

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 1997 by the )  
Secretary of Revenue of North Carolina )  
 )  
vs. )  
 )  
[Taxpayers] )

**FINAL DECISION**  
Docket No. 2001-217

This matter was heard before the Acting Assistant Secretary of Administrative Hearings, Marilyn R. Mudge, in the city of Raleigh on March 26, 2001, upon an application for hearing by [Wife], wherein she protested the proposed assessment of additional tax, penalty, and interest for the taxable year 1997 against her and her [former husband]. [Husband and Wife] are hereinafter referred to collectively as "Taxpayers." The hearing was held under the provisions of G.S. 105-260.1 and was attended by Wife and Gregory B. Radford, Assistant Director of the Personal Taxes Division.

Pursuant to G.S. 105-159 and G.S. 104-241.1, a Notice of Individual Income Tax Assessment proposing an assessment of additional income tax and accrued interest was mailed to Taxpayers on September 26, 2000. Wife wrote to the Department of Revenue and requested waiver of the interest. However, Wife did not pay the tax nor request a hearing. Therefore, a Notice of Penalty Assessment for a late payment penalty was mailed to Taxpayers on November 13, 2000. Wife paid the tax; objected to the proposed assessment of penalty and interest; and timely requested a hearing before the Secretary of Revenue.

**ISSUE**

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

Is the assessment for additional income tax, penalty and interest proposed against Taxpayers for the taxable year 1997 lawful and proper?

## EVIDENCE

The evidence presented by Gregory B. Radford, Assistant Director of the Personal Taxes Division, consisted of the following:

1. Memorandum from E. Norris Tolson, Secretary of Revenue, to Marilyn R. Mudge, Acting Assistant Secretary of Administrative Hearings, dated March 13, 2001, a copy of which is designated as Exhibit PT-1.
2. Taxpayers' North Carolina individual income tax return for the taxable year 1997, a copy of which is designated as Exhibit PT-2.
3. Notice of Individual Income Tax Assessment for the taxable year 1997 dated September 26, 2000, a copy of which is designated as Exhibit PT-3.
4. Notice of Individual Income Tax Penalty Assessment for the taxable year 1997 dated November 13, 2000, a copy of which is designated as Exhibit PT-4.
5. A paper extract of information provided to the Department of Revenue on magnetic tape by the Internal Revenue Service for the taxable year 1997, a copy of which is designated as Exhibit PT-5.
6. Letter from Wife to the Department of Revenue dated October 15, 2000, with a related attachment, copies of which are collectively designated as Exhibit PT-6.
7. Letter from Carla R. Helms, Administrative Officer in the Office Services Division, to Taxpayers dated November 6, 2000, a copy of which is designated as Exhibit PT-7.
8. Letter from Wife to the Department of Revenue dated December 4, 2000, a copy of which is designated as Exhibit PT-8.
9. Letter from Marilyn R. Mudge to Taxpayers dated February 28, 2001, a copy of which is designated as Exhibit PT-9.
10. Wife's acknowledgement of the scheduled time and place for the hearing dated March 7, 2001, a copy of which is designated as Exhibit PT-10.

During the hearing, Wife presented a summary of the events that transpired with respect to the proposed assessment and her concerns with the Department's handling of her file, a copy of which 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. Taxpayers are and at all material times were natural persons, sui juris, and citizens and residents of North Carolina.
2. Taxpayers timely filed their North Carolina income tax return for the tax year 1997.
3. Upon examination, the Department increased Taxpayers' North Carolina taxable income by \$8,077.00 based on a report obtained from the Internal Revenue Service reflecting adjustments to Taxpayers' 1997 federal income tax return. The adjustment consisted of unreported income of \$8,003.00 from Blue Cross Blue Shield of North Carolina and a discrepancy of \$74.00 in the federal taxable income reported on the federal return and the amount reported on the North Carolina return.
4. Pursuant to G.S. 105-159 and G.S. 105-241.1, a Notice of Individual Income Tax Assessment proposing an assessment of additional income tax and accrued interest totaling \$681.07 was mailed to Taxpayers on September 26, 2000.
5. Wife stated that she agreed with the additional tax but asked for waiver of the interest. Wife did not pay the tax nor request a hearing. A Notice of Penalty Assessment for a late payment penalty of \$56.30 was mailed to Taxpayers on November 13, 2000.
6. Wife subsequently paid the tax; protested the proposed assessment of penalty and interest; and requested a hearing before the Secretary of Revenue.

## **CONCLUSIONS OF LAW**

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

1. For residents of this State, North Carolina taxable income is federal taxable income, adjusted for differences in State and federal law. Residents are taxed on income from whatever source derived, whether from sources within North Carolina or sources outside of North Carolina.
2. Gross income includes compensation for services rendered.
3. Upon receipt of information reflecting adjustments to a taxpayer's federal income tax return by the Internal Revenue Service, all facts or evidence including any information shown on the federal

report must be considered in proposing an assessment against the taxpayer. An assessment may be made within three years of receipt of the federal report unless the taxpayer files a return or an amended return reporting the federal changes; in that case, an assessment must be made within one year of receiving the information from the taxpayer or three years of the date the original return was filed, whichever is later.

4. For tax not shown as due on the return but assessed by the Department, a 10% late payment penalty is required if the taxpayer does not pay the tax or request a hearing within thirty days of being notified of the additional tax.
5. All assessments of tax must include interest from the time the tax was due until paid. There is no provision for the waiver of accrued interest.
6. The proposed assessment for the tax year 1997 is lawful and proper.

### **DECISION**

Based on the foregoing evidence of record, findings of fact, and conclusions of law, the Assistant Secretary of Revenue finds the proposed assessment for the tax year 1997 to be lawful and proper and is hereby affirmed.

Wife contends that, when she was notified of the error on her federal return, she visited the Durham office of the North Carolina Department of Revenue in the early summer of 1999 to notify the Department of the federal changes and to pay the additional State tax. She states that the employee in the Durham office who met with her advised her that the Department would bill Taxpayers for the additional State tax. According to Wife, the employee did not make a copy of the federal information from Wife nor attempt to estimate the additional State tax due. The proposed assessment of additional State tax was not issued by the Department until September 2000, some fifteen months after Wife visited the Durham office. Wife concedes that the amount of additional tax is correct and the Department has agreed to waive the late payment penalty, leaving as the only issue the accrued interest.

Wife requests waiver or reduction in the amount of interest because of the Department's delay in issuing the proposed assessment.

While I find Wife's testimony credible and believe the facts as she presented them, I am unable to rule in her favor with respect to waiving or reducing the interest assessed against Taxpayers for the tax year 1997. G.S. 105-241.1(i) requires that interest accrue on tax from the date the tax is due until paid and does not give the Secretary of Revenue the authority to waive or reduce the amount of interest, regardless of delays on the part of the Department in issuing assessments or any other reason. The burden rests solely with taxpayers to pay the tax timely and bear the financial responsibility of not doing so.

The proposed assessment of interest from April 15, 1998, when tax for the tax year 1997 was due, until November 29, 2000, when the additional tax was paid, is lawful and proper and is hereby sustained and is immediately due and collectible.

Made and entered this 9<sup>th</sup> day of April, 2001.

Signature\_\_\_\_\_

Marilyn R. Mudge  
Acting Assistant Secretary of Administrative Hearings