

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

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

FINAL DECISION
Docket No. 2006-225

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, upon an application for hearing by [Taxpayer], hereinafter referred to as "Taxpayer," wherein he objected to the proposed assessment of additional income tax for tax year 2003. At Taxpayer's request, the hearing was conducted via written communication and the Assistant Secretary allowed Taxpayer until October 8, 2006, to provide any arguments, documents, or other evidence in support of his objections to the assessment. The hearing was conducted by the Assistant Secretary under the provisions of G.S.105-260.1

Pursuant to G.S.105-241.1, an assessment proposing additional tax, penalties, and interest for tax year 2003 was mailed to Taxpayer. Taxpayer filed a timely objection to the proposed assessment and requested a 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 Taxpayer 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. Notice of Individual Income Tax Assessment for taxable year 2003, a copy of which is designated as Exhibit PT-2.
3. Taxpayer's wage and tax information from a mortgage group, a copy of which is designated as Exhibit PT-3.
4. Letter from Taxpayer to Department of Revenue dated April 4, 2006, a copy of which is designated as Exhibit PT-4.
5. Letter from Taxpayer to Department of Revenue dated May 16, 2006, a copy of which is designated as Exhibit PT-5.
6. Letter from Edward S. Koonce, Administrative Officer in the Personal Taxes Division, to Taxpayer dated May 16, 2006, a copy of which is designated as Exhibit PT-6.
7. Letter from Eugene J. Cella to Taxpayer dated July 25, 2006, a copy of which is designated as Exhibit PT-7.
8. Letter from Taxpayer to Eugene J. Cella dated August 18, 2006, a copy of which is designated as Exhibit PT-8.
9. Letter from Eugene J. Cella to Taxpayer dated August 29, 2006, a copy of which is designated as Exhibit PT-9.

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 did not file a North Carolina individual income tax return for tax year 2003.
3. Wage and tax information from a mortgage group shows that Taxpayer had wages of at least \$76,254.07 during tax year 2003. No North Carolina income tax was withheld from the wages.

4. Upon examination, the Department calculated Taxpayer's federal taxable income to be \$68,454.00 for tax year 2003, consisting of wages from a mortgage group; the standard deduction for filing status of Single; and one personal exemption.
5. The Department calculated Taxpayer's North Carolina taxable income by increasing Taxpayer's federal taxable income for the differences between the State and federal standard deduction and personal exemption allowances. North Carolina taxable income was determined to be \$71,254.00 for tax year 2003.
6. Notice of Individual Income Tax Assessment proposing assessment of additional income tax, a twenty-five percent late filing penalty, a ten percent late payment penalty, a twenty-five percent negligence penalty, and accrued interest for tax year 2003 was mailed to Taxpayer February 28, 2006.
7. Taxpayer attempts to dismiss the proposed assessment by arguing that the Department did not respond to his request for hearing within the time prescribed by statute.
8. Taxpayer filed his request for hearing on April 4, 2006.
9. In a letter dated May 16, 2006, the Department responded to Taxpayer's request for information regarding the basis of the assessment. The Department allowed Taxpayer 30 days to respond.
10. The Department received no response from Taxpayer and notified Taxpayer in a letter dated July 25, 2006, that his administrative tax hearing had been scheduled for September 14, 2006.
11. The Department did not meet the statutory timetable for scheduling the hearing. However, the hearing was scheduled within 90 days from the time allowed for Taxpayer to respond to the Department's letter.

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 (1) every resident of this State and (2) every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State or deriving income from a business, trade, profession, or occupation carried on in this State.

2. "Taxpayer" is defined as an individual subject to tax imposed by Division II of Article 4 in Chapter 105.
3. "North Carolina taxable income" is defined as the taxpayer's taxable income as determined under the Internal Revenue Code, adjusted as statutorily provided, for the differences in State and federal law.
4. 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. Gross income includes compensation for services rendered and interest. 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.
5. Internal Revenue Code section 63 allows a taxpayer who does not claim itemized deductions to claim a standard deduction. The basic standard deduction for each filing status is set out in subdivision (c)(2). For a single individual, the basic standard deduction is \$3,000.00. Subdivision (c)(4) provides that the basic standard deduction increased each year for inflation. The basic standard deduction for a single individual for tax year 2003 is \$4,750.00.
6. Internal Revenue Code section 151 allows a taxpayer to claim an exemption for himself and for each qualified dependent. Subdivision (d)(1) provides that the basic exemption amount is \$2,000.00. Subdivision (d)(4) provides that the basic personal exemption amount is increased each year for inflation. The personal exemption amount for an individual entitled to only one exemption for tax year 2003 is \$3,050.00.
7. An individual is required to file a federal income tax return if his gross income for the year equals or exceeds the allowable amount.
8. A resident of this State is required under G.S.105-152 to file a North Carolina individual income tax return. The North Carolina return shall show the taxable income and adjustments to federal income required by statute.
9. If a 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.
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).
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).

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.
13. When a taxpayer makes a timely request for hearing, the Secretary of Revenue is required to set the time and the place for the hearing and notify the taxpayer of the designated time within 60 days of the request and at least 10 days prior to the date set for the hearing. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the parties.
14. The statutes provide no remedy to Taxpayer for the Department's failure to meet the timetable. Moreover, even where actual damages are shown and a statutory remedy has been provided, absent malicious intent, the remedy is only commensurate to the actual prejudice established. There was no malicious intent on the part of the Department. Before a statutory violation can give rise to civil damages, the violation must be wrongful and prejudicial. Therefore, there is no basis to withdraw the assessment.

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 the presumption. Taxpayer has not presented evidence or arguments that would tend to contradict the assessment or overcome the presumption of correctness.

Therefore, based on the foregoing findings of fact and conclusions of law, the proposed assessment of additional tax, penalties, and interest for tax year 2003 is found to be lawful and proper; sustained in its entirety; and is determined to be finally due and collectible, together with interest as allowed by law.

Made and entered this 20th day of December, 2006

Signature Eugene J. Cella

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue