

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**BEFORE THE**  
**SECRETARY OF REVENUE**

**IN THE MATTER OF:**

The Proposed Assessment of Use Tax )  
For the period March 1, 1998 through )  
March 31, 1998 )  
 )  
vs. )  
 )  
[Taxpayer] )

**FINAL DECISION**  
Docket No. 2003-292

This matter was reviewed by the Assistant Secretary of Revenue, Eugene J. Cella, in the City of Raleigh, upon application for hearing by [Taxpayers]. The "Taxpayers" waived their right to appear in person for the hearing, and the matter of the administrative tax hearing was handled by written communications between the Assistant Secretary and the Taxpayers.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales & Use Tax Assessment to the Taxpayers on May 13, 2003. The Taxpayers paid the use tax and interest due under protest on April 29, 2003, prior to the Department's mailing of the notice. The Taxpayers timely requested a refund of their remittance, and the Department denied their request in a letter dated June 3, 2003.

**ISSUE**

The issue to be decided is as follows:

Is the Taxpayers' purchase of the log home kit subject to use tax?

**EVIDENCE**

The following items were introduced into evidence by the Department:

1. Memorandum dated May 16, 2001, from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated as Exhibit E-1.
2. Copy of audit report dated May 1, 2003, covering the period March 1, 1998 through March 31, 1998, designated as Exhibit E-2.
3. Copy of the contract between [a company] and the Taxpayers, designated as Exhibit E-3.

4. Copy of the Notice of Sales and Use Tax Assessment dated May 13, 2003, designated as Exhibit E-4.
5. Letter dated February 18, 2003, from the Taxpayers to the Sales and Use Tax Division, designated as Exhibit E-5.
6. Letter dated April 16, 2003, from the Sales and Use Tax Division to the Taxpayers, designated as Exhibit E-6.
7. Letter dated April 29, 2003, from the Taxpayers to the Sales and Use Tax Division, designated as Exhibit E-7.
8. Letter dated June 3, 2003, from the Sales and Use Tax Division to the Taxpayers, designated as Exhibit E-8.
9. Letter dated June 9, 2003, from the Taxpayers to the Sales and Use Tax Division, designated Exhibit E-9.
10. Letter dated June 24, 2003, from the Assistant Secretary of Administrative Hearings to the Taxpayers, designated Exhibit E-10.
11. Letter dated July 1, 2003, from the Taxpayers to the Assistant Secretary of Administrative Hearings, designated Exhibit E-11.
12. Letter dated July 2, 2003, from the Assistant Secretary of Administrative Hearings to the Taxpayers, designated Exhibit E-12.
13. Copy of 1998 North Carolina Individual Income Tax Forms and Instructions Packet, designated Exhibit E-13.
14. Copy of Section 1-1 A.6 of the North Carolina Sales and Use Tax Technical Bulletins, designated Exhibit E-14.
15. Copy of Brief for Tax Hearing prepared by the Sales and Use Tax Division.
16. Letter from Assistant Secretary of Administrative Hearings, Eugene J. Cella, to the Taxpayer dated September 9, 2003.

Evidence presented by the Taxpayers during the course of the written correspondence to resolve the administrative hearing consisted of:

17. Letter dated September 22, 2003, from the Taxpayers to the Assistant Secretary of Administrative Hearings, designated as Exhibit TP-1.

Evidence presented by the Sales and Use Tax Division in response to the Taxpayers' letter consisted of:

18. Memorandum from the Sales and Use Tax Division to the Assistant Secretary of Revenue dated September 29, 2003, designated Exhibit ST-1.

## **FINDINGS OF FACT**

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

1. The Taxpayers purchased a log home kit from [a company] a vendor located in [another country] during the audit period.
2. [The company] did not have nexus in North Carolina and did not collect any North Carolina sales or use tax on the sale of the log home kit to the Taxpayers.
3. The contract between [the company] and the Taxpayers stated that the Taxpayers were responsible for all State and local taxes due.
4. The Taxpayers did not accrue and remit any use tax on the purchase of the log home kit.
5. The examining auditor reviewed the material sales contract between the log home vendor and the Taxpayers and subtracted from the total amount due any charges that represented fees for services and travel. State and local use taxes were assessed against the Taxpayers for the remaining amount.
6. The Taxpayers paid the tax and interest due on April 29, 2003, under protest, in order to limit the amount of interest due.
7. The notice of proposed sales and use tax assessment was mailed to the Taxpayers on May 13, 2003.
8. The Taxpayers contend that the Department did not sufficiently advise them of their use tax liability on their purchase of the log home kit and feel it is unfair for the Department to assess them for the use tax and interest.
9. The Taxpayers never contacted any representative of the Department to determine their North Carolina tax liability on their purchase of the log home kit prior to being contacted by the examining auditor.
10. The Taxpayers timely requested a refund of the payment of tax and interest remitted on the assessment. When that refund was denied, the Taxpayers timely requested a hearing to resolve the matter.

## **CONCLUSIONS OF LAW**

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

1. The Taxpayers' purchase of the log home kit for their use in this State is subject to this State's use tax pursuant to G.S. 105-164.6, G.S. 105-467, G.S. 105-483, and G.S. 105-498.
2. Notice of proposed use tax assessment was properly issued under the provisions of G.S. 105-241.1.

3. Under the provisions of G.S. 105-241.1(e), there is no statute of limitations for assessing the use tax because the Taxpayers did not file a use tax return by the date the tax was due.
4. Pursuant to G.S. 105-241.1(i), all assessments of tax shall bear interest at the rate established by the Secretary from the time the tax is due until it is paid.
5. There is no statutory provision for waiver of interest which accrues on unpaid taxes.
6. The Taxpayers timely requested a refund of the payment of tax and interest they remitted on the assessment. After the Department denied the Taxpayers' request for refund, they requested a hearing to resolve the matter.
7. Notice of proposed assessment for the period was issued pursuant to G.S. 105-241.1.

### **DECISION**

The Taxpayers have not presented any evidence to support their protest of the use tax assessed on their purchase of a log home kit from [another country] vendor that did not collect North Carolina sales or use tax on the kit. In fact, the Taxpayers agree that the use tax is due on the log home kit in their letter to the Department dated September 22, 2003. The Taxpayers' protest is centered on the fairness of the Department's issuing an assessment for the use tax five years after the date they purchased the log home kit.

The statutes clearly provide for a use tax to be collected on the storage, use, or consumption in this State of tangible personal property purchased inside or outside this State for storage, use, or consumption within the State. The Taxpayers' vendor did not collect this tax on the transaction in question, nor did the Taxpayers file a use tax return and remit the use tax due on the original due date of the return. Therefore, the Department was correct in assessing the Taxpayers for the tax. G.S. 105-241.1(e) provides that there is no time limit for assessing tax if a taxpayer fails to file a return. The Department adhered to this statutory provision when assessing the use tax in question. The associated interest and penalties were also assessed in accordance with the statutes. However, there is no legitimate statutory relief for "fairness" issues concerning any taxpayer's tax liability. Therefore, I am unable to address the Taxpayer's protested issue any further. The Department has waived in full the penalties that were originally

assessed, and this is the only relief that, under the provisions of the statutes, can be provided to the Taxpayers in this matter.

Therefore, the assessment of tax and interest is deemed correct under the law and the facts, and the Taxpayers' claim for a refund of their previous remittance of the tax and interest is hereby denied.

Made and entered this 18<sup>th</sup> day of December, 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue