

**STATE OF NORTH CAROLINA**

**BEFORE THE  
SECRETARY OF REVENUE**

**COUNTY OF WAKE**

**IN THE MATTER OF:**

The Proposed Assessment of Additional )  
Income Tax for the Taxable Year 2003 by )  
the Secretary of Revenue of North Carolina )  
)  
)  
vs. )  
)  
[Taxpayer 1] and [Taxpayer 2], Taxpayers )

**FINAL DECISION**  
Docket No. 2005-200

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on August 9, 2005, upon an application for hearing by [Taxpayer 1] and [Taxpayer 2], hereinafter referred to collectively as “Taxpayers” and separately as “Husband” and “Wife,” respectively, wherein they protested the proposed assessment of additional income tax for the taxable year 2003. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by Husband; Nancy R. Pomeranz, Director of the Personal Taxes Division; Carla R. Helms, Administrative Officer in the Personal Taxes Division; and Gregory P. Roney, Assistant Attorney General, Department of Justice.

Pursuant to G.S. 105-241.1, an assessment proposing additional tax, penalty, and interest for the tax year 2003 was mailed to Taxpayers on April 26, 2005. Taxpayers filed a timely protest to the proposed assessment and requested an administrative tax hearing before the Secretary of Revenue.

**ISSUE**

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

Is the assessment for additional income tax proposed against Taxpayers for the taxable year 2003 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. Taxpayers North Carolina individual income tax return for the taxable year 2003, a copy of which is designated as Exhibit PT-2.
3. Worksheet for Determining Tax Credit for Charitable Contributions from the 2003 instructions for filing a return, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Assessment for the taxable year 2003 dated April 26, 2005, a copy of which is designated as Exhibit PT-4.
5. Letter from Al Caviness, Revenue Tax Auditor, to Taxpayers dated February 15, 2005, a copy of which is designated as Exhibit PT-5.
6. Facsimile letter from Husband to the Department of Revenue dated May 4, 2005, a copy of which is designated as Exhibit PT-6.
7. Letter from Nancy R. Pomeranz to Taxpayers dated May 23, 2005, a copy of which is designated as Exhibit PT-7.
8. Letter from Eugene J. Cella to Taxpayers dated June 13, 2005, a copy of which is designated as Exhibit PT-8.
9. Letter from Eugene J. Cella to Taxpayers dated June 14, 2005, a copy of which is designated as Exhibit PT-9.

## **FINDINGS OF FACT**

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

1. Taxpayers elected the standard deduction on their federal individual income tax return for tax year 2003.
2. Taxpayers timely filed their North Carolina individual income tax return for tax year 2003. The return indicated that Taxpayers had an adjusted gross income of \$79,245. On the return, Taxpayers claimed a tax credit for charitable contributions of \$1,212.00.
3. On February 15, 2005, the Department mailed a letter to Taxpayers requesting verification of the contributions that were the basis for the tax credit for charitable contributions claimed on their

return. Taxpayers did not provide any documentation to substantiate the charitable contributions. Therefore, the tax credit claimed of \$1,212.00 was disallowed.

4. A Notice of Individual Income Tax Assessment reflecting the additional tax, a ten percent negligence penalty, and accrued interest was mailed to the Taxpayers on April 26, 2005. Taxpayers objected to the proposed assessment and timely requested a hearing before the Secretary of Revenue.
5. At the hearing, Husband admitted to miscalculating the allowable tax credit and acknowledged that there is significant difference between a deduction and a credit.
6. At the hearing, Husband stated that the claimed charitable contributions were cash donations made to the church he and his wife attended, but he did not furnish any information to verify that charitable contributions were made during the 2003 tax year.
7. In the absence of documentation to the contrary, and based on Husband's admission and acknowledgment, the Assistant Secretary finds that the total amount of charitable contributions made by Taxpayers during tax year 2003, if any, is the amount of credit Taxpayers claimed on their return: \$1,212.00.

### **CONCLUSIONS OF LAW**

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

1. Deductions and credits are privileges, not matters of right, and are allowed as a matter of legislative grace. A taxpayer claiming a deduction or credit must bring himself within the statutory provisions authorizing the deduction or credit. The burden is on the taxpayer to show that he or she comes within an exemption or an exception. Taxpayers have failed to meet this burden with regard to the claimed tax credit for charitable contributions of \$1,212.00.
2. For a taxpayer who elects the standard deduction under section 63 of the Internal Revenue Code, North Carolina G.S.105-151.26 allows a tax credit based on charitable contributions made during the taxable year. The allowable credit equals seven percent of the amount by which the charitable contributions made by the taxpayer for the taxable year exceed two percent of the taxpayer's federal adjusted gross income. Taxpayers would have had to make contributions in excess of \$1,585 (2% x \$79,245 adjusted gross income) to have any credit at all. Because the amount of Taxpayers' charitable contributions, if any, did not exceed \$1,585, Taxpayers are not entitled to a credit.
3. 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. The best information available in this case indicates that the assessment at issue is correct, lawful, and proper.

**DECISION**

Based on the foregoing evidence of record, findings of fact, and conclusions of law, the Assistant Secretary finds the proposed assessment for the tax year 2003, to the extent hereinafter modified, to be lawful and proper and is hereby affirmed.

After considering the facts and circumstances, the Assistant Secretary finds reasonable cause to waive the ten percent negligence penalty. Therefore, the proposed assessment for the tax year 2003, modified to exclude the ten percent negligence penalty, is hereby sustained in its entirety and is determined to be finally due and collectible, together with interest as allowed by law.

Made and entered this 12th day of October, 2005

Signature \_\_\_\_\_

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings  
North Carolina Department of Revenue