

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 2001)
and 2002 by the Secretary of Revenue of)
North Carolina)
vs.)
[Taxpayer])

FINAL DECISION
Docket No. 2006-316

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on January 25, 2007, upon an application for hearing by [Taxpayer], hereinafter referred to as "Taxpayer," wherein she objected to the proposed assessments of additional income tax for the taxable years 2001 and 2002. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by Taxpayer; Samuel L. McEwen, Assistant Director of the Personal Taxes Division; and, Carla R. Helms, Administrative Officer in the Personal Taxes Division.

Pursuant to G.S. 105-241.1, assessments proposing additional income tax, penalties, and interest for tax years 2001 and 2002 were mailed to Taxpayer on June 27, 2006. Taxpayer objected to the proposed assessments and timely requested an administrative tax hearing.

ISSUES

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

1. Was Taxpayer a resident of North Carolina for income tax purposes during tax years 2001 and 2002?

2. Were the alimony payments received by Taxpayer during tax years 2001 and 2002 taxable?
3. Are the assessments for additional income tax proposed against Taxpayer for the taxable years 2001 and 2002 lawful and proper?

EVIDENCE

The evidence presented by Samuel L. McEwen, Assistant 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 the taxable year 2001 dated June 27, 2006, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for the taxable year 2002 dated June 27, 2006, a copy of which is designated as Exhibit PT-3.
4. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 2001, a copy of which is designated as Exhibit PT-4.
5. Federal income tax return detail information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 2002, a copy of which is designated as Exhibit PT-5.
6. Letter from Central Examination Section to Taxpayer dated March 27, 2006, a copy of which is designated as Exhibit PT-6.
7. Letter from Taxpayer to Central Examination Section dated May 12, 2006, a copy of which is designated as Exhibit PT-7.
8. Letter from Taxpayer to North Carolina Department of Revenue dated July 24, 2006, a copy of which is designated as Exhibit PT-8.
9. Letter from Carla R. Helms, Administrative Officer in the Personal Taxes Division, to Taxpayer dated August 3, 2006, a copy of which is designated as Exhibit PT-9.

10. Letter from Taxpayer to Carla R. Helms dated August 31, 2006, a copy of which is designated as Exhibit PT-10.
11. Letter from Taxpayer to Carla R. Helms, with related attachments, dated September 5, 2006, copies of which are designated as Exhibit PT-11.
12. Letter from Carla R. Helms to Taxpayer dated October 10, 2006, a copy of which is designated as Exhibit PT-12.
13. Letter from Taxpayer to Carla R. Helms dated November 13, 2006, a copy of which is designated as Exhibit PT-13.
14. Letter from Eugene J. Cella to Taxpayer dated November 28, 2006, a copy of which is designated as Exhibit PT-14.
15. Letter from Taxpayer to Nancy R. Pomeranz, Director of Personal Taxes Division, dated December 8, 2006, a copy of which is designated as Exhibit PT-15.
16. Letter from Nancy R. Pomeranz to Taxpayer dated December 15, 2006, a copy of which is designated as Exhibit PT-16.
17. Taxpayer's driver's license history detail obtained from the North Carolina Department of Transportation, Division of Motor Vehicles, a copy of which is designated as Exhibit PT-17.
18. Taxpayer's driver's license event description history obtained from the North Carolina Department of Transportation, Division of Motor Vehicles, a copy of which is designated as Exhibit PT-18.
19. Taxpayer's vehicle registration information obtained from the North Carolina Division of Motor Vehicles, a copy of which is designated as Exhibit PT-19.
20. Taxpayer's vehicle registration information obtained from the North Carolina Division of Motor Vehicles, a copy of which is designated as Exhibit PT-20.
21. Taxpayer's Motor Vehicle Tax Billing information obtained from the Wake County Property Tax Office, a copy of which is designated as Exhibit PT-21.
22. Taxpayer's Motor Vehicle Tax Billing Account Summary obtained from the Wake County Property Tax Office, a copy of which is designated as Exhibit PT-22.
23. Taxpayer's Motor Vehicle Tax Billing Account Summary obtained from the Wake County Property Tax Office, a copy of which is designated as Exhibit PT-23.

At the conclusion of the hearing, the Assistant Secretary allowed Taxpayer thirty days to submit additional information for the record in support of her position. Subsequent to the hearing, Taxpayer submitted the following evidence:

1. Memorandum from Taxpayer to Carla R. Helms dated January 31, 2007, a copy of which is designated as Exhibit TP-1.
2. Memorandum from Taxpayer to Department of Revenue, with related attachments, dated February 9, 2007, copies of which are designated as Exhibit TP-2.
3. Memorandum from Taxpayer to Eugene J. Cella entitled Mailing I dated March 14, 2007, a copy of which is designated as Exhibit TP-3.
4. Memorandum from Taxpayer to Eugene J. Cella, with related attachments, entitled Mailing II dated March 15, 2007, copies of which are designated as Exhibit TP-4.

Also subsequent to the hearing, the Personal Taxes Division submitted as evidence a letter from Eugene J. Cella to Taxpayer dated February 27, 2007, a copy of which is designated as Exhibit PT-24.

FINDINGS OF FACT

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

1. Taxpayer did not file North Carolina individual income tax returns for the tax years 2001 and 2002.
2. The Department received Taxpayer's federal income tax information for tax years 2001 and 2002 from the Internal Revenue Service showing Taxpayer's federal taxable income to be \$6,050.00 and \$4,062.00, respectively. The information showed that Taxpayer received alimony of \$13,500.00 and \$11,762.00 for tax years 2001 and 2002, respectively.
3. The Department determined Taxpayer's North Carolina taxable income for tax years 2001 and 2002 to be \$8,000.00 and \$6,262.00, respectively, by increasing Taxpayer's federal taxable income for the differences between the State and federal standard deduction and personal exemption allowances.

4. Notices of Individual Income Tax Assessment reflecting tax, penalties, and interest of \$885.61 and \$670.08 for tax years 2001 and 2002, respectively, were mailed to Taxpayer on June 27, 2006.
5. The notices for tax years 2001 and 2002 proposed income tax, a twenty-five percent late filing penalty, a ten percent late payment penalty, a twenty-five percent negligence penalty, and accrued interest.
6. Taxpayer objected to the proposed assessments and timely requested an administrative tax hearing.
7. Taxpayer maintained a current North Carolina driver's license during 2001 and 2002.
8. Taxpayer maintained registration on her vehicle with the North Carolina Division of Motor Vehicles during 2001 and 2002.
9. Taxpayer paid Wake County ad valorem taxes on her vehicle during 2001 and 2002.
10. Taxpayer's address on her 2001 and 2002 federal income tax returns is a certain P.O. Box.
11. All of the gross income reported on Taxpayer's federal income tax returns for tax years 2001 and 2002 was alimony payments.
12. Since at least 1999 to current date, Taxpayer has used a certain physical address and a certain mailing address.
13. Taxpayer has paid ad valorem taxes on her vehicle since at least 1994 and is current in her payment.
14. 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).
15. Taxpayer contends that she is not a resident of North Carolina because she does not maintain a domicile in North Carolina.
16. Taxpayer contends that the alimony she received is derived from a property settlement and, therefore, not taxable.
17. Taxpayer has provided no evidence to show that she established domicile in a locality other than North Carolina.

18. Taxpayer has provided no evidence to support her claim that the alimony she received during 2001 and 2002 is not taxable.

19. The Assistant Secretary closed the hearing record on March 16, 2007.

CONCLUSIONS OF LAW

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

1. North Carolina imposes an individual income tax upon the taxable income of every resident of this State. For residents of this State, “North Carolina taxable income” is the taxpayer’s taxable income as determined under the Internal Revenue Code, adjusted as statutorily mandated for differences in State and federal law.
2. A resident of this State is required to file a North Carolina individual income tax return if the individual is required to file a federal income tax return. The North Carolina return must show the taxable income and adjustments to federal taxable income required by statute.
3. A “resident” is an individual who is domiciled in this State at any time during the year, or who, whether regarding his domicile as in this State or not, resides within North Carolina during the year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the State for more than 183 days raises no presumption that the individual is not a resident.
4. For tax purposes, “domicile” is the residence of a person at a particular place, with the intention to remain there permanently, or for an indefinite length of time, or until some unexpected event shall occur to induce him to leave the same. To effect a change of domicile, a person’s first domicile must be abandoned with no intention of returning to it, and actual residence established in a new locality coupled with the intention of making the last acquired residence the taxpayer’s permanent home. The law presumes that a person’s domicile of origin exists until a change of domicile is proved and the burden of proof is upon the individual alleging the change of domicile.
5. Alimony or separate maintenance payments are includible as income and mean any payment in cash if such payment is received by (or on behalf of) a spouse

- under a divorce or separation instrument and the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income.
6. Section 6103(d) of the Internal Revenue Code provides that federal income tax returns and return information are open to inspection by, or disclosure to, any State agency, body, or commission which is charged under the laws of that State with responsibility for the administration of the State's tax laws. Such inspection or disclosure is permitted only upon written request by the head of the agency or by an individual designated by the head of the agency.
 7. If a taxpayer does not provide adequate and reliable information upon which to 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. Assessments must generally be proposed within three years of the date the return was filed or the date the return was due to be filed, whichever is the later. When a return has not been filed, there is no statute of limitations and an assessment can be proposed at any time.
 8. 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 of \$5.00, maximum twenty-five percent).
 9. A penalty is imposed for failure to pay tax when due. The penalty is equal to ten percent of the tax (minimum \$5.00).
 10. 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 evidence of record, findings of fact, and conclusions of law, the Assistant Secretary finds the proposed assessments for the tax years 2001 and 2002 to be lawful and proper and are hereby sustained in their entireties and are determined to be finally due and collectible, together with interest as allowed by law.

Made and entered this 11th day of June , 2007

Signature_____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue