

**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 June 1, 1993 through )  
September 30, 1998, by the Secretary of )  
Revenue of North Carolina )  
 )  
vs. )  
 )  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2000-135

This matter was heard by the Assistant Secretary of Administrative Hearings, Eugene J. Cella, upon application for hearing by the Taxpayer wherein he protested our proposed assessment of tax, penalty and interest for the period June 1, 1993 through September 30, 1998. The Taxpayer waived his right to appear in person for the hearing, and the matter of the administrative tax hearing was handled by written communications between the Assistant Secretary and the Taxpayer.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales and Use Tax Assessment dated December 13, 1999 to the Taxpayer, assessing tax, penalty and interest in the amount of \$53,012.13. The Taxpayer's attorney, in a letter dated January 11, 2000, objected to the assessment 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 correct and properly proposed against the Taxpayer based on the best information available?

**EVIDENCE**

The following items were introduced into evidence by the parties:

1. Copy of memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated Exhibit E-1.
2. Copy of the face sheet of the audit report and auditor's comments dated September 9, 1999, designated Exhibit E-2.

3. Copy of Notice of Sales and Use Tax Assessment dated December 13, 1999, designated Exhibit E-3.
4. Copy of letter dated January 10, 2000 from the Taxpayer to the Sales and Use Tax Division, designated Exhibit E-4.
5. Copy of letter dated January 11, 2000 from the Taxpayer's attorney to the Sales and Use Tax Division, designated Exhibit E-5.
6. Copy of letter dated January 24, 2000 from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-6.
7. Copy of letter dated February 29, 2000 from the Sales and Use Tax Division to the Taxpayer's attorney, designated Exhibit E-7.
8. Copy of letter dated March 24, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-8.
9. Copy of letter dated June 27, 2000 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-9.
10. Copy of letter dated January 18, 2002, from the Sales and Use Tax Division to the Taxpayer, designated Exhibit E-10.
11. Copy of letter dated February 18, 2002 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-11.
12. Copy of letter dated March 1, 2002 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-12.
13. Copy of letter dated March 13, 2002 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-13.
14. Copy of the Brief for Tax Hearing, Docket No. 2000-135, prepared by the Sales and Use Tax Division, designated Exhibit E-14.

The Taxpayer presented the following information into evidence:

15. Copy of letter dated October 5, 2002 from the Taxpayer to the Assistant Secretary of Revenue and attached response to the Department's proposed assessments, designated Exhibit TP-1.

### **FINDINGS OF FACT**

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

1. The Taxpayer was engaged in business operating a used car lot and muffler shop during the audit period.

2. For the sample audit period, the taxable sales shown on the Taxpayer's sales invoices exceeded the taxable sales reported on the Taxpayer's sales and use tax returns filed with the Department.
3. The Taxpayer did not present the Department with any evidence or records that would contradict the assessment or overcome its presumption of correctness.
4. The notice of sales and use tax assessment was mailed to the Taxpayer on December 13, 1999.
5. The Taxpayer's attorney objected to the assessment and by letter dated January 11, 2000, timely 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. The taxpayer was a retailer and at all material times engaged in the business of making retail sales of tangible personal property subject to sales tax.
2. The Taxpayer did not keep and preserve suitable records necessary to determine the amount of sales and use tax for which he is liable as required under G.S. 105-164.22.
3. The proposed assessment is based on the best information available and is presumed to be correct, as set out in G.S. 105-241.1.
4. The Notice of Proposed Assessment for the period of November 1, 1997 through December 1, 2000 was issued pursuant to G.S. 105-241.1.

### **DECISION**

The Taxpayer operated a used car lot and a muffler shop, charging and collecting State and local sales and use taxes for the periods included in the assessment.

The Department's examining auditor reviewed the Taxpayer's purchases and sales records and determined that these records were insufficient to determine the correct taxable sales. The Taxpayer states that records prior to 1997 were destroyed in a fire and the invoice numbers had been removed on most of the invoices that were produced. Also, many of the invoices were missing for the audit period. In the absence of creditable sales or purchase records, the examining auditor used the Department's records of sales and purchases reported,

the sales and use taxes paid to the Department, and purchase records obtained from several of the Taxpayer's vendors to determine the Taxpayer's sales and use tax liability.

The Taxpayer's objection to the Department's assessment provides a chronology of the business undertakings of the Taxpayer and other business and personal events, but does not include any information that could be reasonably viewed as factual evidence or documentation. Certainly there was nothing in the response to overcome the presumption of correctness of the assessment or on which to base an amendment to the assessment.

Clearly, in G.S. 105-164.22, 105-164.26 and 105-241.1, the Legislature intended that retailers keep suitable records to determine their sales tax liability and that failure to do so should not benefit the Taxpayer. Given that the records kept by the Taxpayer were not creditable, I find that the auditor's methods of determining the Taxpayer's sales and use tax liability are reasonable and constitute the best information available on which to base the assessment.

Wherefore the assessment is sustained in its entirety, and is declared to be final and immediately due and collectible.

This 6<sup>th</sup> day of January, 2002.

Signature\_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Administrative Tax Hearings