

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

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], Taxpayer)

FINAL DECISION
Docket No. 2006-24

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on February 14, 2006, upon an application for hearing by [Taxpayer 1], hereinafter referred to as "Taxpayer," wherein he objected to 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 Nancy R. Pomeranz, Director of the Personal Taxes Division. Neither Taxpayer nor anyone representing Taxpayer attended the hearing.

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 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 dated October 25, 2005, a copy of which is designated as Exhibit PT-2.
3. Taxpayer's wage and tax information from Taxpayer's Employer, a copy of which is designated as Exhibit PT-3.
4. Letter from Department of Revenue to Taxpayer dated August 22, 2005, a copy of which is designated as Exhibit PT-4.
5. Letter from Taxpayer to Department of Revenue dated September 21, 2005, a copy of which is designated as Exhibit PT-5.
6. Letter from Taxpayer to Department of Revenue dated November 15, 2005, a copy of which is designated as Exhibit PT-6.
7. Letter from Eugene J. Cella dated January 27, 2006, a copy of which is designated as Exhibit PT-7.
8. Selected pages from Internal Revenue Service reference guide, ADP and IDRS Information 2003, a copy of which is designated as Exhibit PT-8.

FINDINGS OF FACT

1. Taxpayer is and at all 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 received from Taxpayer's Employer shows that Taxpayer had wages of at least \$36,813.00 during tax year 2003. No North Carolina tax was withheld from the wages.

4. Upon examination, the Department calculated Taxpayer's federal taxable income to be \$29,013.00 for tax year 2003, consisting of wages from Taxpayer's Employer, the standard deduction for filing status of Single, and one personal exemption.
5. The Department calculated Taxpayer's North Carolina taxable income for each year by increasing Taxpayer's federal taxable income for the differences between State and federal standard deduction and personal exemption allowances. North Carolina taxable income was determined to be \$31,313.00 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 October 25, 2005.
7. Taxpayer has offered no defense directly addressing the calculation of the proposed assessment. Taxpayer attempts to discredit the assessment through his interpretation of the Internal Revenue Service's individual master file of Taxpayer.
8. Taxpayer's contention that the filing requirement codes shown in the individual master file of Taxpayer indicate that he is not required to file a federal income tax return is an attempt to avert attention away from the core issue. The filing requirement code merely indicates the type of forms package the Internal Revenue Service must mail to Taxpayer. It is not relevant to the actual filing requirement under federal law.
9. Taxpayer contends that he was not notified by the Secretary of Revenue that he is liable for State income tax.

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 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 the 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 is increased each year for inflation. The standard deduction 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 is increased each year for inflation. The personal exemption 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 minimum gross income levels. A resident of this State is required under G.S. 105-152 to file a North Carolina individual income tax return if he 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.
8. Taxpayer is clearly required to file both State and federal income tax returns.
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.

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. Notice of the time and place of the hearing was mailed to Taxpayer by first-class mail, postage prepaid on January 27, 2006. Neither Taxpayer nor anyone representing Taxpayer appeared at the hearing to offer any evidence or argument 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 lawful and proper; sustained in its entirety; and is determined to be finally due and collectible.

Made and entered this 21st day of April, 2006

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue