

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
Tax for the period May 1, 1998 through)
October 31, 1998)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2002-35

This matter was heard before the Assistant Secretary of Administrative Hearings, Eugene J. Cella, in the City of Raleigh, on January 10, 2002, upon application for hearing by the Taxpayer wherein he protested the assessment of tax, penalty, and interest for the period May 1, 1998 through October 31, 1998. The hearing was held by the Assistant Secretary pursuant to the provisions of G.S. 105-260.1. The Taxpayer represented himself, and representing the Sales and Use Tax Division were W. Timothy Holmes, Assistant Director, and Amy A. McLemore, Administration Officer.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales & Use Tax Assessment to the Taxpayer on May 25, 2001. The Taxpayer objected to the assessment in a letter dated June 19, 2001, and timely requested a hearing.

ISSUE

The issue to be decided is as follows:

Is the corporation's president/treasurer personally liable under G.S. 105-253(b) for payment of sales tax owed by the corporation for the period May 1, 1998 through October 31, 1998?

EVIDENCE

The following items were introduced into evidence:

1. Memorandum dated May 16, 2001, from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated as Exhibit E-1.
2. Copy of Taxpayer's corporation's Registration Application Sales and Use Tax and/or Income Tax Withholding dated March 30, 1998, designated as Exhibit E-2.

3. Copy of Taxpayer's corporation's Notice of Tax Assessment – Sales & Use for the period May 1, 1998 through October 31, 1998 dated February 8, 1999, designated as Exhibit E-3.
4. Copy of face sheet of audit report and audit remarks, designated as Exhibit E-4.
5. Copy of Taxpayer's corporation's Final Notice of Tax Assessment Sales & Use – Audit for the period May 1, 1998 through October 31, 1998 dated April 12, 1999, designated as Exhibit E-5.
6. Copy of letter dated June 16, 1999, from the Taxpayer to the Department, designated as Exhibit E-6.
7. Copy of letter dated June 25, 1999, from the Taxpayer to the Sales & Use Tax Division, designated as Exhibit E-7.
8. Copy of letter dated July 15, 1999, from the Sales & Use Tax Division to the Taxpayer, designated Exhibit E-8.
9. Copy of letter dated July 28, 1999, from the Taxpayer to the Sales & Use Tax Division, designated Exhibit E-9.
10. Copy of letter dated August 30, 1999, from the Sales & Use Tax Division to the Taxpayer, designated Exhibit E-10.
11. Copy of Notice of Sales & Use Tax Assessment for the period May 1, 1998 through October 31, 1998, dated May 25, 2001, designated Exhibit E-11.
12. Copy of letter dated June 19, 2001, from the Taxpayer to the Department, designated Exhibit E-12.
13. Copy of letter dated July 16, 2001, from the Sales & Use Tax Division to the Taxpayer, designated Exhibit E-13.
14. Copy of letter dated September 18, 2001, from the Sales & Use Tax Division to the Taxpayer, designated Exhibit E-14.
15. Copy of letter dated December 13, 2001, from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-15.

FINDINGS OF FACT

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

1. The Taxpayer was president/treasurer of a corporation engaged in the business of operating a grocery store during the audit period.
2. The corporation was delinquent in filing sales and use tax reports and remitting sales tax for the periods May 1, 1998 through October 31, 1998.

3. The corporation had collected sales tax on its sales for the periods May 1, 1998 through October 31, 1998.
4. The corporation closed its business in December of 1998.
5. On February 8, 1999, the Department assessed the corporation for the tax, penalties, and interest outstanding for the periods in question. The corporation timely objected to the assessment and requested a hearing before the Secretary.
6. The Department agreed to reduce the amount of penalties assessed against the corporation, and the Taxpayer advised that the corporation no longer protested the assessment and wanted to make payment arrangements.
7. A Final Notice of Tax Assessment Sales & Use was issued to the corporation on April 12, 1999.
8. The Registration Application Sales and Use Tax And/Or Income Tax Withholding filed on behalf of the corporation indicated that the Taxpayer was the corporation's president/treasurer.
9. The assessment remained unpaid by the corporation, and on May 25, 2001, an assessment for the liability was issued to the corporation's president (the Taxpayer) as responsible corporate officer.
10. The Taxpayer timely objected to the assessment and requested a hearing to resolve the matter.

CONCLUSIONS OF LAW

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

1. As a retailer, the corporation was liable for collecting the applicable State and local sales tax on its sales of tangible personal property pursuant to G.S. 105-164.4, G.S. 105-467, G.S. 105-483, and G.S. 105-498.
2. The Taxpayer, as president/treasurer of the corporation, was a "responsible corporate officer" and individually liable for sales and use taxes owed by the corporation pursuant to G.S. 105-253(b) for the period May 1, 1998 through October 31, 1998.
3. The Taxpayer timely protested the Notice of Sales & Use Tax Assessment dated May 25, 2001.

DECISION

The corporation, engaged in the business of operating a grocery store, was delinquent in filing sales and use tax reports and remitting the sales tax it collected from its customers for the

periods in question. The Taxpayer provided the corporation's sales tax records to the Department for examination. An audit report was completed in which the tax liability was assessed against the corporation. The corporation had not paid its sales tax liability at the time it closed its doors for business, and the assessment against the corporation was final billed. As the corporation had no assets with which to pay the assessment, the Department assessed the president of the corporation as the responsible corporate officer for the amount of sales tax unpaid by the corporation. The assessment was based on the sales records previously furnished to the Department by the Taxpayer.

The Registration Application Sales and Use Tax And/Or Income Tax Withholding filed on behalf of the corporation indicated that the Taxpayer was the corporation's president/treasurer. The Taxpayer has not furnished the Department with any documents or information which supports any adjustment to the amount of tax assessed, nor has he provided any information indicating that he was not the responsible corporate officer of the corporation for the period included in the assessment. Thus, the Taxpayer is personally liable as the president/treasurer of the corporation during the applicable period pursuant to G.S. 105-253(b).

Therefore, the assessment of tax and interest is deemed correct under the law and the facts and is hereby declared to be finally determined and immediately due and payable as allowed by law. The penalties are hereby waived.

Made and entered this 28th day of February, 2002.

Signature _____

Eugene J. Cella

Assistant Secretary for Administrative Tax Hearings
North Carolina Department of Revenue