

STATE OF NORTH CAROLINA

**BEFORE THE
SECRETARY OF REVENUE**

COUNTY OF WAKE

IN THE MATTER OF:

The Denial of a Claim for Refund of Sales and)
Use Tax for the Period September 1, 1998)
through September 30, 1998)

vs.)

[Taxpayer])

FINAL DECISION

Docket No. 2002-229

This matter was heard before the Assistant Secretary of Revenue, Eugene J. Cella, upon application for hearing by the Taxpayer wherein it protested the denial of a claim for refund of tax for the period September 1, 1998 through September 30, 1998. The hearing was scheduled for June 13, 2002 and at the Taxpayer's request, the hearing was conducted by written correspondence. The hearing was held before the Assistant Secretary pursuant to the provisions of G.S. 105-260.1.

ISSUES

The issue to be decided is as follows:

Is the Taxpayer entitled to a refund of an overpayment of sales tax based on a claim for refund filed after three years after the due date of the return on which the tax was paid and after six months from the payment of the tax?

EVIDENCE

The following items were introduced into evidence by the parties:

1. Memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary for Administrative Hearings, designated Exhibit E-1.
2. Business claim for refund of state and county sales and use taxes and attachments dated October 28, 2001, designated Exhibit E-2.
3. Letter dated February 1, 2002 from the Taxpayer Assistance Division to the Taxpayer, designated Exhibit E-3.
4. Letter dated February 12, 2002 from the Taxpayer's representative to the Sales and Use Tax Division, designated Exhibit E-4.

5. Letter dated March 6, 2002 from the Division to the taxpayer's representative, designated Exhibit E-5.
6. Copy of taxpayer's September 1998 sales and use tax return, designated Exhibit E-6.
7. Letter dated April 5, 2002 from the Assistant Secretary to the Taxpayer's representative, designated Exhibit E-7.
8. Division's Brief for Tax Hearing, designated Exhibit E-8.
9. Letter dated June 3, 2002 from the Assistant Secretary to the Taxpayer's representative, designated Exhibit E-9.

FINDINGS OF FACT

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

1. The Taxpayer collected \$275.00 in sales tax from a purchaser in September 1998 and remitted the tax collected to the Department with a return dated October 11, 1998.
2. In May 2001, the purchaser submitted information that the tax was collected in error. On June 26, 2001, the Taxpayer issued a refund to the purchaser in the amount of \$275.00.
3. On October 28, 2001, the Taxpayer submitted a claim for refund to the Department in the amount of \$275.00.
4. The due date of the return for sales and use tax due for the month of September 1998 was October 15, 1998.
5. The claim for refund was filed more than three years after the due date of the return for which the tax was paid and more than six months after the tax was paid.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Assistant Secretary makes the following conclusions of law:

1. The Taxpayer issued a refund of an erroneous collection of sales tax to the purchaser and, pursuant to G.S. 105-164.11, could make a demand for refund from the Department for the amount refunded to the purchaser.
2. The Taxpayer did not submit a demand for refund to the Department within the period required under G.S. 105-266(c)(1).
3. The Taxpayer is not entitled to a refund of the overpayment.

DECISION

The Taxpayer contends that the Department should issue the requested refund since the claim as submitted by the Taxpayer was less than two weeks outside the statute of limitations period for filing a timely claim. The Taxpayer requests relief based, in part, on the fact that the purchaser was refunded the tax collected in error and the Taxpayer bears the additional cost.

The Revenue Laws do not provide any authority for extension of the time in which to file a demand for refund. The Taxpayer acknowledges that the demand for refund was not made within the time set by statute to submit the demand.

I find that the Taxpayer is not entitled to a refund of \$275.00 and the denial of the refund is hereby sustained.

Made and entered this 11th day of July, 2002.

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue