

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Reduction of the Individual Income)
Tax Refund for Taxable Year 2006 by the)
Secretary of Revenue of North Carolina)
)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2007-164

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on October 11, 2007, upon an application for hearing by [Taxpayer], hereinafter referred to as "Taxpayer," wherein he objected to the reduction of his individual income tax refund for tax year 2006. The hearing was held by the Assistant Secretary under the provisions of G.S.106-260.1 and was attended by Taxpayer's CPA, hereinafter referred to as "CPA"; Nancy R. Pomeranz, Director of the Personal Taxes Division; and Edward S. Koonce, Administrative Officer in the Personal Taxes Division. Taxpayer's Company hereinafter referred to as "Company."

ISSUE

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

Is the reduction of the refund for tax year 2006 lawful and proper?

EVIDENCE

The evidence presented by Nancy R. Pomeranz, Director of the Personal Taxes Division, consisted of the following:

1. Taxpayer's North Carolina individual income tax return for taxable year 2006, a copy of which is designated as Exhibit PT-1.

2. Notice of Individual Income Tax Adjustment for taxable year 2006, dated May 15, 2007, a copy of which is designated as Exhibit PT-2.
3. Letter from former Revenue Tax Auditor, to Taxpayer dated April 19, 2007, a copy of which is designated as Exhibit PT-3.
4. Taxpayer's Form NC K-1 from Company and CPA's schedule of additional first-year depreciation, copies of which are collectively designated as Exhibit PT-4.
5. Letter from Revenue Tax Auditor, to Taxpayer dated May 9, 2007, a copy of which is designated as Exhibit PT-5.
6. Letter from Taxpayer to Department of Revenue dated May 23, 2007, and completed Power of Attorney and Declaration of Representative, copies of which are collectively designated as Exhibit PT-6.
7. Letter from Edward S. Koonce, Administrative Officer in the Personal Taxes Division, to CPA dated July 23, 2007, a copy of which is designated as Exhibit PT-7.
8. Letter from CPA to Edward S. Koonce dated July 25, 2007, a copy of which is designated as Exhibit PT-8.
9. Letter from Eugene J. Cella to CPA dated July 31, 2007, a copy of which is designated as Exhibit PT-9.
10. Letter from CPA to Eugene J. Cella dated September 18, 2007, a copy of which is designated as Exhibit PT-10.
11. Letter from Eugene J. Cella to CPA dated September 18, 2007, a copy of which is designated as Exhibit PT-11.
12. Selected pages of Company's C corporation tax return for tax year 2002, a copy of which is designated as Exhibit PT-12.
13. Selected pages of Company's C corporation tax return for tax year 2003, a copy of which is designated as Exhibit PT-13.
14. Selected pages of Company's S corporation tax return for tax year 2004, a copy of which is designated as Exhibit PT-14.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following 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 an individual income tax return for tax year 2006 reflecting an overpayment of \$15,656.00.
3. Additions to federal taxable income were made on Company's C corporation tax returns of \$445,845.00 and \$45,051.00 for tax years 2002 and 2003, respectively.
4. An addition to federal taxable income was made on Company's S corporation tax return of \$32,331.00 for taxable year 2004.
5. Taxpayer claimed a deduction of \$104,646.00 on his 2006 individual income tax return for 20% of the additional first-year depreciation added back in previous years on Company's C corporation returns.
6. The examining auditor disallowed the deduction of \$104,646.00 because the additional first-year depreciation had been added back on a C corporation income tax return rather than an individual income tax return.
7. As a result of the auditor's adjustment, Taxpayer's overpayment was reduced from \$15,656.00 to \$7,023.00.
8. CPA conceded at the hearing that the law does not permit a deduction on the individual return for additional first-year depreciation previously added-back on a C corporation return, however, he believes the law is unfair.

CONCLUSIONS OF LAW

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

1. Internal Revenue Code sections 168(k) and 1400L allow a taxpayer to claim additional first-year depreciation for federal income tax purposes for tax years 2001, 2002, 2003, and 2004.
2. The North Carolina General Assembly did not adopt the federal additional first-year depreciation and enacted G.S. 105-134.6(c)(8) for individual income tax purposes and G.S.105-130.5(a)(15) for corporate income tax purposes, to

require an addition to federal taxable income equal to 100% of the additional first-year depreciation claimed on the federal income tax returns for tax years 2001 and 2002. An addition to federal taxable income equal to 70% of the additional first-year depreciation claimed on the federal income tax returns was required for tax years 2003 and 2004.

- 3. G.S.105-134.6(b)(17) allows a deduction on the individual income tax return for the total additional first-year depreciation previously added back on the individual income tax return under G.S.105-134.6(c)(8). A deduction of 20% of the total amount added back is to be claimed in each of the individual's first five years beginning on or after January 1, 2005.
- 4. G.S.105-130.5(b)(21) allows a deduction on the corporation income tax return for the total additional first-year depreciation previously added back on the corporation income tax return under G.S.105-130.5(a)(15). A deduction of 20% of the total amount added back is to be claimed in each of the Corporation's first five years beginning on or after January 1, 2005.
- 5. The statutory wording of the relevant statutes is clear, certain, and unambiguous.

DECISION

I find no statutory authority or discretionary powers which would permit me to supercede the applicable individual and corporate income tax statutes in this instance. Based on the foregoing findings of fact and conclusions of law, the reduction of the refund requested for tax year 2006 is found to be lawful and proper and is hereby sustained.

Made and entered this 7th day of November, 2007.

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue