

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Penalties)
by the Secretary of Revenue)
of North Carolina)
)
vs.)
)
Estate of [Decedent])

FINAL DECISION
Docket No. 2002-365

This matter was heard before the Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, on July 18, 2002, upon an application for a hearing on behalf of the administrator of the estate wherein he protested the assessment of penalties against the estate of [Decedent]. The hearing was held by the Assistant Secretary under the provisions of G.S. 105-260.1 and was attended by [Accountant]; [Administrator]; and W. Edward Finch, Jr., Assistant Director of the Personal Taxes Division.

ISSUES

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

1. Is the assessment proposed against Decedent's estate lawful and proper?
2. Is there reasonable cause for waiving the 25 percent late filing penalty or the 10 percent late payment penalty?

EVIDENCE

The evidence presented at the hearing by W. Edward Finch, Jr., included 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. Decedent's North Carolina Estate Tax Return, a copy of which is designated as Exhibit PT-2.
3. Notice of Tax Assessment dated February 18, 2002, a copy of which is designated as Exhibit PT-3.

4. Letter from Accountant to Michael D. Wall, Tax Auditor in the Office Examination Division, dated February 26, 2002, a copy of which is designated as Exhibit PT-4.
5. Letter from Accountant to Michael D. Wall dated March 15, 2001 (Accountant inadvertently dated the letter as year 2001 instead of 2002), a copy of which is designated as Exhibit PT-5.
6. Letter from W. Edward Finch, Jr., to Accountant dated April 24, 2002, a copy of which is designated as Exhibit PT-6.
7. Note from Accountant to W. Edward Finch, Jr., received on May 3, 2002, a copy of which is designated as Exhibit PT-7.
8. Letter from Eugene J. Cella to Accountant dated May 21, 2002, a copy of which is designated as Exhibit PT-8.

Evidence presented by Accountant at the hearing consisted of a list of points to be considered with related attachments, copies of which are collectively designated as Exhibit TP-1.

FINDINGS OF FACT

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

1. Decedent died on November 29, 2000. Administrator filed the North Carolina estate tax return on January 21, 2002, without an approved extension of time for filing. The return reflected tax and interest of \$36,860.00, payment of which was included with the return.
2. The auditor assessed the late filing penalty of \$8,934.00 and the late payment penalty of \$3,573.60. A Notice of Estate Tax Assessment reflecting the penalties was mailed to Administrator on February 18, 2002.
3. Administrator objected to the proposed assessment of penalties and timely requested an administrative tax hearing before the Secretary of Revenue.
4. The initial inventory for Decedent's estate filed by Administrator with [a County Clerk of Court] reported total gross estate of \$704,761.22. A corrected inventory was filed after the due date of the estate tax return reporting total gross estate of \$674,459.09

CONCLUSIONS OF LAW

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

1. A North Carolina estate tax return is required to be filed if a federal estate tax return is required. For individuals dying in 2000, federal and State estate tax returns were required if a decedent's gross estate exceeded \$675,000.

2. The North Carolina estate tax return must be filed and the tax paid within nine months from the date of death. An extension of time to file a federal estate tax return is an automatic extension of time to file a North Carolina estate tax return.
3. To receive an extension of time to file the North Carolina estate tax return and pay the tax, a request for extension must be submitted in writing to the Department of Revenue on or before the due date of the return.
4. A penalty of five percent of the tax (maximum 25 percent) for each month is required for failure to file an estate tax return by the due date of the return. A penalty of ten percent of the tax is required for failure to pay the estate tax when due. Because Administrator did not file the estate tax return until January 21, 2002, nor pay the tax when due, the late filing and late payment penalties were properly and lawfully assessed.
5. The Secretary of Revenue is authorized to waive or reduce any penalty. Such waiver or reduction results from the taxpayer establishing reasonable cause for waiving or reducing the penalty assessed. The Secretary is not authorized to waive or reduce interest.

DECISION

Decedent died intestate. Administrator volunteered to administer the estate and was appointed by the court on January 26, 2001. Administrator was not knowledgeable of estate filing requirements. After considering the property tax value of real estate, Administrator incorrectly assumed that the total gross value of the estate was below the minimum filing requirement. Administrator later sought professional advice from Accountant who suggested that he obtain a property appraisal. The estate tax return was filed and the tax and interest paid within a week after the appraisal was received.

The Assistant Secretary believes that Administrator acted in good faith and that his error was inadvertent and due to his limited knowledge of estate tax matters. Therefore, the Assistant Secretary finds reasonable cause for waiver of the late filing penalty of \$8,934.00 and the late payment penalty of \$3,573.60.

Made and entered this 9th day of October, 2002.

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue