

**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 2002, )  
2003, and 2004 by the Secretary of )  
Revenue of North Carolina )  
vs. )  
)  
[Taxpayer 1], Taxpayer )

**FINAL DECISION**  
Docket No. 2006-268

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on November 9, 2006, upon an application for hearing by [Taxpayer 1], hereinafter referred to as "Taxpayer," wherein he objected to the proposed assessments of additional income tax for the taxable years 2002, 2003, and 2004. The hearing was held by the Assistant Secretary under the provisions of G. S.105-260.1 and was attended by Taxpayer; Nancy R. Pomeranz, Director of the Personal Taxes Division; Rhonda R. Smith, Administrative Officer in the Personal Taxes Division; and with Taxpayer's permission [Taxpayer 1's aunt], hereinafter referred to as "Aunt." Assistant Secretary Cella held the record open for 10 days to allow Taxpayer to submit additional information.

Pursuant to G. S. 105-241.1, assessments proposing additional tax, penalties, and interest for tax years 2002, 2003, and 2004 were mailed to Taxpayer on January 4, 2006. Taxpayer filed timely objections to the proposed assessments and requested a hearing before the Secretary of Revenue.

**ISSUE**

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

1. Is Taxpayer entitled to the contribution deductions claimed on his 2002, 2003, and 2004 individual income tax returns?
2. Are the assessments for additional income tax proposed against Taxpayer for taxable years 2002, 2003, and 2004 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, copy of which is designated as Exhibit PT-1.
2. Notice of Individual Income Tax Assessment for the tax year 2002 dated January 4, 2006, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for the tax year 2003 dated January 4, 2006, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Assessment for the tax year 2004 dated January 4, 2006, a copy of which is designated as Exhibit PT-4.
5. Taxpayer's North Carolina individual income tax return for the tax year 2002, a copy of which is designated as Exhibit PT-5.
6. Taxpayer's North Carolina individual income tax return for the tax year 2003, a copy of which is designated as Exhibit PT-6.
7. Taxpayer's North Carolina individual income tax return for the tax year 2004, a copy of which is designated as Exhibit PT-7.
8. Undated letter from Taxpayer to the Department of Revenue, a copy of which is designated as Exhibit PT-8.
9. Taxpayer's copy of a letter from Al Caviness, Tax Auditor, dated November 20, 2005, with related attachments, copies of which are collectively designated as Exhibit PT-9.
10. Letter from Al Caviness to Taxpayer dated February 9, 2006, a copy of which is designated as Exhibit PT-10.
11. Letter from Al Caviness to Taxpayer dated April 4, 2006, a copy of which is designated as Exhibit PT-11.
12. Letter from Taxpayer to Al Caviness dated April 18, 2006, a copy of which is designated as Exhibit PT-12.
13. Letter from Al Caviness to Taxpayer dated April 27, 2006, a copy of which is designated as Exhibit PT-13.

14. Letter from Taxpayer to Al Caviness dated May 3, 2006, a copy of which is designated as Exhibit PT-14.
15. Letter from Al Caviness to Taxpayer dated June 29, 2006, a copy of which is designated as Exhibit PT-15.
16. Letter from Eugene J. Cella to Taxpayer dated September 20, 2006, a copy of which is designated as Exhibit PT-16.

Subsequent to the hearing date, Taxpayer submitted the following:

1. Undated letter to Eugene J. Cella from Taxpayer and a redacted copy of Federal Form 886-A, Explanation of Items, a copy of which is designated as Exhibit TP-1.

### **FINDINGS OF FACT**

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

1. Taxpayer timely filed his North Carolina individual income tax returns for the tax years 2002, 2003, and 2004.
2. For the years at issue, Taxpayer claimed the following deductions for charitable contributions on his income tax returns:

<b><u>Deductions</u></b>	<b><u>2002</u></b>	<b><u>2003</u></b>	<b><u>2004</u></b>
Cash Contributions	\$9,500.00	\$11,100.00	\$11,000.00
Noncash			
Contributions	<u>3,300.00</u>	<u>3,200.00</u>	<u>2,950.00</u>
Total	<u>\$12,800.00</u>	<u>\$14,300.00</u>	<u>\$13,950.00</u>

3. The examining auditor requested verification of the charitable contributions for the tax years 2002, 2003, and 2004 from Taxpayer.
4. Because Taxpayer did not submit factual evidence to verify the contributions, the examining auditor disallowed the contribution deductions for each year.
5. Notices of Individual Income Tax Assessments reflecting additional tax, the twenty-five percent negligence penalty, and accrued interest were mailed to Taxpayer on January 4, 2006.

6. Taxpayer objected to the proposed assessments and timely requested a hearing before the Secretary of Revenue.
7. For the tax years 2002, 2003, and 2004, Aunt prepared Taxpayer's tax returns. Taxpayer relied on her advice.
8. Taxpayer contends that he contributed at least thirty percent of his salary each week for the past five years to a church, although he is not a member of a church and does not use church envelopes.
9. Taxpayer submitted copies of hand written statements showing cash contributions given to a particular church each week for the tax years 2002, 2003, and 2004. Taxpayer believes these hand written statements are acceptable documentation.
10. Taxpayer was unable to provide an acknowledgement from the church for any contributions.
11. Taxpayer acknowledged that he has a checking account but does not write checks for his cash contributions.
12. Taxpayer contends that he places cash in the church offering plate rather than writing a check since the cash funds were from gambling winnings.
13. Taxpayer claims that he records his cash contributions to the church on a calendar each week, at the advice of Aunt, and gives the calendar to Aunt who prepares his tax return.
14. Taxpayer did not retain the calendars in his records.
15. Although requested to do so, Taxpayer has not furnished reasonable or reliable documentation to verify the contributions claimed on his tax returns.
16. The noncash contributions of \$3,300.00, \$3,200.00, and \$2,950.00, for tax years 2002, 2003, and 2004, respectively, were disallowed since Taxpayer did not submit documentation to verify the amounts claimed.
17. The Department asserted the twenty-five percent negligence penalties for the tax years 2002, 2003, and 2004 because Taxpayer understated taxable income by an amount equal to twenty-five percent or more of gross income.

## **CONCLUSIONS OF LAW**

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

1. Deductions are privileges, not matters of right, and are allowed as a matter of legislative grace. A taxpayer claiming a deduction must bring himself within the statutory provisions authorizing the deduction. To claim any deductions, a taxpayer must be able to prove that the expenses were in fact paid or incurred.
2. A Taxpayer may claim only those deductions and expenses to which he is entitled and for which he has maintained proper documentation.
3. G. S. 105-258 provides that the Secretary of Revenue has the power to examine any books, papers, records, or other relevant data for the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the tax liability of a person, or collecting any such tax.
4. 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.
5. For contributions of \$250.00 or more, a taxpayer must have an acknowledgment of the contribution from the qualified organization. For noncash contributions, a taxpayer must keep records showing the name of the charitable organization, the date and location of the contribution, and a detailed description of the property.
6. Taxpayer has failed to provide the required documentation to substantiate the charitable contributions claimed on his return.

## **DECISION**

Based on the foregoing findings of fact and conclusions of law, the proposed assessments for tax years 2002, 2003, and 2004 are lawful and proper and are hereby sustained in their entireties, modified to exclude the negligence penalties.

At no time did Taxpayer provide adequate information establishing his eligibility for the deductions that have been disallowed. However, Taxpayer relied on the advice of Aunt and did not intentionally understate his taxable income. Therefore, the negligence penalties are hereby waived.

Made and entered this 7th day of February, 2007

Signature \_\_\_\_\_

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings  
North Carolina Department of Revenue