

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Additional)
Income Tax for the Taxable Year 2004 by the)
Secretary of Revenue of North Carolina)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2007-87

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in the city of Raleigh on June 20, 2007, upon an application for hearing by [Taxpayer], hereinafter referred to as "Taxpayer," wherein he objected to the proposed assessment of additional tax for the taxable year 2004. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by Nancy R. Pomeranz, Director of the Personal Taxes Division. Neither Taxpayer nor anyone representing Taxpayer attended the hearing.

Pursuant to G.S. 105-241.1, an assessment proposing additional income tax, penalties, and interest for tax year 2004 was mailed to Taxpayer. Taxpayer filed a timely objection to the proposed assessment and requested an administrative tax hearing.

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 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, former 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 2004 dated January 9, 2007, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for taxable year 2004 dated March 6, 2007, a copy of which is designated as Exhibit PT-3.
4. Taxpayer's wage history for tax year 2004 from the Employment Security Commission, a copy of which is designated as Exhibit PT-4.
5. Wage and Income Transcript from the Internal Revenue Service for taxable year 2004, a copy of which is designated as Exhibit PT-5.
6. Letter from Taxpayer to Department of Revenue dated February 6, 2007, a copy of which is designated as Exhibit PT-6.
7. Letter from Carla R. Helms, Administrative Officer in the Personal Taxes Division, to Taxpayer dated March 1, 2007, a copy of which is designated as Exhibit PT-7.
8. Letter from Taxpayer to Carla R. Helms dated March 10, 2007, a copy of which is designated as Exhibit PT-8.
9. Letter from Carla R. Helms to Taxpayer dated April 11, 2007, a copy of which is designated as Exhibit PT-9.
10. Letter from Taxpayer to Carla R. Helms dated April 21, 2007, a copy of which is designated as Exhibit PT-10.
11. Letter from Eugene J. Cella to Taxpayer dated May 3, 2007, a copy of which is designated as Exhibit PT-11.
12. Letter from Taxpayer to Eugene J. Cella dated May 8, 2007, a copy of which is designated as Exhibit PT-12.
13. Letter from Eugene J. Cella to Taxpayer dated May 24, 2007, a copy of which is designated as Exhibit PT-13.
14. Letter from Taxpayer to Eugene J. Cella dated June 13, 2007, a copy of which is designated as PT-14.

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 a North Carolina individual income tax return for tax year 2004.
3. Wage history from the Employment Security Commission shows that Taxpayer earned wages of at least \$22,685.56 for taxable year 2004.
4. Upon examination, the Department calculated Taxpayer's North Carolina taxable income to be \$17,185.00, consisting of wages; the standard deduction for the filing status of single; and one personal exemption.
5. Notice of Individual Income Tax Assessment proposing 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 for tax year 2004 was mailed to Taxpayer on January 9, 2007.
6. Subsequent to mailing the proposed assessment, the Department obtained the Wage and Income Transcript from the Internal Revenue Service that shows Taxpayer had wages of \$21,859.00 and non-employee compensation of \$1,245.00. The transcript also reflected Form 1098 Mortgage Interest of \$2,995.00 was paid by Taxpayer during the tax year 2004. The Department also determined that Taxpayer's filing status should be married filing separate.
7. The Department recalculated Taxpayer's North Carolina taxable income to be \$17,609.00, consisting of wages; non-employee compensation; the standard deduction for the filing status of married filing separate; and one personal exemption.
8. An amended Notice of Individual Income Tax Assessment proposing 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 for tax year 2004 was mailed to Taxpayer on March 6, 2007.
9. Taxpayer objected to the proposed assessment and timely requested a hearing before the Secretary of Revenue.
10. 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).
11. Taxpayer understated taxable income by an amount equal to twenty-five percent or more of gross income for tax year 2004.

12. Taxpayer contends that the Wage and Income Transcript obtained from the Internal Revenue Service is not a legal document.
13. Taxpayer contends that he has incurred medical and dental expenses, tax return expenses, and charitable donations for the taxable year 2004 that have not been allowed. Taxpayer further contends that he had State income tax withheld that was not allowed.
14. Taxpayer has not offered any factual evidence to show that he did not receive the income reflected on the Wage and Income Transcript.
15. Although Taxpayer has been provided ample opportunity, he has not provided factual evidence to support any deductions or State income tax withheld from his wages.
16. Taxpayer requested that the administrative tax hearing be held in Charlotte.
17. Taxpayer was notified that all administrative tax hearings are held in Raleigh and, therefore, his request was denied.
18. Neither Taxpayer nor anyone representing Taxpayer appeared at the hearing to offer any evidence or argument that would tend to contradict the assessment or overcome the presumption of correctness.

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 the 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 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 a standard deduction. The basic standard deduction for each filing status is set out in subdivision (c)(2). For single and married filing separate individuals, the basic standard deduction is \$3,000.00. Subdivision (c)(4) provides that the basic standard deduction is increased each year for inflation. The basic standard deduction for a single individual and for a married filing separate individual for tax year 2004 is \$4,850.00.
6. Internal Revenue Code section 151 allows a taxpayer to claim an exemption for himself and for each qualified dependent. Subdivision (d)(1) provides that the basic exemption amount is \$2,000.00. Subdivision (d)(4) provides that the basic personal exemption amount is increased each year for inflation. The personal exemption amount for an individual entitled to only one exemption for tax year 2004 is \$3,100.00.
7. An individual is required to file a federal income tax return if his gross income for the year equals or exceeds the allowable amount.
8. A resident of this State is required to file a North Carolina individual income tax return if he is required to file a federal income tax return. The North Carolina return shall 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 the taxpayer does not provide adequate and reliable information upon which to compute his tax liability, G.S.105-241.1 provides that 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. 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). A late filing penalty of \$282.00 was properly assessed for tax year 2004.
12. A penalty is imposed for failure to pay tax when due. The penalty is equal to ten percent of the tax (minimum \$5.00). A late payment penalty of \$112.80 was properly assessed for tax year 2004.

13. 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. A negligence penalty of \$282.00 was properly imposed for tax year 2004.
14. The Secretary of Revenue must set the time and place for the administrative tax hearing. The Secretary may delegate to a Deputy or Assistant Secretary the authority to hold any hearing. The Assistant Secretary for Administrative Tax Hearings, by statutory authority, requires hearings to be held in Raleigh.
15. Taxpayer's letter of June 13, 2007, was frivolous and done solely for the purpose of delay.
16. An assessment of tax is presumed to be correct and the burden is upon a taxpayer who takes exception to an assessment to overcome the presumption.

DECISION

Based on the foregoing findings of fact and conclusions of law, the proposed assessment for tax year 2004 is found to be lawful and proper; is sustained in its entirety; and is determined to be finally due and collectible, together with interest as allowed by law.

Made and entered this _____ day of _____, 2007

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue