

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 2000,)
2001, 2002, 2003, and 2004 by the)
Secretary of Revenue of North Carolina)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2006-332

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, upon application for hearing by [Taxpayer], hereinafter referred to as "Taxpayer," wherein he objected to the proposed assessments of additional income tax for taxable years 2000 through 2004. At Taxpayer's request, the hearing was conducted via written communication and the Assistant Secretary allowed Taxpayer until May 12, 2007, to provide any arguments, documents, or other evidence in support of his objection to the assessments. The hearing was conducted by the Assistant Secretary under the provisions of G.S.105-260.1.

Pursuant to G.S.105-241.1, assessments proposing additional tax, penalties, and accrued interest for tax years 2000 through 2004 were mailed to Taxpayer. He objected to the proposed assessments and timely requested an administrative tax hearing.

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 2000, 2001, 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 2000 dated August 29, 2006, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for taxable year 2001 dated August 29, 2006, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Assessment for taxable year 2002 dated August 29, 2006, a copy of which is designated as Exhibit PT-4.
5. Notice of Individual Income Tax Assessment for taxable year 2003 dated August 29, 2006, a copy of which is designated as Exhibit PT-5.
6. Notice of Individual Income Tax Assessment for taxable year 2004 dated August 29, 2006, a copy of which is designated as Exhibit PT-6.
7. Wage and tax statements for tax year 2000 from Taxpayer's employers, copies of which are collectively designated as Exhibit PT-7.
8. Wage and tax statements for tax year 2001 from Taxpayer's employers, copies of which are collectively designated as Exhibit PT-8.
9. Wage and tax statements for tax year 2002 from Taxpayer's employers, copies of which are collectively designated as Exhibit PT-9.
10. Wage and tax statements for tax year 2003 from Taxpayer's employers, copies of which are collectively designated as Exhibit PT-10.
11. Wage and tax statements for tax year 2004 from Taxpayer's employers, copies of which are collectively designated as Exhibit PT-11.
12. Wage and Income Transcript from the Internal Revenue Service for taxable year 2000, a copy of which is designated as Exhibit PT-12.
13. Wage and Income Transcript from the Internal Revenue Service for taxable year 2001, a copy of which is designated as Exhibit PT-13.

14. Wage and Income Transcript from the Internal Revenue Service for taxable year 2002, a copy of which is designated as Exhibit PT-14.
15. Wage and Income Transcript from the Internal Revenue Service for taxable year 2003, a copy of which is designated as Exhibit PT-15.
16. Wage and Income Transcript from the Internal Revenue Service for taxable year 2004, a copy of which is designated as Exhibit PT-16.
17. Letter from A. Weir, Revenue Tax Auditor, to Taxpayer dated May 30, 2006, a copy of which is designated as Exhibit PT-17.
18. Letter from Taxpayer to A. Weir dated September 21, 2006, a copy of which is designated as Exhibit PT-18.
19. Letter from Edward S. Koonce, Administrative Officer in the Personal Taxes Division, to Taxpayer dated October 27, 2006, a copy of which is designated as Exhibit PT-19.
20. Letter from Taxpayer to Edward S. Koonce dated November 24, 2006, a copy of which is designated as Exhibit PT-20.
21. Letter from Eugene J. Cella to Taxpayer dated December 11, 2006, a copy of which is designated as Exhibit PT-21.
22. Letter from Taxpayer to Eugene J. Cella dated December 23, 2006, a copy of which is designated as Exhibit PT-22.
23. Letter from Eugene J. Cella to Taxpayer dated January 5, 2007, a copy of which is designated as Exhibit PT-23.
24. Letter from Taxpayer to Eugene J. Cella dated January 16, 2007, a copy of which is designated as Exhibit PT-24.
25. Letter from Eugene J. Cella to Taxpayer dated February 1, 2007, a copy of which is designated as Exhibit PT 25.
26. Letter from Taxpayer to Eugene J. Cella dated February 6, 2007, a copy of which is designated as Exhibit PT-26.
27. Letter from Eugene J. Cella to Taxpayer dated February 12, 2007, a copy of which is designated as Exhibit PT-27.
28. Letter from Taxpayer to Eugene J. Cella dated March 20, 2007, a copy of which is designated as Exhibit PT-28.

Taxpayer presented the following information:

1. Letter from Eugene J. Cella to Taxpayer dated April 12, 2007, a copy of which is designated as Exhibit TP-2.
2. Letter from Taxpayer to Eugene J. Cella dated April 30, 2007, a copy of which is designated as Exhibit TP-1.
3. Brief for Tax Hearing, a copy of which is designated as Exhibit TP-3.
4. Affidavit of Material Facts, a copy of which is designated as Exhibit TP-4.

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 North Carolina individual income tax returns for tax years 2000, 2001, 2002, 2003, or 2004.
3. Wage and Income information from the Internal Revenue Service reflected wages of \$54,679.00, \$65,937.00, \$51,159.00, \$54,739.00, and \$55,789.00 for tax years 2000, 2001, 2002, 2003, and 2004.
4. Wage and tax information from Taxpayer's employer reflected wages of \$4,667.30, \$2,894.39, \$2,985.95, \$5,312.93, and \$3,258.52 for tax years 2000, 2001, 2002, 2003, and 2004, respectively. The wage and tax information also reflected North Carolina tax withheld of \$165.63, \$102.15, \$103.32, \$211.47, and \$64.83 for tax years 2000, 2001, 2002, 2003, and 2004, respectively.
5. Wage and tax information from Taxpayer's employer reflected wages of \$10,659.36, \$41,704.57, and \$48,174.73 for tax years 2000, 2001, and 2002, respectively. The wage and tax information also reflected North Carolina tax withheld of \$88.43, \$1,860.56, and \$2,212.55 for tax years 2000, 2001, and 2002, respectively.
6. Wage and tax information from Taxpayer's employer reflected wages of \$36,564.67 and \$6,891.18 for tax years 2000 and 2001, respectively. The wage and tax information also reflected North Carolina individual income tax withheld of \$2,057.34 and \$396.96 for tax years 2000 and 2001, respectively.
7. Wage and tax information from Taxpayer's employer reflected wages of \$49,427.56 and \$52,531.43 for tax years 2003 and 2004, respectively. The wage and tax information also reflected North Carolina individual income tax withheld of \$2,278.12 and \$2,520.48 for tax years 2003 and 2004, respectively.

8. The Department determined Taxpayer's North Carolina taxable income for each year by increasing his federal taxable income for the difference between the State and federal standard deduction and personal exemption.
9. Assessments proposing additional tax, penalties, and interest for tax years 2000, 2001, 2002, 2003, and 2004 were mailed to Taxpayer on August 29, 2006.
10. The notices for tax years 2000, 2001, 2002, 2003, and 2004 proposed additional tax, a twenty-five percent late filing penalty, a ten percent late payment penalty, a twenty-five percent negligence penalty, and a fifty percent underwithholding penalty, and accrued interest.
11. Taxpayer objected to the proposed assessments and timely requested an administrative tax hearing.
12. In 1982, the Department of Revenue and the Internal Service executed an Agreement on Coordination of Tax Administration that allows for the continuous sharing of tax information between the two agencies.
13. Taxpayer contends that he is not a citizen of the United States.
14. Taxpayer contends that the United States consists of only the District of Columbia.
15. Taxpayer contends that only employees of the federal government are subject to federal income tax.
16. Taxpayer contends that the Department of Revenue does not have the authority to correct his federal return.
17. Taxpayer contends that the Internal Revenue Code does not impose an income tax liability nor require that income tax be paid on the basis of a return.
18. Taxpayer requested that the hearing be held in a city near him. He contends that he did not waive his right to appear in person at a hearing in Raleigh.
19. Taxpayer telephoned the undersigned on April 11, 2007, and stated that he would agree to handle the hearing by mail.

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 every resident of 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 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.
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 married filing separate 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 exemption amount.
8. A resident of this State is required 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 of Revenue has the power to examine any books, papers, records, or other relevant data for the purposes 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.

10. 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.
11. The Fourteenth Amendment to the United States Constitution defines the basis for United States citizenship, stating that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”
12. Taxpayer argues that the United States consists only of the District of Columbia; therefore, he does not live in the United States and is not subject to income tax. The Internal Revenue Code imposes a federal income tax upon all United States citizens and residents, not just those who reside in the District of Columbia.
13. Taxpayer contends that only employees of the federal government are subject to income tax. This argument is based on a misinterpretation of Code section 3401. Section 3401 “defines employee” and states that the term “includes an officer, employee, or elected official of the United States...” This language does not address how other employee’s wages are subject to withholding or taxation. Section 7701(c) states that the use of the word “includes” shall not be deemed to exclude things otherwise within the meaning of the word defined.” The word “includes” as used in the definition of “employee” is a term of enlargement, not of limitation.
14. The Department has the authority to determine an individual’s correct federal taxable income for the purposes of determining the individual’s North Carolina income tax liability. Taxable income as determined under the Code does not mean the taxable income Taxpayer chooses to report on his or her return, but rather the taxable income as it should actually be calculated under the Code. Therefore, if an individual calculates federal taxable income incorrectly or reports no taxable income on his federal return, the State is not bound by the amount reported.
15. The Secretary of Revenue must set the time and the place for an administrative tax hearing. G.S.105-260.1 provides that the Secretary of Revenue may delegate to a Deputy or Assistant Secretary of Revenue the authority to hold any hearing. The Assistant Secretary for Tax Hearings, by authority of the North Carolina General Statutes, requires administrative tax hearings to be held in person in Raleigh or via written communication. Taxpayer’s assertions regarding the location of the hearing are inaccurate and disingenuous.
16. Taxpayer’s letter of April 30, 2007, was frivolous, without merit, and done solely for the purpose of delay.

17. 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).
18. A penalty is imposed for failure to pay tax when due. The penalty is equal to ten percent of the tax (minimum \$5.00).
19. 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.
20. The fifty percent penalty for underwithholding was assessed in error for the years at issue is hereby withdrawn.

DECISION

Taxpayer raises familiar arguments typically espoused by individuals who object to the payment of income tax. I find Taxpayer's arguments to be nothing more than trite contentions repeatedly rejected by the courts as having no merit whatsoever.

Based on the foregoing findings of fact and conclusions of law, the proposed assessments of additional tax, penalties, and interest for tax years 2000, 2001, 2002, 2003, and 2004, modified to exclude the fifty percent penalty for underwithholding, are found to be lawful and proper. The assessments are, therefore, sustained in their entirety and are determined to be finally due and collectible, together with interest as allowed by law.

Made and entered this 8th day of August 2007.

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue