

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Additional Sales)
and Use Tax for the period April 1, 1996)
through December 31, 2001, by the Secretary)
of Revenue)
vs.)
[Taxpayer])

FINAL DECISION
Docket No. 2003-122

This matter was heard before the Assistant Secretary of Revenue, Eugene J. Cella, in the City of Raleigh, on March 20, 2003, upon application for hearing by the Taxpayer wherein it protested a proposed assessment of tax, penalty and interest for the period April 1, 1996 through December 31, 2001. The hearing was held by the Assistant Secretary pursuant to G.S. 105-260.1 and was attended by W. Timothy Holmes, Assistant Director, and William C. Shelton, Administration Officer, representing the Sales and Use Tax Division. Neither the Taxpayer nor a representative attended the hearing.

Pursuant to G. S. 105-241.1, the Department mailed a Notice of Proposed Assessment to Taxpayer on May 28, 2002 assessing additional tax, penalty and interest of \$15,129.84 for the period April 1, 1996 through December 31, 2001. The Taxpayer filed a timely protest to the proposed assessment and requested a hearing before the Secretary of Revenue.

ISSUE

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

- (1) Are the Taxpayer's purchases of building materials for use in the construction of a United States post office in North Carolina pursuant to a contract with the United States Government subject to use tax?
- (2) Are the penalties and interest proposed against the Taxpayer legally and properly assessed?

EVIDENCE

The following items were introduced into evidence by the Division:

1. Copy of Memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary of Tax Administration, designated Exhibit E-1.
2. Copy of Auditor's report dated May 17, 2002 covering the period April 1, 1996 through December 31, 2001, designated Exhibit E-2.
3. Notice of Sales and Use Tax Assessment dated May 28, 2002, designated Exhibit E-3.
4. Copy of a letter dated June 24, 2002 from the Taxpayer to the Sales and Use Tax Division, designated Exhibit E-4.
5. Copy of a letter dated July 8, 2002 from the Sales and Use Tax Division to the Taxpayer, designated Exhibit E-5.
6. Copy of a letter dated September 3, 2002 from the Sales and Use Tax Division to the Taxpayer, designated Exhibit E-6.
7. Copy of a letter dated January 10, 2003 from the Sales and Use Tax Division to the Taxpayer, designated Exhibit E-7.
8. Redacted Final Decision dated December 4, 1952 from the Commissioner of Revenue, designated Exhibit E-8.
9. Redacted Final Decision, Docket 93-31 dated June 24, 1993 from the Assistant Secretary For Legal and Administrative Services, designated Exhibit E-9.
10. Sales and Use Tax Technical Bulletin 31-1, designated Exhibit E-10.
11. Sales and Use Tax Technical Bulletin 37-3, designated Exhibit E-11.
12. Copy of a letter dated March 4, 2003 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-12.

DECISION

1. An assessment of tax is presumed to be correct.
2. The burden is upon a taxpayer who takes exception to an assessment to overcome that presumption.
3. The time and place for hearing was mailed to the last known address of the Taxpayer by first class mail, postage prepaid, and such notice was not returned by the postal service.
4. Neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing.

5. The Taxpayer offered no evidence or argument at the hearing that would tend to contradict the assessment or overcome the presumption of correctness.

Therefore, the proposed assessment of tax, penalty and interest is deemed to be correct under the law and the facts and is hereby sustained. The proposed assessment of tax and penalty is hereby declared to be finally determined and immediately due and collectable with interest as allowed by law.

Made and entered this 18th day of June, 2003.

Signature _____

Eugene J. Cella
Assistant Secretary of Administrative Tax Hearings