

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)

FINAL DECISION
Docket No. 2006-279

vs.)

[Taxpayer 1], Taxpayer)

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on November 14, 2006, upon an application for hearing by [Taxpayer 1], hereinafter referred to as "Taxpayer," wherein he 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 Taxpayer; Nancy R. Pomeranz, Director of the Personal Taxes Division; and Jeffrey C. Davenport, Administrative Officer in the Personal Taxes Division.

Pursuant to G.S. 105-241.1, an assessment proposing additional tax, penalty, and interest for tax year 2003 was mailed to Taxpayer on June 20, 2006. Taxpayer objected to the proposed assessment and timely 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. Taxpayer's North Carolina individual income tax return for the taxable year 2003, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for the taxable year 2003 dated June 20, 2006, a copy of which is designated as Exhibit PT-3.
4. Letter from Taxpayer to the Secretary of Revenue dated July 8, 2006, a copy of which is designated as Exhibit PT-4.
5. Letter from D.D. Hamilton, Tax Auditor in the Examination Division, to Taxpayer dated August 3, 2006, a copy of which is designated as Exhibit PT-5.
6. Letter from Taxpayer to D.D. Hamilton dated August 8, 2006, a copy of which is designated as Exhibit PT-6.
7. Letter from Jeffrey C. Davenport, Administrative Officer in the Personal Taxes Division, to Taxpayer dated September 8, 2006, a copy of which is designated as Exhibit PT-7.
8. Letter from Taxpayer to Jeffrey C. Davenport dated September 13, 2006, a copy of which is designated as Exhibit PT-8.
9. Letter from Eugene J. Cella to the Taxpayer dated October 2, 2006, a copy of which is designated as Exhibit PT-9.

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 timely filed his 2003 North Carolina individual income tax return and correctly calculated the addition to federal taxable income of \$1,750.00 on line 31 of the return.

3. If an individual claims the standard deduction on his federal return, line 31 of the State return instructs the individual to skip line 32 and enter on line 33 the amount entered on line 31.
4. Since Taxpayer claimed the standard deduction on his federal return, he should have skipped line 32 and entered \$1,750.00 as an addition to federal taxable income on line 33 of the return. In error, he entered zero.
5. Taxpayer's total additions to federal taxable income on line 38 should have been \$2,300.00 rather than \$550.00.
6. The auditor calculated Taxpayer's North Carolina taxable income by increasing federal taxable income by \$1,750.00 for the difference between the State and federal standard deduction. North Carolina taxable income was determined to be \$30,900.00 for tax year 2003.
7. Notice of Individual Income Tax Assessment proposing assessment of additional income tax, a ten percent negligence penalty, and accrued interest for tax year 2003 was mailed to Taxpayer June 20, 2006.
8. Subsequent to the mailing of the assessment notice of June 20, 2006, the Department determined that the ten percent negligence penalty was assessed in error. The penalty was withdrawn.
9. Taxpayer has attempted to discredit the assessment by arguing that the tax form and instructions are ambiguous and confusing.

CONCLUSIONS OF LAW

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

1. An assessment of tax is presumed to be correct and the burden is on a taxpayer who takes exception to an assessment to overcome that presumption. Taxpayer has failed to overcome the presumption of correctness.
2. Internal Revenue Code section 63 allows a taxpayer who does not claim itemized deductions to claim the standard deduction. Subdivision (c) (4) of section 63 provides that the basic standard deduction is increased each year for inflation.
3. The federal standard deduction for a single person for tax year 2003 is \$4,750.00. The North Carolina standard deduction is \$3,000.00.

4. Under G.S. 105-134.6 (c) (4), an addition to federal taxable income is required for the difference in the amount of the basic federal standard deduction, including adjustments for inflation, and the North Carolina standard deduction.
5. The proposed assessment of additional tax and interest for the taxable year 2003 is 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 of additional tax and interest for tax year 2003 to be lawful and proper. Therefore, the assessment is hereby sustained in its entirety and is determined to be finally due and collectible.

Made and entered this 9th day of January, 2007

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue