

- (3) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003 covering the period September 1, 1999 through September 30, 1999, designated as Exhibit E-3.
- (4) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003 covering the period January 1, 2000 through January 31, 2000, designated as Exhibit E-4.
- (5) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003 covering the period February 1, 2000 through February 28, 2000, designated as Exhibit E-5.
- (6) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period March 1, 2000 through March 31, 2000, designated as Exhibit E-6.
- (7) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period April 1, 2000 through April 20, 2000, designated as Exhibit E-7.
- (8) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period September 1, 2000 through September 30, 2000, designated as Exhibit E-8.
- (9) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period October 1, 2000 through October 31, 2000, designated as Exhibit E-9.
- (10) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period November 1, 2000 through November 30, 2000, designated as Exhibit E-10.
- (11) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period December 1, 2000 through December 31, 2000, designated as Exhibit E-11.
- (12) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period January 1, 2001 through January 31, 2001, designated as Exhibit E-12.
- (13) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period February 1, 2001 through February 28, 2001, designated as Exhibit E-13.
- (14) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period March 1, 2001 through March 31, 2001, designated as Exhibit E-14.

- (15) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period April 1, 2001 through April 30, 2001, designated as Exhibit E-15.
- (16) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period May 1, 2001 through May 31, 2001, designated as Exhibit E-16.
- (17) Copy of Notice of Sales and Use Tax Assessment dated April 15, 2003, covering the period June 1, 2001 through June 30, 2001, designated as Exhibit E-17.
- (18) Letter from the Taxpayer to the Department dated April 29, 2003, designated as Exhibit E-18.
- (19) Letter from the Sales & Use Tax Division to the Taxpayer dated June 10, 2003, designated Exhibit E-19.
- (20) Letter from the Taxpayer to the Sales & Use Tax Division dated June 26, 2003, designated Exhibit E-20.
- (21) Letter from a North Carolina State Senator to the Department dated August 12, 2003, designated Exhibit E-21.
- (22) Letter from the Sales & Use Tax Division to a North Carolina State Senator dated August 14, 2003, designated Exhibit E-22.
- (23) Letter from the Assistant Secretary of Revenue to the Taxpayer dated August 17, 2004, designated as Exhibit E-23.
- (24) Letter from the Taxpayer to the Assistant Secretary of Revenue dated August 22, 2004, designated Exhibit E-24.
- (25) Letter from the Assistant Secretary of Revenue to the Taxpayer dated September 24, 2004, designated Exhibit E-25.
- (26) Letter from the Taxpayer to the Assistant Secretary of Revenue dated November 5, 2004, designated Exhibit E-26.

Evidence presented by the Taxpayer for the hearing held by written correspondence consisted of:

- (27) Letter from the Taxpayer's attorney to the Assistant Secretary of Revenue dated December 8, 2004, designated as Exhibit TP-1.

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

- (28) Memorandum from the Sales and Use Tax Division to the Assistant Secretary of Revenue dated December 13, 2004, 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 Taxpayer was the president of the corporation and the officer responsible for filing the corporation's sales and use tax reports for the periods in question.
- (2) The delinquent returns for the periods August 1, 1999 through September 30, 1999, January 2000, and October 1, 2000 through May 31, 2001 were signed by the Taxpayer, and all of the returns were filed by the Taxpayer on July 6, 2001.
- (3) The Taxpayer notified Department personnel at the time he filed the delinquent returns that he had sold the business on June 17, 2001.
- (4) The Taxpayer made a payment of \$500.00 to cover a portion of the sales tax liability on July 24, 2001, shortly after he filed the delinquent returns, but that check was returned for insufficient funds.
- (5) Notices of proposed sales and use tax assessments against the Taxpayer as the responsible corporate officer were mailed to the Taxpayer on April 15, 2003.
- (6) The Taxpayer objected to the assessments and 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 Taxpayer was the sole stockholder of the business and the corporate officer responsible for filing sales and use tax returns for the periods in question. G.S. 105-253.

- (2) Sales and use taxes are liens upon all personal property of any person engaged in business and who stops engaging in business by selling a business and/or its assets or by going out of business. G.S. 105-164.38.
- (3) A person who stops engaging in business must file the sales and use tax returns within 30 days after selling the business and/or its assets or after going out of business.
- (4) Each responsible officer of any corporation that is required to file sales and use tax returns is personally and individually liable for payment of the tax owed by the corporation. The term "responsible officer" means the president and the treasurer of a corporation.
- (5) The Department is authorized to hold a purchaser of a business or its assets personally liable for the business's unpaid taxes; however, this authorization does not preclude the Department from assessing the liability against the seller of the business, especially when the seller is the responsible corporate officer.
- (6) The Taxpayer is liable for the State and applicable county tax.
- (7) The Notices of Sales & Use Tax Assessment for the sales and use tax periods in question were issued pursuant to G.S. 105-241.1 on April 15, 2003.

FINAL DECISION

The Taxpayer objects to the Department's efforts to collect from him the tax, penalties, and interest due for the periods for which he was the president and the corporate officer responsible for filing the business's sales and use tax returns. The Taxpayer reasons that when he sold the business, any tax liability for the business became the responsibility of the new owner. The Taxpayer notified Department personnel at the time he filed the delinquent returns that he had sold the business and advised them to whom it had been sold. He then concluded that his liability for the delinquent taxes had been passed on to the purchaser.

I disagree with his conclusion. The Taxpayer does not question that he was the sole stockholder of the business and the corporate officer responsible for filing sales and use tax reports for the periods in question. The Taxpayer argues that G.S. 105-164.38 provides that the party who purchased his business should have withheld from the consideration he paid the Taxpayer an amount sufficient to cover the corporation's sales tax liability. However, that statute also states that the Taxpayer should have provided the purchaser with a statement from the Department indicating that the corporation had no outstanding tax liability. The Department could not issue such a statement to the Taxpayer or the purchaser because, at the time the Taxpayer sold the business, the reports and the sales tax for the periods in question had not been filed or paid.

More to the point, the fact that one statute authorizes the Department to assess a purchaser for a business's tax liability in no way prevents the Department from assessing the seller of the business. G.S. 105-253 authorizes the Department to assess the responsible corporate officer and the party who was originally delinquent in filing the returns and remitting the sales tax. The Taxpayer is the responsible officer in this case. While it is unfortunate that the purchaser never paid the Taxpayer in full and left this State with all of the business's assets, the Department was correct in assessing the Taxpayer for the outstanding liability.

Therefore, the assessments of tax, penalties, and interest are deemed correct under the law and the facts and are hereby declared to be finally determined and immediately due and payable as allowed by law.

Made and entered this 7th day of March, 2005.

Eugene J. Cella
Assistant Secretary of Revenue
For Administrative Tax Hearings