

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Denial of Individual Income Tax)
Refund for the Taxable Year 1998 by the)
Secretary of Revenue of North Carolina)
)
)
)
)
vs.)
)
Taxpayer)

FINAL DECISION
Docket No. 2004-109

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on May 12, 2004, upon an application for hearing by "Executrix," wherein she objected to the denial of refund of individual income tax for the taxable year 1998. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by Executrix; W. Edward Finch, Jr., Assistant Director of the Personal Taxes Division; and Carl G. Hayes, Administrative Officer in the Personal Taxes Division.

Taxpayer, hereinafter referred to as "Decedent," died on December 31, 1998. The Department received Decedent's North Carolina individual income tax return for the taxable year 1998 on July 3, 2003. The return reflected an overpayment of \$863.00.

By letter dated July 31, 2003, the Department notified Executrix that the overpayment of \$836.00 could not be refunded because Decedent's return was not filed within three years from the date set by statute for filing the return. Executrix objected to the denial of refund and requested a hearing before the Secretary of Revenue.

ISSUE

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

1. Is the Secretary of Revenue authorized to refund an overpayment of tax demanded on a return not received by the Department within three years after the due date of the return?

2. Is the denial of refund for the taxable year 1998 lawful and proper?

EVIDENCE

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

1. Memorandum dated May 16, 2001, from E. Norris Tolson, Secretary of Revenue, to Eugene J. Cella, Assistant Secretary of Administrative Hearings, a copy of which is designated as Exhibit PT-1.
2. Decedent's North Carolina individual income tax return for the taxable year 1998, a copy of which is designated as Exhibit PT-2
3. Application for automatic six-month extension of time to file Decedent's North Carolina individual income tax return for the taxable year 1998, a copy of which is designated as Exhibit PT-3.
4. Letter with related attachment from Executrix to the Department of Revenue dated December 28, 2003, copies of which are collectively designated as Exhibit PT-4.
5. Letter from Nancy R. Pomeranz, Director in the Personal Taxes Division, to Executrix dated January 30, 2004, a copy of which is designated as Exhibit PT-5.
6. Letter from Eugene J. Cella to Executrix dated March 16, 2004, a copy of which is designated as Exhibit PT-6.

At the conclusion of the hearing, the Assistant Secretary allowed Executrix thirty days to submit additional information for the record in support of her position. Subsequent to the hearing, Executrix submitted a letter with related attachments dated June 6, 2004, copies of which are collectively designated as Exhibit TP-1.

FINDINGS OF FACT

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

1. Decedent died on December 31, 1998.
2. On February 3, 1999, Executrix was authorized to represent the Decedent's estate and to file Decedent's 1998 North Carolina individual income tax return.

3. On April 15, 1999, Executrix requested and was granted an extension of time until October 15, 1999, to file Decedent's North Carolina individual income tax return for the tax year 1998.
4. The Decedent's 1998 income tax return reflecting an overpayment of \$863.00 was dated by the preparer on June 6, 2002, but not received by the Department of Revenue until July 3, 2003.
5. By letter dated July 31, 2003, the Department notified the Executrix that the overpayment could not be refunded because the Decedent's 1998 income tax return was not filed within three years from the date set by statute for filing the return.
6. Executrix objected to the denial of refund and made a request for hearing.

CONCLUSIONS OF LAW

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

1. A refund may be issued if requested within three years from the date set for the filing of the return, or within six months of the actual payment of the tax sought to be refunded.
2. If an extension of time to file a return has been granted, the three-year refund period is three years from the extended due date or the date the return is filed, whichever is earlier.
3. The Executrix was granted an extension of time until October 15, 1999, to file the Decedent's North Carolina individual income tax return for the tax year 1998; therefore, the last date on which to file the return to qualify for a refund was October 15, 2002.
4. Because the Decedent's North Carolina individual income tax return for the tax year 1998 was not filed until July 3, 2003, the Department properly denied the refund.

DECISION

Executrix contends that she and her accountant were unaware of the time limits for claiming refunds. It is common for statutes of limitations to bar refund claims after a period of time has elapsed. The Internal Revenue Service and most states all have

provisions barring old tax refund claims, and by law bear no legal responsibility to advise taxpayers as to how a particular refund statute may apply to items. Such provisions are matters of law enacted by legislative bodies, codified, and in the public domain. More specifically, the Department of Revenue publishes the time restrictions for claiming refunds in the instructions for filing North Carolina individual income tax returns.

The Secretary of Revenue's duties includes administering the laws enacted by the General Assembly. The General Assembly has unequivocally preconditioned the refund provisions of The Revenue Act upon the satisfaction of certain time limitations and there is simply no authority of any kind which would permit the Secretary of Revenue to supersede or waive, for whatever reason, otherwise applicable statutes of limitations. Therefore, it is the decision of the Assistant Secretary for Administrative Tax Hearings that the denial of the refund is lawful and proper and should be sustained.

Made and entered this 1st day of September, 2004.

Signature_____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue