



## North Carolina Department of Revenue

Michael F. Easley  
Governor

October 27, 2006

E. Norris Tolson  
Secretary

[REDACTED]  
Hendersonville, North Carolina [REDACTED]

Dear Mr. Archer:

We have received your letter of September 21, 2006, regarding the individual income tax assessments proposed against you for tax years 2000, 2001, 2002, 2003, and 2004.

For tax years 2000 through 2004, we have no record of your filing North Carolina individual income tax returns. Assessments were prepared for tax years 2000 through 2004 based on information received from the Internal Revenue Service and your employers, Henderson County Hospital Corporation, Visiting Health Professionals Inc., Community Carepartners Inc., and Blue Ridge Health Center. The information we received, copies of which are enclosed, reflects wages of \$51,890.00, \$51,489.00, \$51,159.00, \$54,739.00, and \$55,789.00, respectively, for tax years 2000, 2001, 2002, 2003, and 2004. The information from the Internal Revenue Service also reflects 401k distributions from The King Group of \$2,789.00 and \$14,448.00 for tax years 2000 and 2001, respectively. A deduction from federal taxable income of \$2,000.00 was allowed for tax years 2000 and 2001 for retirement benefits received from a private retirement plan. Your income tax was computed using the standard deduction for a married filing separate individual and allowing one personal exemption. Based on these factors, your North Carolina taxable income was determined to be \$48,179.00, \$59,437.00, \$46,659.00, \$49,989.00, and \$50,789.00 for tax years 2000, 2001, 2002, 2003, and 2004, respectively.

G.S.105-241.1 provides the time period in which a taxpayer must request a written statement or a hearing with regard to a proposed assessment of tax; the time period in which the Department of Revenue must respond to a taxpayer's request for information; and also the time period for which an assessment of tax may be proposed. G.S.105-266 provides the time period in which a taxpayer may request a refund of taxes paid. Both G.S.105-241.1 and G.S.105-266 were enacted by the General Assembly. The Secretary of Revenue is charged with administering the laws enacted by the General Assembly relating to the assessment and collection of individual income taxes. As an official of the executive branch of the government, the Secretary lacks the authority to determine the fairness of legislative acts.

Section 6103(d) of the Internal Revenue Code provides that federal income tax returns and return information are open to inspection by, or disclosure to, any State agency, body, or commission which is charged under the laws of that State with responsibility for the administration of the State's tax laws. Such inspection or disclosure is permitted only upon written request by the head of the agency

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or by an individual designated by the head of the agency. 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 request requirement of Code section 6103(d).

North Carolina law, G.S. 105-134, imposes an individual income tax upon the taxable income of every resident of this State. For residents of this State, G.S. 105-134.5(a) defines "North Carolina taxable income" as the taxpayer's taxable income as determined under the Internal Revenue Code ("Code"), adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7 for differences in State and federal law. "Taxable income as determined under the Code" does not mean the taxable income a taxpayer chooses to report on his or her return, but rather the taxable income as it should be correctly 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.

Federal taxable income is defined in section 63 of the Internal Revenue Code as gross income less deductions and personal exemptions. Gross income is defined in section 61 of the Code as all income from whatever source derived unless specifically excepted. Gross income includes compensation for services rendered (§61(a)(1)) and gross income derived from business (§61(a)(2)). 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 (26 CFR §1.61-2(a)(1)). An individual is required to file a federal income tax return if his gross income for the year equals or exceeds the allowable exemption amount (Code section 6012(a)(1)(A)). A resident of this State is required under G.S. 105-152 to file a North Carolina individual income tax return if the individual is required to file a federal income tax return. The North Carolina return must show the taxable income and adjustments to federal taxable income required by statute.

The assessments are presumed to be correct and the burden of proof is on you to prove otherwise. If you have factual evidence to show that the assessments are in error, please send it to us so that we may review the assessments for any necessary changes. Please let us hear from you within 30 days and include a copy of this letter with your reply.

Very truly yours,

*Edward S. Koonce*

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Personal Taxes Division  
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ESK/mlb

Enclosures

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