

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])

FINAL DECISION
Docket No. 2006-315

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on January 17, 2007, upon an application for hearing by [Taxpayer], hereinafter, referred to as "Taxpayer," wherein he objected to the proposed assessments of additional tax for 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; Edward S. Koonce, Administrative Officer in the Personal Taxes Division; and with Taxpayer's permission and at his request, an acquaintance of Taxpayer.

ISSUE

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

Are the assessments for additional income tax proposed against Taxpayer for the 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, a copy of which is designated as Exhibit PT-1.
2. Notice of Individual Income Tax Assessment for taxable year 2002, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for taxable year 2003, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Assessment for taxable year 2004, a copy of which is designated as Exhibit PT-4.
5. Notice of Individual Income Tax Assessment for taxable year 2004, a copy of which is designated as Exhibit PT-5.
6. Wage and Income Transcript from the Internal Revenue Service for taxable year 2002, a copy of which is designated as Exhibit PT-6.
7. Account and Wage and Income Transcripts from the Internal Revenue Service for taxable year 2003, copies of which are collectively designated as Exhibit PT-7.
8. Wage and Income Transcript from the Internal Revenue Service for taxable year 2004, a copy of which is designated as Exhibit PT-8.
9. Taxpayer's 2004 wage and tax statement, a copy of which is designated as Exhibit PT-9.
10. Letter from L.A. Lacey, Revenue Tax Auditor, to Taxpayer dated July 21, 2006, a copy of which is designated as Exhibit PT-10.
11. Letter from L.A. Lacey to Taxpayer dated September 6, 2006, a copy of which is designated as Exhibit PT-11.
12. Letter from Taxpayer to E. Norris Tolson dated September 30, 2006, a copy of which is designated as Exhibit PT-12.
13. Letter from Edward S. Koonce, Administrative Officer in the Personal Taxes Division, to Taxpayer dated October 20, 2006, a copy of which is designated as Exhibit PT-13.

14. Letter from Taxpayer to Edward S. Koonce dated November 9, 2006, a copy of which is designated as Exhibit PT-14.
15. Letter from Eugene J. Cella, to Taxpayer dated November 29, 2006, a copy of which is designated as Exhibit PT-15.

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 North Carolina individual income tax returns for tax years 2002, 2003, or 2004.
3. Wage income from the Internal Revenue Service reflected wages of \$17,094.00, \$33,286.00, and \$23,785.00 for tax years 2002, 2003, and 2004, respectively.
4. Wage and tax information for tax year 2004 received from Taxpayer's employer, reflected North Carolina income tax withheld of \$644.00.
5. Assessments proposing additional tax, penalties, and interest for tax years 2002, 2003, and 2004 were mailed to Taxpayer on September 6, 2006.
6. An assessment proposing a reduction in the additional tax, penalties, and interest for tax year 2004 was mailed to Taxpayer on September 12, 2006.
7. The notices for tax years 2002, 2003, and 2004 proposed 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.
8. Taxpayer objected to the proposed assessments and timely requested a hearing before the Secretary of Revenue.
9. In 1982, the Department of Revenue and the Internal Revenue Service executed an Agreement on Coordination of Tax Administration that allows for the continuous sharing of tax information between the two agencies. The courts have consistently held that such standing agreement satisfies the written requirement of Code section 6103(d).
10. Taxpayer contends that he was not notified by the Secretary of Revenue that he was required to file a State income tax return.
11. Taxpayer contends that he is not liable for income tax.

12. Taxpayer contends that he does not have gross income as it is defined in Internal Revenue Code section 61.
13. Taxpayer questions the authority of the Department's personnel to create assessments.
14. Taxpayer contends that the requirements set forth in section 6103(d) of the Internal Revenue Code have not been met with respect to receiving federal income tax information.
15. At the conclusion of the hearing, the record was held open for thirty days. No further information was submitted by Taxpayer during that period.

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 or 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 income tax imposed by Division II of Article 4 in Chapter 105.
3. "North Carolina taxable income" is defined as a 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 in section 61 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. Taxpayer has gross income within the meaning of section 61.
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 subsection (c)(2). For single individuals, the basic standard deduction is \$3,000.00. Subsection (c)(4) provides that the basic standard deduction is increased each year for inflation.

6. Internal Revenue Code section 151 allows a taxpayer to claim an exemption for himself and for each qualifying dependent. Subsection (d)(1) provides that the basic exemption amount is \$2,000.00. Subsection (d)(4) provides that the basic exemption amount is increased each year for inflation.
7. An individual is required to file a federal 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 must show the taxable income and adjustments to federal taxable income required by statute.
9. The Secretary is not required to individually notify each taxpayer of his or her requirement to file a return.
10. If a taxpayer does not provide adequate and reliable information upon which the Department can accurately compute his tax liability, 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.
11. 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.
12. The Secretary may appoint agents to determine the liabilities of all persons for any tax imposed under the Revenue Act. The authority of an employee of the Department of Revenue to perform the duties of his or her position is implicit and arises automatically from the individual's appointment by the Secretary to that position.
13. 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).
14. A penalty is imposed for failure to pay when due. The penalty is equal to ten percent of the tax (minimum \$5.00).
15. 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

Based on the foregoing findings of fact and conclusions of law, the proposed assessments of additional tax, penalties, and interest for tax years 2002, 2003, and 2004 are found to be lawful and proper. The assessments are, therefore, sustained in their entireties and are determined to be finally due and collectible, together with interest as allowed by law.

Made and entered this 30th day of April, 2007

Signature_____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue