

**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, 1999 through )  
August 31, 2002, by the Secretary of Revenue )  
of North Carolina )  
 )  
vs. )  
 )  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2003-176

This matter was heard before the Assistant Secretary of Administrative Hearings, Eugene J. Cella, in the City of Raleigh, on August 6, 2003, upon application for hearing by the Taxpayer wherein it protested the proposed assessment of tax and interest for the period October 1, 1999 through August 31, 2002. The Assistant Secretary held the hearing pursuant to the provisions of G.S. 105-260.1. Representing the Sales and Use Tax Division were W. Timothy Holmes, Assistant Director, and M. D. Stephenson, Administration Officer. The Taxpayer was represented by [a CPA and the President of the Corporation].

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales and Use Tax Assessment on November 12, 2002 to the Taxpayer, assessing tax and interest in the amount of \$5,247.14. The Taxpayer's representative objected to the proposed assessment in a letter dated December 11, 2002 and timely requested a hearing.

**ISSUE**

The issue to be decided in this matter is:

Did the Taxpayer's single, line-item charge on its invoices for the retail sale of a safe described as "delivery," "labor," "labor and bolt-down," "labor and service to deliver and place," or "labor and service to deliver and install" constitute part of the sales price of the safe?

**EVIDENCE**

The following items were introduced into evidence by the Department at the hearing:

1. Memorandum dated May 16, 2001, from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings (Assistant Secretary), designated as Exhibit E-1.

2. Copy of audit report covering the period October 1, 1999 through August 31, 2002 dated November 1, 2002, designated as Exhibit E-2.
3. Copy of Notice of Sales and Use Tax Assessment dated November 12, 2002, designated as Exhibit E-3.
4. Copy of letter dated December 11, 2002, from the Taxpayer's representative to the Sales and Use Tax Division ("Division"), designated as Exhibit E-4.
5. Copy of letter dated January 16, 2003, from the Division to the Taxpayer's representative, designated as Exhibit E-5.
6. Copy of letter dated April 1, 2003 from the Assistant Secretary to the Taxpayer's representative, designated as Exhibit E-6.
7. Copies of invoices issued by the Taxpayer:
  - a. Invoice Number 20034 dated August 29, 2000, designated as Exhibit E-7(a).
  - b. Invoice Number 20050 dated September 13, 2000, designated as Exhibit E-7(b).
  - c. Invoice Number 20061 dated September 27, 2000, designated as Exhibit E-7(c).
  - d. Invoice Number 20063 dated September 29, 2000, designated as Exhibit E-7(d).
8. Copy of letter dated May 21, 2003, from the Assistant Secretary to the Taxpayer's representative, designated as Exhibit E-8.
9. Copy of Brief for Tax Hearing, Docket Number 2003-176.

### **FINDINGS OF FACT**

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

1. The Taxpayer sold and delivered safes to its customers during the audit period.
2. The Taxpayer used specialized equipment to move a safe from its warehouse to the place of delivery. After the safe is in the designated spot, it is leveled, bolted down, cleaned, touched up and the safe's combination is set.
3. The Taxpayer collected and remitted sales tax on its charges for the safes; however, it did not collect and remit sales tax on any of the charges for delivery. The charges for delivery, set up, leveling, and bolting down the safes were listed as one single, line item charge on the invoices issued to customers.
4. The Department assessed the additional sales tax due on 90% of the single, line item charges (labor) made by the Taxpayer on customers' invoices, which represent taxable delivery charges, against the Taxpayer.
5. The Department allowed 10% of the single, line-item charges on the customers' invoices as installation labor, notwithstanding that the Taxpayer did not separately state its labor charges for leveling, installing and bolting down the safes.

6. The Notice of Proposed Assessment was mailed to the Taxpayer on November 12, 2002.
7. The Taxpayer objected to the assessment and made a timely request for a hearing.

### **CONCLUSIONS OF LAW**

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

1. The Taxpayer was, at all material times, a registered retailer engaged in the business of making retail sales of safes.
2. The general rate of State tax and applicable local tax is due on the Taxpayer's retail sales of tangible personal property (safes) to customers in North Carolina during the assessment period.
3. The Taxpayer is liable for collecting and remitting the sales tax on the "sales price" of taxable tangible personal property (safes).
4. The definition of "sales price" includes delivery charges; however, separately stated installation charges are excluded from sales tax.
5. The Taxpayer's charges for "delivery," "labor," "labor and bolt-down," "labor and service to deliver and place," or "labor and service to deliver and install" are principally for the movement of the safes it sold from its place of business to the point of installation where its customers specifically agreed to take delivery.
6. The Taxpayer's single, line-item charges constitute "delivery" charges that are subject to sales tax within G.S. 105-164.3(16) prior to January 1, 2002. This statute was recodified and rewritten under G.S.105-164.3(37), effective January 1, 2002, and the statute provides that delivery charges in connection with a sale are taxable. However, the Department allowed 10% of the single, line-item charge as reasonable exempt installation labor notwithstanding that the installation charges were not separately stated.
7. The Notice of Proposed Assessment for the period October 1, 1999 through August 31, 2002 was issued pursuant to G.S. 105-241.1.

### **DECISION**

The Taxpayer is engaged in the business of making retail sales of safes during the audit period. It is the Taxpayer's position that the single, line-item charges entered on customers' invoices labeled "delivery," "labor," "labor and bolt-down," "labor and service to deliver and place," and "labor and service to deliver and install" are, in essence, charges for installation labor and therefore exempt from sales tax. The basis for this contention is that the

Taxpayer is an internationally certified safe technician using highly skilled labor and specialized equipment in the movement of the safes, installing them, and setting combinations. The Taxpayer believes that the Department has issued its assessment based on the form of the transactions, since the words entered on some of the invoices include “delivery”; however, it claims the substance of the transactions constitute installation labor.

When the Taxpayer sells a safe from the showroom floor, it is subsequently moved to a warehouse where it is cleaned and prepped for delivery. Thereafter, the safe is moved with a forklift and loaded onto a ¾ ton truck where it is securely strapped to the bed. The safe is then transported to the customer’s location, unloaded using the truck’s hydraulic lift onto a pallet jack, then moved to the customer’s garage or entry way. Next, the safe is moved to the installation site, and if it must be moved up or down stairs a hydraulic jack known as a “stairclimber” is utilized. When the safe is moved along the floor, steel plates are laid on the floor and the safe is rolled on steel pipes. After the safe is at the designated place of installation, it is leveled, bolted down, cleaned, touched-up and the combination is set. The Taxpayer stated that the charge for delivery and installation varies, depending on the distance between its business location and the customer’s and the level of difficulty in moving the safe, due to its weight, to the installation site. Additionally, the charge for delivery and installation may be different, depending upon whether the customer accepts delivery at their entry or garage versus a location that requires the safe to be moved up or down stairs.

NCAC T17 :07B .0802(b) provides that:

“Sales to users or consumers of tangible personal property, including articles fabricated by the vendor, which the vendor contracts to install are subject to the sales or use tax and persons making such sales must register with the Department and collect and remit all tax due. If the vendor makes a charge for installing articles of tangible personal property which he sells, the charge for installation will not be subject to tax provided it is in addition to the sales price of the property and is stated separately on the customer’s invoice and in the

vendor's records. If the installation charge is not separately stated, the entire amount will be taxable." (Emphasis added).

During the hearing, it was observed that when any other retailer sells, delivers, and installs tangible personal property, such as cabinets, appliances, audio equipment or video equipment, the retailer's "sales price" of such tangible personal property, including its delivery charges, is subject to sales tax. This is notwithstanding that the retailer might send a licensed professional that uses specialized skill to the site to perform the installation. Any separately stated installation charges are exempt from tax. However, in this case the Taxpayer's charges for delivery and installation were lumped together and billed as a single, line-item charge. The Department allowed 10% of the lump-sum charge as exempt installation labor, and 90% was held as delivery and part of the sales price.

Considering the overall activities of the Taxpayer as described in the Department's Brief and by the Taxpayer during the hearing, the principal purpose for and the substance of the single, line-item charge on a customer's invoice is for delivery, not installation. The allowance of 10% of the single, lump-sum charges as exempt installation labor and the imposition of tax on 90% of such charges, as delivery, in connection with the sales of safes during the assessment period, is reasonable.

Therefore, the assessment of additional tax and accrued interest is deemed to be correct under the law and the facts and is hereby sustained and is declared to be final and immediately due and collectible.

This 29<sup>th</sup> day of October 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Administrative Hearings