

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 1994 )  
through 2001 by the Secretary of Revenue )  
of North Carolina )  
vs. )  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2003-327

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on November 6, 2003, upon an application for hearing by [Taxpayer], wherein he protested the proposed assessments of additional income tax for the taxable years 1994 through 2001. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by Nancy R. Pomeranz, Director of the Personal Taxes Division. Neither Taxpayer nor anyone representing Taxpayer attended the hearing.

Taxpayer did not file individual income tax returns for the tax years 1994 through 2001. Upon examination, Taxpayer's individual income tax liabilities for tax years 1996 through 2001 were determined based on information obtained from the Internal Revenue Service. Taxpayer's individual income tax liabilities for tax years 1994 and 1995 were estimated based on Taxpayer's gross income for tax years 1996 through 2001 and Consumer Price Index percentages obtained from the United States Department of Labor. Pursuant to G.S. 105-241.1, Notices of Individual Income Tax Assessment reflecting additional income tax; a twenty-five percent late filing penalty; a ten percent late payment penalty; a twenty-five percent negligence penalty; a penalty for underpayment of estimated income tax; and accrued interest for tax years 1994 through 2001 were mailed to Taxpayer on June 3, 2003. Subsequent to mailing the assessment notices on June 3, 2003, the Department determined that penalties pursuant to G.S. 105-163.5(f) were due for each year since there is no basis in law entitling Taxpayer to exempt status. The imposition of the G.S. 105-163.5(f) penalties resulted in the withdrawal of the previously assessed underpayment of estimated income tax penalties for every year except 2001. In addition, the Department obtained additional information from the Internal Revenue Service indicating that Taxpayer's actual gross income for the tax year 1994 was \$909.00 greater than the amount the Department had originally estimated. Taxpayer was informed of these adjustments in a subsequent letter dated July 14, 2003. Amended assessment notices reflecting Taxpayer's corrected 1994 North Carolina taxable income and penalties and corrected 1995 through 2001 penalties were mailed to Taxpayer on July 21, 2003.

Taxpayer objected to the proposed assessments and timely requested an administrative tax hearing before the Secretary of Revenue. His objections to the assessments consisted of

familiar arguments typically presented to the Department by individuals who protest the payment of income tax.

**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 1994 through 2001 lawful and proper?

**EVIDENCE**

The evidence presented by Nancy R. Pomeranz, Director of the Personal Taxes Division, consisted of Exhibits PT-1 through PT-35.

**DECISION**

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. Notice of the time and place of the hearing was mailed to Taxpayer and Taxpayer's representative by first-class mail, postage prepaid, on September 12, 2003. Neither Taxpayer nor anyone representing Taxpayer appeared at the hearing to offer any evidence or argument that would tend to contradict the assessments or overcome the presumption of correctness.

Therefore, the proposed amended assessments dated July 21, 2003, are found to be lawful and proper and are sustained in their entireties. The assessments are further declared to be final and immediately due and collectible, together with interest as allowed by law.

Made and entered this 20<sup>th</sup> day of November, 2003.

Signature\_\_\_\_\_

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings  
North Carolina Department of Revenue