

STATE OF NORTH CAROLINA

BEFORE THE SECRETARY OF REVENUE

COUNTY OF WAKE

OF NORTH CAROLINA

IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
 Tax for the period September 1, 1997 through)
 August 31, 2003, by the Secretary of)
 Revenue of North Carolina)
)
 vs.)
)
 Taxpayer)

FINAL DECISION
Docket No. 2004-361

This matter was on heard on September 21, 2004, by the Assistant Secretary of Administrative Hearings, Eugene J. Cella, upon application for hearing by the Taxpayer wherein he protested our proposed assessment of tax, penalty and interest for the period September 1, 1997 through August 31, 2003. The hearing was held by the Assistant Secretary pursuant to the provisions of G.S. 105-260.1. Representing the Sales and Use Tax Division were W. Timothy Holmes, Assistant Director, and Richard C. Stewart, Administration Officer. Neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing.

Pursuant to G.S. 105-241.1, a Notice of Sales and Use Tax Assessment was mailed to the Taxpayer on November 11, 2003. The Taxpayer's certified public accountant, in a letter dated December 10, 2003, objected to the assessment and timely requested a hearing before the Secretary of Revenue.

ISSUE

The issue to be decided in this matter is as follows:

Are the rental charges by the Taxpayer for equipment to a construction company which is used in the performance of a contract with a non-profit organization subject to sales tax?

EVIDENCE

The following items were introduced into evidence at the hearing:

1. Memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings, designated Exhibit E-1.
2. Audit report dated October 17, 2003 covering the period September 1, 1997 through August 31, 2003, designated Exhibit E-2.
3. Notice of Sales and Use Tax Assessment dated November 11, 2003, designated Exhibit E-3.
4. Letter dated December 10, 2003 from the Taxpayer's accountant to the Sales and Use Tax Division, designated Exhibit E-4.
5. Letter dated February 2, 2004 from the Sales and Use Tax Division to the Taxpayer's accountant, designated Exhibit E-5.
6. Letter dated March 22, 2004 from the Taxpayer's accountant to the Sales and Use Tax Division, designated Exhibit E-6.
7. Letter dated April 6, 2004 from the Sales and Use Tax Division to the Taxpayer's accountant, designated Exhibit E-7.
8. Letter dated May 26, 2004 from the Sales and Use Tax Division to the Taxpayer's accountant, designated Exhibit E-8.
9. Letter dated June 17, 2004 from the Sales and Use Tax Division to the Taxpayer's accountant, designated Exhibit E-9.
10. Letter dated August 17, 2004, from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-10.
11. Sales and Use Tax Technical Bulletin 17, designated Exhibit E-11.
12. Copy of Brief for Tax Hearing covering the period September 1, 1997 through August 31, 2003, designated Exhibit E-12.

FINDINGS OF FACT

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

1. The Taxpayer at all material times was engaged in the business of leasing construction equipment.
2. The Taxpayer's only customer was [construction company].
3. The Taxpayer is the president and sole stockholder in [construction company].
4. The Taxpayer collected receipts from [construction company] for the lease of the construction equipment.
5. The Taxpayer did not collect or remit tax on the receipts derived from the lease of construction equipment to [construction company].
6. Notice of time and place was mailed to the Taxpayer's last known address by first-class mail, postage prepaid, on August 17, 2004 and has not been returned by the postal service.
7. Neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing.
8. The Department assessed sales tax on the lease receipts derived from the lease of construction equipment from the Taxpayer to [construction company].
9. Notice of proposed assessment was mailed to the Taxpayer on November 11, 2003.
10. The Taxpayer's certified public accountant submitted a letter of objection on December 10, 2003 and timely requested a hearing.

CONCLUSIONS OF LAW

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 proposed assessment was issued pursuant to G.S. 105-241.1.

4. No evidence was presented at the hearing that would tend to contradict the assessment or overcome the presumption of correctness.
5. The Taxpayer is liable for the applicable State and county additional tax.

DECISION

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

This 4th day of October 2004.

Eugene J. Cella
Assistant Secretary of Administrative Hearings