

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 2000)
and 2001 by the Secretary of)
Revenue of North Carolina)
vs.)
[Taxpayer])

FINAL DECISION
Docket No. 2003-271

This matter was heard on August 27, 2003, before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, upon an application for hearing by [Taxpayer], wherein he protested the proposed assessments of additional income tax for the taxable years 2000 and 2001. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by Taxpayer; Nancy R. Pomeranz, Director of the Personal Taxes Division; Angela C. Quinn, Administrative Officer in the Personal Taxes Division; and, with the permission of Taxpayer, various family members and acquaintances of Taxpayer.

Pursuant to G.S. 105-159 and G.S. 105-241.1, Notices of Individual Income Tax Assessment proposing assessments of additional income tax, penalties, and accrued interest for tax years 2000 and 2001 were mailed to Taxpayer on September 30, 2002. Taxpayer objected to the proposed assessments and requested an administrative tax hearing before the Secretary of Revenue.

ISSUE

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

Are the assessments for additional income tax proposed against Taxpayer for the taxable years 2000 and 2001 lawful and proper?

EVIDENCE

The 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 Eugene J. Cella, Assistant Secretary for Administrative Tax Hearings, dated May 16, 2001, a copy of which is designated as Exhibit PT-1.
2. Taxpayer's North Carolina individual income tax return for the taxable year 2000, a copy of which is designated as Exhibit PT-2.
3. Taxpayer's North Carolina individual income tax return for the taxable year 2001, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Assessment for the taxable year 2000 dated September 30, 2002, a copy of which is designated as Exhibit PT-4.
5. Notice of Individual Income Tax Assessment for the taxable year 2001 dated September 30, 2002, a copy of which is designated as Exhibit PT-5.
6. Federal return information for tax year 2000 provided by the Internal Revenue Service, a copy of which is designated as Exhibit PT-6.
7. Wage history file from the Employment Security Commission reflecting 2001 wages, a copy of which is designated as Exhibit PT-7.
8. Letter from Central Examination Section to Taxpayer dated October 3, 2002, a copy of which is designated as Exhibit PT-8.
9. Letter from Central Examination Section to Taxpayer dated October 3, 2002, a copy of which is designated as Exhibit PT-9.
10. Letter from Taxpayer to the North Carolina Department of Revenue dated October 14, 2002, a copy of which is designated as Exhibit PT-10.
11. Letter from Taxpayer to the North Carolina Department of Revenue dated December 11, 2002, a copy of which is designated as Exhibit PT-11.
12. Letter from Angela C. Quinn, Administrative Officer in the Personal Taxes Division, to Taxpayer dated February 11, 2003, a copy of which is designated as Exhibit PT-12.
13. Letter from Taxpayer to the North Carolina Department of Revenue dated February 20, 2003, a copy of which is designated as Exhibit PT-13.
14. Letter from Taxpayer to Angela C. Quinn dated May 16, 2003, a copy of which is designated as Exhibit PT-14.
15. Letter from Taxpayer to the North Carolina Department of Revenue dated May 14, 2003, a copy of which is designated as Exhibit PT-15.

16. Letter from Taxpayer to the North Carolina Department of Revenue dated June 5, 2003, a copy of which is designated as Exhibit PT-16.
17. Letter from Eugene J. Cella to Taxpayer dated June 9, 2003, a copy of which is designated as Exhibit PT-17.

At the hearing, Taxpayer presented various documents including federal transcripts, excerpts from the Congressional Record, and copies of U.S. court cases, which are collectively designated as Exhibits TP-1 through TP-11.

FINDINGS OF FACT

Based on the foregoing evidence of record, the 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. Taxpayer timely filed his North Carolina individual income tax returns for the taxable years 2000 and 2001.
3. The 2000 return reflected federal taxable income of zero; North Carolina taxable income of zero; and North Carolina tax withheld of \$555.00. The tax withheld was refunded to Taxpayer as requested.
4. The 2001 return reflected federal taxable income of zero; North Carolina taxable income of zero; and North Carolina income tax withheld of \$1,443.00. Taxpayer requested a refund of \$1,443.00, which was not refunded.
5. The Department of Revenue received information from the Internal Revenue Service indicating that Taxpayer received wages of \$14,953.00 during tax year 2000. The Department also obtained information from the Employment Security Commission indicating that Taxpayer received wages of \$30,904.00 during tax year 2001. The Department determined federal taxable income to be \$12,153.00 for tax year 2000 and \$28,004.00 for tax year 2001 based on total wages earned each year and allowing one personal exemption.
6. The Department calculated Taxpayer's North Carolina taxable income for each year by increasing Taxpayer's federal taxable income for the difference in the State and federal personal exemption amounts. North Carolina taxable income was determined to be \$12,453.00 for tax year 2000 and \$28,404.00 for tax year 2001.
7. Notices of Individual Income Tax Assessment proposing assessments of additional income tax, penalties, and accrued interest for the both tax years were mailed to Taxpayer on September 30, 2002.
8. Taxpayer objected to the proposed assessments and timely requested an administrative tax hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

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

1. Division II of Article 4 in Chapter 105 of the North Carolina General Statutes 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 defined as the taxpayer's taxable income as determined under the Internal Revenue Code, adjusted as statutorily provided for differences in State and federal law. A "taxpayer" is a person subject to tax.
2. Federal taxable income is defined in the Internal Revenue Code as gross income less deductions and personal exemptions. Gross income is defined as all income from whatever source derived unless specifically excepted, including compensation for services rendered. Wages, salaries, commissions paid salesmen, compensation for services on the basis of a percentage of profits, tips, and bonuses are all includable in gross income.
3. A taxpayer may claim an exemption for himself and for each qualified dependent. The basic federal exemption amount is \$2,000.00. The basic exemption amount is increased each year for inflation. The federal personal exemption for an individual entitled to only one exemption for the tax years 2000 and 2001 is \$2,800.00 and \$2,900.00, respectively.
4. Additions to federal taxable income are required for the amount by which the Taxpayer's personal exemptions have been increased for inflation under the Code. Additions of \$300.00 and \$400.00 were properly made for the tax years 2000 and 2001, respectively.
5. An individual is required to file a federal income tax return if his gross income for the year equals or exceeds the allowable exemption amount. 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 shall show the taxable income and adjustments to federal taxable income required by statute.
6. If the taxpayer does not provide adequate and reliable information upon which to compute his tax liability, G S. 105-241.1 provides that 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.
7. G.S. 105-258 provides that 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. G.S. 105-258 also empowers the Secretary to appoint agents to determine liabilities of all persons for any tax imposed under the Revenue Act. The law does not require the Secretary to issue a delegation of authority in writing to each of the Department's employees to perform the duties of their job. The authority of an employee of the Department of Revenue to perform the duties of his or her position is implicit and arises automatically from the individual's appointment by the Secretary to that position.

8. Section 6103(d) of the Internal Revenue Code provides that federal income tax returns and return information are open to inspection by, or disclosure to, any State agency, body, or commission which is charged under the laws of that State with responsibility for the administration of the State's tax laws. Such inspection or disclosure is permitted only upon written request by the head of the agency or by an individual designated by the head of the agency. In 1982, the Department of Revenue and the Internal Revenue Service executed an Agreement on Coordination of Tax Administration that allows for the continuous sharing of tax information between the two agencies.
9. A twenty-five percent negligence penalty is imposed pursuant to G.S. 105-236(5) b 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 \$191.75 and \$110.25 were properly assessed for the tax years 2000 and 2001.
10. A penalty of \$500.00 is imposed pursuant to G.S. 105-236(10a) for filing a frivolous return. A frivolous return is a return that fails to provide sufficient information to permit a determination that the return is correct or contains information which positively indicates that the return is incorrect and evidences an intention to delay, impede, or negate the revenue laws of this State or purports to adopt a position that is lacking in seriousness. The penalty was properly assessed for the tax years 2000 and 2001.

DECISION

Based on the foregoing evidence of record, findings of fact, and conclusions of law, the Assistant Secretary finds the proposed assessments for the tax years 2000 and 2001 to be lawful and proper, and they are hereby affirmed. Both federal and State law impose the individual income tax on the "taxable income" of every individual. The State's definition of taxable income refers to the definition of taxable income in Internal Revenue Code section 63. Taxable income for federal purposes means gross income less allowable deductions. Gross income is defined by Code section 61 as, except as otherwise provided, all income from whatever source derived, including compensation for services.

An assessment of tax is presumed to be correct and the burden is upon a taxpayer who takes exception to an assessment to overcome that presumption. Taxpayer has offered no defense directly addressing the calculation of the proposed liability; rather, he disputes his requirement to file State and federal income tax returns. He claims that the income tax, as imposed by the Internal Revenue Code, is an excise tax and that he is not liable for such tax

since he has no revenue taxable activity. Taxpayer's arguments fail and are nothing more than familiar arguments typically presented to the Department by individuals who protest the payment of income tax.

A hearing before the Secretary of Revenue with respect to a proposed assessment of North Carolina income tax is not the proper forum to determine constitutionality of a direct, non-apportioned tax on earnings. As an official of the Executive branch of the government, the Secretary lacks the authority to determine the constitutionality of legislative acts. The question of constitutionality of a statute is for the judicial branch. (*Insurance Co. v. Gold*, 254 NC 168).

North Carolina statutes mandate that an income tax be imposed on the taxable income of every resident of this State. Therefore, the proposed assessments for the tax years 2000 and 2001 are hereby sustained in their entireties and are determined to be final and collectible, together with interest as allowed by law.

Made and entered this 4th day of November, 2003.

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue