 checks introduced in Exhibit TP-2, a copy of which is designated as Exhibit TP-3.
4. Page 1 of the Admission and Financial Agreement between [an out-of-state retirement home] and Taxpayer dated January 14, 1999, a copy of which is designated as Exhibit TP-4.

FINDINGS OF FACT

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

1. Taxpayer did not file North Carolina individual income tax returns for the tax years 1995 through 2001.

2. Based on federal information, the Department determined Taxpayer's North Carolina taxable income for tax years 1995, 1996, 1997, 1998, 1999, 2000, and 2001 to be \$18,246.00, \$6,831.00, \$18,735.00, \$10,809.00, \$34,119.00, \$44,124.00, and \$17,687.00, respectively.
3. Notices of Individual Income Tax Assessment reflecting additional tax, penalties, and interest of \$840.80, \$2,319.62, and \$1,217.92 for the tax years 1996, 1997, and 1998, respectively, were mailed to Taxpayer on November 12, 2002. A Notice of Individual Income Tax Assessment reflecting additional tax, penalties, and interest of \$4,060.45 for the tax year 1999 was mailed to Taxpayer on November 26, 2002. Notices of Individual Income Tax Assessment reflecting additional tax, penalties, and interest of \$2,485.21, \$5,266.27, and \$1,894.18 for the tax years 1995, 2000, and 2001, respectively, were mailed to Taxpayer on April 8, 2003. Taxpayer objected to the proposed assessments and timely requested a hearing before the Secretary of Revenue.
4. Subsequent to the mailing of the assessment notices on November 12 and 26, 2002, the Department determined that the amount used as federal taxable income (\$5,781.00) in calculating Taxpayer's North Carolina taxable income for tax year 1996 was incorrect. Instead of using Taxpayer's 1996 federal taxable income of \$15,185.00 as reflected on his 1996 federal return, the Department had inadvertently used Taxpayer's 1996 wages. In addition, the Department determined that the penalty for underpayment of estimated income tax had been omitted from the proposed assessment notices for tax years 1996, 1997, and 1999 in error. Taxpayer was informed of these errors in a subsequent letter dated April 1, 2003. Amended assessment notices reflecting Taxpayer's corrected 1996 North Carolina taxable income and penalties and corrected 1997 and 1999 penalties were mailed to Taxpayer on April 8, 2003. The amended notices for tax years 1996, 1997, and 1999 reflected additional tax, penalties, and interest of \$2,145.91, \$2,408.67, and \$4,144.56, respectively.
5. Taxpayer sold his personal residence in [another state] in February 1994.
6. Taxpayer began leasing [an apartment in North Carolina] on March 6, 1994 and has continually leased that apartment through the current date.
7. Taxpayer registered his vehicle with the North Carolina Division of Motor Vehicles on April 18, 1994. Taxpayer listed his address on the registration as [a North Carolina address].
8. Information obtained from [a North Carolina County Tax Office] indicates that Taxpayer is current in his payment of [North Carolina County and City] ad valorem taxes on his vehicle.
9. On April 14, 1998, Taxpayer surrendered his [out-of-state] driver license, which was to expire on April 21, 1998, and obtained a North Carolina driver license.
10. Taxpayer maintains a [North Carolina] telephone number.
11. Taxpayer's [out-of-state] insurance agent license expired on March 1, 1995. [The Department of Financial Services located in another state] lists Taxpayer's last known home address as [an out-of-state address]. Taxpayer sold his personal residence located at this address in February 1994.

12. Since at least January 1, 1995, Taxpayer has had his mail sent to [a North Carolina address].
13. Taxpayer filed federal income tax returns for the tax years 1995 through 2001 reflecting his [North Carolina address]. All of Taxpayer's gross income for those years was derived from interest income, dividends, and capital gains, except for a small amount of wages in 1995 and 1996. For each of the years in question, Taxpayer filed as single claiming one personal exemption on his federal income tax returns.
14. During 1999, Taxpayer wrote 8 checks to [a city located outside of North Carolina] and the Department of Water and Sewers in [another state] for payment of water and sewer service for property owned by Taxpayer's mother. Also during 1999, Taxpayer wrote 3 checks to [an out-of-state power company] for service provided to property owned by Taxpayer's mother. The checks were written for nominal amounts and were for services provided between the date Taxpayer's mother was admitted to [an out-of-state retirement home] and the date the property for which the services were provided was sold. In addition, all 11 checks list Taxpayer's address as [a North Carolina address].
15. Taxpayer contends that he is a resident of [another state] and has never been employed within North Carolina nor has he ever derived gross income from North Carolina sources attributable to the ownership of any interest in real or tangible property in this State or from a business, trade, profession, or occupation carried on in this State.

CONCLUSIONS OF LAW

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

1. North Carolina imposes an individual income tax upon the taxable income of every resident of this State. For residents of this State, "North Carolina taxable income" is the taxpayer's taxable income as determined under the Internal Revenue Code, adjusted as statutorily mandated for differences in State and federal law.
2. A resident of this State is required to file a North Carolina individual income tax return if the individual is required to file a federal income tax return. The North Carolina return must show the taxable income and adjustments to federal taxable income required by statute.
3. A resident of North Carolina is taxed on income from all sources, including income earned outside the State.
4. A "resident" is an individual who is domiciled in this State at any time during the year, or who, whether regarding his domicile as in this State or not, resides within North Carolina during the year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the State for more than 183 days raises no presumption that the individual is not a resident.

5. For tax purposes, "domicile" is the residence of a person at a particular place, with the intention to remain there permanently, or for an indefinite length of time, or until some unexpected event shall occur to induce him to leave the same. To effect a change of domicile, a person's first domicile must be abandoned with no intention of returning to it, and actual residence established in a new locality coupled with the intention of making the last acquired residence the taxpayer's permanent home. The law presumes that a person's domicile of origin exists until a change of domicile is proved and the burden of proof is upon the individual alleging the change of domicile.
6. Domicile is a question of fact and intention. The determination of domicile does not depend on one fact but rather on the whole which taken together shows a predominance of evidence in favor of a particular place as the domicile.
7. The Secretary of Revenue has the power to examine any books, papers, records, or other relevant data for the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the tax liability of a person, or collecting any such tax.
8. If a taxpayer does not provide adequate and reliable information upon which to compute his tax liability, an assessment may be made upon the basis of the best information available; and, in the absence of information to the contrary, such assessment is deemed to be correct. Assessments must generally be proposed within three years of the date the return was filed or the date the return was due to be filed, whichever is the later. When a return has not been filed, there is no statute of limitations and an assessment can be proposed at any time.
9. Additions to federal taxable income are required for the amount by which the taxpayer's standard deduction has been increased and the amount by which each of the taxpayer's personal exemptions has been increased for inflation under the Code. The increase in the personal exemption for inflation is reduced by \$500.00 if the taxpayer's federal adjusted gross income is below the threshold for the taxpayer's filing status. Additions of \$1,150.00, \$1,050.00, \$1,300.00, \$1,450.00, \$1,550.00, \$1,700.00, \$1,950.00 were properly made for the tax years 1995, 1996, 1997, 1998, 1999, 2000, and 2001, respectively.
10. A penalty is imposed for failure to file a return when due. The penalty is equal to five percent of the tax for each month, or fraction of a month, the return is late (minimum \$5.00, maximum twenty-five percent). Because Taxpayer did not file the returns, penalties of \$287.00, \$252.00, \$295.75, \$162.50, \$565.25, \$740.25, and \$277.50 for failure to file the returns when due were properly assessed for the tax years 1995, 1996, 1997, 1998, 1999, 2000, and 2001, respectively.
11. A penalty is imposed for failure to pay tax when due. The penalty is equal to ten percent of the tax (minimum \$5.00). Because Taxpayer did not pay the tax when due, penalties of \$114.80, \$100.80, \$118.30, \$65.00, \$226.10, \$296.10, and \$111.00 were properly assessed for the tax years 1995, 1996, 1997, 1998, 1999, 2000, and 2001, respectively.
12. A twenty-five percent negligence penalty is imposed for a large individual income tax deficiency. A large income tax deficiency exists when a taxpayer understates taxable income by an amount equal to twenty-five percent or more of gross income. Penalties of \$287.00, \$252.00, \$295.75, \$162.50, \$565.25, \$740.25, and \$277.50 were properly

assessed for the tax years 1995, 1996, 1997, 1998, 1999, 2000, and 2001, respectively because Taxpayer understated taxable income by 25 percent or more of gross income.

13. A penalty is imposed for underpayment of estimated income tax if the taxpayer does not pay estimated income tax of at least ninety percent of the tax shown on the current year's return, or if no return is filed, ninety percent of the tax for that year or one hundred percent of the tax shown due on the previous year's return, whichever is less. The penalty is not due if the tax due on the return, reduced by the North Carolina tax withheld and allowable tax credits, is less than \$1,000.00. Penalties of \$54.43, \$60.48, \$34.71, \$120.74, and \$47.61 for underpayment of estimated income tax were properly assessed for the tax years 1996, 1997, 1999, 2000, and 2001.
14. The proposed assessments for the tax years 1995, 1998, 2000, and 2001, and the amended proposed assessments for the tax years 1996, 1997, and 1999 dated April 8, 2003, are lawful and proper.

DECISION

The question turns on whether Taxpayer was a resident of North Carolina during the calendar years 1995 through 2001. Taxpayer claims he was a resident of [another state] during the years at issue and had no requirement to file North Carolina individual income tax returns. The Department contends that Taxpayer was a resident of North Carolina for the entire period and is subject to North Carolina income tax for each of the years at issue.

The question of residency is dependent upon an analysis of all the facts and circumstances in each case. Although Taxpayer states that his intention was never to become a resident of North Carolina, this expression of intent alone is not dispositive of the issue. In fact, there are numerous facts which directly contradict the stated intention of Taxpayer that he was not a resident of North Carolina at any time.

Taxpayer stated at the hearing that his only connection to North Carolina is the post office box he maintains in [North Carolina] for purposes of receiving mail more conveniently. The Department has shown Taxpayer's ties to North Carolina to be much more profound. Taxpayer has been a resident of [an apartment building in North Carolina] since March 6, 1994. Although Taxpayer owned a home in [another state], it was sold in February 1994. Taxpayer began using [the address in North Carolina] sometime during 1994. Taxpayer registered his

vehicle with the North Carolina Division of Motor Vehicles on April 18, 1994, providing [a North Carolina address]. Taxpayer is current in his payment of [North Carolina County and City] ad valorem taxes on his vehicle. On April 14, 1998, Taxpayer surrendered his [out-of-state] driver license, which was to expire on April 21, 1998, and obtained a North Carolina driver license. Since tax year 1995, Taxpayer's federal income tax returns have reflected [a North Carolina address]. Taxpayer also allowed his [out-of-state] insurance agent license to expire on March 1, 1995. All of this evidence clearly supports the Department's contention that Taxpayer has been a resident of North Carolina since at least January 1, 1995.

When asked to present information and documentation to show he was a resident of [another state], Taxpayer produced copies of eleven canceled checks written on various dates in 1999. Eight of the checks were made payable to [a city located outside of North Carolina] and the Department of Water and Sewers for the water and sewer account of Taxpayer's deceased father. Taxpayer's mother owned the property for which the water and sewer services were provided. The remaining three checks were made payable to [an out-of-state power company] for services provided to the same property owned by Taxpayer's mother. I note that the checks are nominal in amount and represent payment for services provided to Taxpayer's mother's property from the date Taxpayer's mother was admitted to [an out-of-state retirement home] until the date the property was sold. The Admission and Financial Agreement between [an out-of-state retirement home] and Taxpayer lists Taxpayer as the responsible party for his mother. Being legally responsible for a third party and paying a third-party's bills does not establish an individual's residency status in a particular locale. The checks simply show that Taxpayer paid his mother's light and water bills until the property could be sold.

While the Department has presented substantial evidence showing Taxpayer's numerous ties to this State, Taxpayer has failed to produce any documentary evidence that indicates he maintained a domicile in any state other than North Carolina since January 1, 1995. Taxpayer relies solely on his statement of intent. Intent is not sufficient to overcome the

preponderance of evidence presented by the Department, which shows that Taxpayer has been a resident of this State since January 1, 1995.

It is my opinion that Taxpayer resided in North Carolina during the calendar years 1995 through 2001 for other than a temporary or transitory purpose and was, therefore, a resident of this State for the tax years at issue. Therefore, the proposed assessments for the tax years 1995, 1998, 2000, and 2001, and the amended proposed assessments for the tax years 1996, 1997, and 1999 dated April 8, 2003, are hereby sustained in their entireties and are determined to be finally due and collectible.

Made and entered this 14th day of August, 2003.

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue