

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 October 1, 1992 through)
August 31, 1995 by the Secretary of Revenue)
vs.)
[Taxpayer])

FINAL DECISION
Docket No. 2000-7

This matter was heard before the Assistant Secretary of Revenue, Michael A. Hannah, in the City of Raleigh on January 18, 2000, upon application for hearing by [Taxpayer], wherein it protested a proposed assessment of tax, penalty, and interest for the period October 1, 1992 through August 31, 1995. The hearing was held before the Assistant Secretary pursuant to G.S. 105-260.1 and the Taxpayer elected to submit information through written communication rather than personal appearance. The Taxpayer also remitted a partial payment towards the assessment of \$113,113.13.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales and Use Audit Tax Assessment to the Taxpayer on April 12, 1999, assessing additional tax, penalty, and interest of \$183,977.26 for the period October 1, 1992 through August 31, 1995. The Taxpayer objected to the basis for the proposed amended assessment by letter of August 5, 1999, and timely requested a hearing.

ISSUES

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

- (1) Are Taxpayer's sales in North Carolina of aerial devices and motor vehicle bodies subject to sales tax?
- (2) Is the Department estopped from assessing the additional tax due to prior advice rendered by an employee of the Department?

EVIDENCE

- (1) Memorandum dated August 20, 1999, from Secretary of Revenue to Assistant Secretary of Revenue, designated Exhibit E-1.
- (2) Face sheet and comments of auditor's report dated March 26, 1999, designated Exhibit E-2.
- (3) Notice of Sales & Use - Audit Tax Assessment dated April 12, 1999, designated Exhibit E-3.
- (4) Letter dated April 20, 1999, from the Taxpayer to the Sales and Use Tax Division, (Division) designated Exhibit E-4.
- (5) Letter dated May 25, 1999, from the Division to the Taxpayer, designated Exhibit E-5.
- (6) Schedule dated June 22, 1999, showing titling dates and invoice dates of motor vehicles delivered, designated Exhibit E-6.
- (7) Letter dated August 5, 1999, from the Taxpayer to the Division, designated Exhibit E-7.
- (8) Letter dated August 5, 1999, from the Taxpayer's customer to the Taxpayer, designated Exhibit E-8.
- (9) Sample invoices and bills of lading dated August 26, 1999, designated Exhibit E-9.
- (10) Letter dated September 1, 1999, from the Division to the Taxpayer, designated Exhibit E-10.
- (11) Letter dated September 28, 1999, from the Division to the Taxpayer, designated Exhibit E-11.
- (12) Letter dated October 4, 1999, from the Taxpayer to the Division, designated Exhibit E-12
- (13) Letter dated October 8, 1999, from the Division to the Taxpayer, designated Exhibit E-13.
- (13) Letter dated October 13, 1989, from the Taxpayer to the Division, designated Exhibit E-14.
- (14) Letter dated October 30, 1989, from the Division to the Taxpayer, designated Exhibit E-15.
- (16) Letter dated November 6, 1989, from the North Carolina Division of Motor Vehicles, designated Exhibit E-16.

- (17) Letter dated October 15, 1999, from the Assistant Secretary of Revenue (Assistant Secretary) to the Taxpayer, designated Exhibit E-17.
- (18) Letter dated February 22, 2000, from the Assistant Secretary to the Taxpayer, designated Exhibit E-18.
- (19) Letter dated April 3, 2000, from the Taxpayer to the Assistant Secretary, designated Exhibit T-1.
- (20) Memo dated April 20, 2000, from the Division to the Assistant Secretary, designated Exhibit E-19.
- (21) Letter dated July 24, 2000, from the Assistant Secretary to the Taxpayer, designated Exhibit E-20.

FINDINGS OF FACT

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

- (1) The Taxpayer is a corporation headquartered [outside North Carolina] with facilities in North Carolina that manufactures, sells and installs specialized truck bodies and other equipment onto truck chassis.
- (2) The Taxpayer sold and installed truck bodies on truck chassis which were provided by its customer, a large telephone company with locations in several states.
- (3) The truck bodies were delivered directly to the Taxpayer's locations in [North Carolina and another state] by [the manufacturer of the truck bodies] at the customer's direction.
- (4) After the Taxpayer installed the truck bodies on the truck chassis, the trucks were delivered to the Taxpayer's customer's facilities in North Carolina and other states.
- (5) Some of the truck bodies were titled with the North Carolina Division of Motor Vehicles by the Taxpayer's customer prior to completion of the installation of the specialized truck bodies and delivery of the finished trucks to the customer in North Carolina.
- (6) The Department assessed the Taxpayer sales tax on the sales price of truck bodies that were installed on those truck chassis that had been titled at the Division of Motor Vehicles by the Taxpayer's customer prior to the installation date of the truck bodies. No tax was assessed on the sales price of truck bodies installed on a truck chassis that had not been titled prior to the installation.

- (7) The Taxpayer wrote to the Sales and Use Tax Division on October 13, 1989 and requested information about motor vehicles delivered to customers with body and equipment already permanently attached.
- (8) The Division responded to Taxpayer's October 13, 1989 letter and advised that the transaction involved Highway Use Tax administered by the North Carolina Division of Motor Vehicles, and forwarded the letter to that agency for response.
- (9) The Division did not provide Taxpayer with any advice concerning the application of sales tax to a transaction involving the sale of a motor vehicle after the truck chassis had been titled. That question was not asked by the Taxpayer.
- (10) On November 6, 1989 the Division of Motor Vehicles informed the Taxpayer by letter that a complete motor vehicle unit was subject to highway use tax on the purchase at the time application for title and license is made.
- (11) The Notice of Proposed Assessment was mailed to Taxpayer on April 12, 1999.

CONCLUSIONS OF LAW

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

- (1) G.S. 105-164.3(16) provides in part that 'sales price' means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of tangible personal property."
- (2) G.S. 105-164.13(32) provides an exemption from sales tax for "the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis." The statute is unequivocal that the exemption only applies when the motor vehicle chassis has not been titled prior to installation of the motor vehicle body.
- (3) The North Carolina Supreme Court has held that any taxpayer claiming an exemption or exception from tax has the burden of bringing himself within the exemption or exception since it must be construed in favor of the imposition of the tax. In Sale v. Johnson, 258 N.C. 749, 129 S.E. 2d 45 (1963), the Court stated that "[S]tatutes providing exemption from taxation are strictly construed." The Court also ruled in Hatteras Yacht Co. v. High, 265 N.C. 653, 144 S.E. 2d 821 (1965), that "[P]rovisions in a tax statute granting exemptions are to be strictly construed in favor of the imposition of the tax and against the claim of exemption."
- (4) G.S. 105-264 provides that when the Department issues erroneous written advice to a Taxpayer in response to a specific request in writing, the Taxpayer can rely on such written advice. No such erroneous advice was given to the Taxpayer.

- (5) The language of the statute granting the exemption sought by the Taxpayer is so specific that to allow the exemption under the facts in this case would directly contravene that language and the clear intent of the Legislature. The only lawful conclusion that can be reached is that the Taxpayer made retail sales of truck bodies and other equipment to its customers for which there is no exemption, and the transactions are subject to the sales tax.
- (6) Notice of assessment for the period October 1, 1992 through August 31, 1999, was properly issued to the Taxpayer pursuant to G.S. 105-241.1.
- (7) The Taxpayer timely protested his Notice of Proposed Amended Assessment dated April 12, 1999.

DECISION

The Taxpayer is a corporation headquartered [outside North Carolina] with facilities in North Carolina that manufactures, sells, and installs specialized truck bodies and other equipment onto truck chassis. The Taxpayer sold and installed truck bodies on certain truck chassis that were provided by its customer, a large telephone company with facilities in various states. The truck chassis were delivered directly from the [manufacturer] to the Taxpayer's plants in [inside and outside North Carolina] at the request of the customer. After installation of the truck bodies, some finished trucks were delivered to the customer's facilities in North Carolina and some were delivered to other states.

The issues presented in this case are: (1) whether the Taxpayer's sales in North Carolina of truck bodies are subject to sales tax; and (2) whether the Department is estopped from assessing the additional tax because prior advice was rendered by an employee of the Department. The dates of the transactions at issue were verified by the Department's auditor and indicate that some of the vehicles were titled with the North Carolina Division of Motor Vehicles (NCDMV) by the Taxpayer's customer prior to completion of the installation of the specialized truck bodies and the delivery of the finished trucks to the customer in this State. The Department

assessed the Taxpayer sales tax on the sales price of truck bodies that were installed on those truck chassis that had been titled at the NCDMV by the Taxpayer's customer prior to the installation date of the truck bodies. No tax was assessed on the sales price of truck bodies that were installed on a truck chassis that had not been titled prior to the installation. The Taxpayer argues that the assessment is improper because it is entitled to the exemption afforded under G.S. 105-164.13(32).

G.S. 105-164.4 imposes the State sales tax at the applicable rate on a retailer's net taxable sales of tangible personal property. G.S. 105-467, 105-468, 105-483, and 105-498 levy the applicable local sales and use taxes on sales and purchases of tangible personal property subject to the general State rate of tax. G.S. 105-164.3(16) provides, in part, that "sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property." G.S. 105-164.13 (32) provides an exemption from sales tax "for the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis" (underlining added). Thus, the statute is absolutely unequivocal in its requirement that the exemption only applies when the motor vehicle chassis has not been titled prior to the installation of the motor vehicle body.

The Department's auditor prepared a schedule showing the dates that the Taxpayer's customer titled the motor vehicles and the dates that the Taxpayer invoiced the customer for the truck bodies. (Department's Exhibit E-6). In all cases, the trucks were titled prior to the dates the Taxpayer invoiced the customer for the truck bodies. It is apparent that the dates on which the finished vehicles were delivered to the customer were always within a few days of the invoice dates and in all cases were after the dates the vehicles had been titled at the NCDMV. Clearly,

the trucks had been titled by the Taxpayer's customer prior to the completion of the installation of the specialized truck bodies. A comparison of the bills of lading showing the actual delivery dates of the trucks (Department's Exhibit E-9) with the schedule showing the dates the titles were issued (Department's Exhibit E-6) demonstrates this fact.

The North Carolina Supreme Court has held that any taxpayer claiming an exemption or exception from tax has the burden of bringing himself within the exemption or exception since it must be construed in favor of the imposition of the tax. In Sale v. Johnson, 258 N.C. 749, 129 S.E. 2d 465 (1963), the Court stated that "[S]tatutes providing exemption from taxation are strictly construed ." The Court also ruled in Hatteras Yacht Co. v. High, 265 N.C. 653, 144 S.E. 2d 821 (1965), that "[P]rovisions in a tax statute granting exemptions from the tax thereby imposed are to be strictly construed in favor of the imposition of the tax and against the claim of exemption." Had the Taxpayer's customer purchased the truck chassis and then delivered them to the Taxpayer for the truck bodies to be installed thereon prior to the issuance of a title by the NCDMV, the transactions would have been exempt from sales tax pursuant to G.S. 105-164.13(32). However, that is not the case here. The record clearly shows that the trucks were titled before the Taxpayer installed truck bodies on the chassis and delivered them to its customer. The Taxpayer has failed to show that the transactions in question qualify for the exemption provided by G.S. 105-164.13(32).

The Taxpayer also makes the contention that it was given erroneous advice by the Department regarding the proper application of sales tax to the transactions in question. The Taxpayer wrote the Sales and Use Tax Division on October 13, 1989, and requested information concerning motor vehicles delivered to customers with body and equipment already permanently attached. (Department's Exhibit E-14). The Division responded to the Taxpayer on October 30,

1989, that this transaction involved highway use tax, which is administered by the NCDMV. As a result, the Taxpayer's letter was forwarded to that department for a reply. (Department's Exhibit E-15). On November 6, 1989, the NCDMV informed the Taxpayer by letter that a complete motor vehicle unit was subject to highway use tax on the purchase at the time application for title and license is made. (Department's Exhibit E-16).

G.S. 105-264 provides that when the Department issues erroneous written advice to a taxpayer in response to a specific request in writing, the taxpayer can rely on such written advice. Thus, if a taxpayer requests specific advice in writing from the Department and receives erroneous written advice in response, the taxpayer is not liable for an additional assessment of tax or penalty attributable to the erroneous written advice, provided the information furnished to the Department upon which the written response was based was adequate and accurate. A review of the Department's exhibits numbered E-14 through E-16 discussed above indicates that the Sales and Use Tax Division did not render advice concerning the application of sales tax to a transaction involving sales of a motor vehicle body after the truck chassis had been titled. That question was not asked by the Taxpayer. Also, the NCDMV only responded to the highway use tax question posed by Taxpayer, not a sales tax question. It is therefore clear that the Taxpayer was not provided with erroneous advice by the Department and the protection afforded by G. S. 105-264 does not apply.

In its letter dated April 3, 2000, (Taxpayer's Exhibit T-1), the Taxpayer stated:

"I would ask you to consider that [Taxpayer's customer] is an outstanding Corporate citizen and that they attempt to comply with all applicable rules and regulations. Now that we are all aware of the proper required sequence of event, we can institute procedures to comply in the future."

The reputation of its customer notwithstanding, the Taxpayer alone must be held responsible for determining the proper application of the sales tax to the transactions it engages in. The language of the statute granting the exemption sought by the Taxpayer is so specific that to allow the exemption under the facts in this case would directly contravene that language and the clear intent of the Legislature. The only logical conclusion that can be reached is that the Taxpayer made retail sales of truck bodies and other equipment to its customer for which there is no exemption and the transactions are subject to the sales tax.

Therefore, the proposed assessment of sales tax is deemed to be correct under the law and the facts, is sustained and is hereby declared to be finally determined and immediately due and collectible together with interest as allowed by law. Because the failure on the part of the Taxpayer to collect and remit North Carolina sales tax was not the result of an intentional or negligent disregard of the law, I find reasonable cause to waive the penalties that were imposed.

Made and entered this 10th day of October, 2000.

Signature _____

Michael A. Hannah
Assistant Secretary of Revenue