

**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 January 1, 1999 )  
through June 30, 2001, by the Secretary of )  
Revenue of North Carolina. )  
vs. )  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2003-212

This matter was heard before the Assistant Secretary of Revenue, Eugene J. Cella, in the City of Raleigh, on May 13, 2003, upon application for hearing by the Taxpayer, wherein he protested a proposed assessment of tax and interest for the period January 1, 1999 through June 30, 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 Danny R. Fulcher, 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 January 8, 2002 assessing additional tax and interest of \$4,175.98 for the period January 1, 1999 through June 30, 2001. The Taxpayer filed a timely protest to the proposed assessment and requested a hearing before the Secretary of Revenue.

**ISSUES**

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

1. Are service-related charges such as design charges in connection with the production of tangible personal property, such as printed matter and disks, subject to sales and use tax when separately stated on the customer's invoice?
2. Are film, proofs, negatives, and other items subject to sales and use tax when they are purchased by the Taxpayer and delivered to a third party printer who uses them in the production of printed matter which is then sold by the Taxpayer to its customers?

## EVIDENCE

The Sales and Use Tax Division introduced the following items into evidence:

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 field auditor's report dated December 14, 2001, covering the period January 1, 1999 through June 30, 2001, designated Exhibit E-2.
3. Copy of Notice of Sales and Use Tax Assessment dated January 8, 2002, designated Exhibit E-3.
4. Copy of a letter dated January 30, 2002, from the Taxpayer to the Department of Revenue (Department), designated Exhibit E-4.
5. Copy of a letter dated March 4, 2002, from the Sales and Use Tax Division (Division) to the Taxpayer, designated Exhibit E-5.
6. Copy of a letter dated June 25, 2002, from the Division to the Taxpayer, designated Exhibit E-6
7. Copy of a letter dated July 26, 2002, from the Taxpayer to the Department, designated Exhibit E-7, along with the following attachments:
  - a. Copy of Schedule E-4 from the field auditor's report, Additional Taxable Purchases- by Date, designated Exhibit E-7 a.
  - b. Copy of a letter dated December 18, 2001, from the Taxpayer's attorney to the Taxpayer, designated Exhibit E-7 b.
8. Copy of a facsimile from the Revenue Field Auditor dated August 9, 2002, designated Exhibit E-8, to the Division with the following attachments:
  - a. Copy of Invoice number 124, dated February 16, 1999, to [a company] from [Taxpayer], designated Exhibit E-8 a.
  - b. Copy of the Taxpayer's Accounts Receivable Register for January 11, 1999, through January 22, 1999, designated Exhibit E-8 b.
  - c. Copy of the Taxpayer's Accounts Receivable Register for December 14, 1999 through December 29, 1999, designated Exhibit E-8 c.
  - d. Copy of the Taxpayer's Accounts Receivable Register for December 7, through January 10, 2001, designated Exhibit E-8 d.
9. Copy of a letter dated August 26, 2002, from the Division to the Taxpayer, designated Exhibit E-9.

10. Copy of a letter dated October 4, 2002, from the Division to the Taxpayer, designated Exhibit E-10.
11. Copy of a letter dated January 8, 2003, from the Division to the Taxpayer, designated Exhibit E-11.
12. Copy of redacted Final Decision, Docket Number 92-155, dated May 13, 1994, designated Exhibit E-12.
13. Copy of Sales and Use Tax Technical Bulletin 24-1 dated June 1, 2002, designated Exhibit E-13.
14. Copy of a letter dated April 24, 2003, from Assistant Secretary of Revenue to Taxpayer, designated Exhibit E-14.

### **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. Notice of time and place of hearing was mailed to the taxpayer's last known address by first-class mail, postage prepaid, on April 24, 2003, and has not been returned by the postal service.
4. The taxpayer received notice of time and place of hearing but neither the taxpayer nor anyone representing the Taxpayer appeared at the hearing.
5. No evidence was presented at the hearing that would tend to contradict the assessment or overcome the presumption of correctness.

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

This 31<sup>st</sup> day of July, 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue