

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 September 1, 1997)
through September 30, 1999, by the Secretary)
Revenue of North Carolina)
vs.)
[Taxpayer])

FINAL DECISION
Docket No. 2003-474

This matter was heard before the Assistant Secretary of Revenue, Eugene J. Cella, in the City of Raleigh, on January 14, 2004, upon application for hearing by the Taxpayer, wherein it protested a proposed assessment of tax, penalty and interest for the period September 1, 1997 through September 30, 1999. The hearing was held by the Assistant Secretary pursuant to G.S. 105-260.1 and was attended by M. D. Stephenson, 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 March 11, 2000 assessing additional tax, penalty and interest of \$28,785.10 for the period September 1, 1997 through September 30, 1999. 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. Is the Taxpayer engaged in business for sales and use tax purposes and liable for collecting and remitting sales or use tax on sales of tangible personal property to purchasers in North Carolina?
2. Has the amount of the assessment been properly determined?

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 face sheet of audit report and supporting auditor comments, designated Exhibit E-2.
3. Copy of notice of proposed assessment, designated Exhibit E-3.
4. Copy of letter dated March 2, 2000 from Taxpayer to the Department, designated Exhibit E-4.
5. Copy of letter dated April 11, 2000 from Taxpayer to the Department, designated Exhibit E-5.
6. Copy of letter dated May 17, 2000 from the Division to Taxpayer, designated Exhibit E-6.
7. Copy of letter dated June 5, 2000 from Taxpayer to the Division, designated Exhibit E-7.
8. Copy of letter dated June 23, 2000 from the Division to Taxpayer, designated Exhibit E-8.
9. Copy of letter dated June 28, 2000 from Taxpayer's representative to the Division, designated Exhibit E-9.
10. Copy of letter dated July 11, 2000 from the Division to Taxpayer's representative, designated Exhibit E-10.
11. Copy of letter dated February 27, 2001 from the Division to Taxpayer's representative, designated Exhibit E-11.
12. Copy of letter dated April 23, 2001 from Taxpayer's representative to the Division, designated Exhibit E-12.
13. Copy of letter dated May 18, 2001 from the Division to Taxpayer's representative, designated E-13.
14. Copy of letter dated September 18, 2001 from the Division to Taxpayer's representative, designated Exhibit E-14.
15. Copy of letter dated February 28, 2002 from the Division to Taxpayer's representative, designated Exhibit E-15.
16. Copy of letter dated October 17, 2003 from the Division to Taxpayer's representative with copy to Taxpayer, designated Exhibit E-16.
17. Copy of [a court case], designated E-17.

18. Copy of [a court case], designated E-18.
19. Copy of letter dated October 30, 2003 from the Assistant Secretary to Taxpayer's representative with copy to Taxpayer, designated Exhibit E-19.
20. Copy of letter dated November 26, 2003 from Taxpayer's representative to the Division, designated Exhibit E-20.
21. Copy of letter dated December 5, 2003 from the Division to Taxpayer, designated Exhibit E-21.

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 representative with a copy to the Taxpayer's last known address by first-class mail, postage prepaid, on October 30, 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 19th day of February, 2004.

Eugene J. Cella
Assistant Secretary of Revenue