

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE SECRETARY OF REVENUE
OF NORTH CAROLINA

IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
Tax for the period April 1, 2003 through)
December 31, 2005, by the Secretary of)
Revenue of North Carolina)
)
vs.)
)
Taxpayer)

FINAL DECISION
Docket No. 2006-216

This matter was heard by the Assistant Secretary of Administrative Hearings, Eugene J. Cella, upon application for hearing by [the Taxpayer], (Taxpayer) wherein they protested the proposed assessment of tax and interest for the period April 1, 2003 through December 31, 2005. The hearing was held by the Assistant Secretary pursuant to the provisions of G.S. 105-260.1 and was attended by W. Timothy Holmes, Assistant Director, and Richard C. Stewart, Administration Officer, representing the Sales and Use Tax Division. The Taxpayer was represented by [officer], president of the corporation.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Proposed Assessment to the Taxpayer on March 21, 2006, and on March 17, 2006, the Taxpayer timely requested a hearing before the Secretary of Revenue.

ISSUE

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

Is the tire disposal fee the Taxpayer charged customers to cover the expense of disposing of their old tires when they bought new tires a part of the sales price of the new tires and subject to tax?

EVIDENCE

The following items were introduced into evidence at the hearing:

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 the Auditor's report Sales and Use Tax dated March 15, 2006 covering the period April 1, 2003 through December 31, 2005, designated Exhibit E-2.
3. Copy of Notice of Sales and Use Tax Assessment dated March 21, 2006, designated Exhibit E-3.
4. Copy of letter dated March 17, 2006 from the Taxpayer to the Sales and Use Tax Division ("Division"), designated Exhibit E-4.
5. Copy of letter dated May 4, 2006 from the Division to the Taxpayer, designated Exhibit E-5.
6. Copy of letter dated May 10, 2006 from Senator [N.C. State Senator] to the Secretary of Revenue, designated Exhibit E-6.
7. Copy of letter dated May 11, 2006 from the Taxpayer to the Division, designated Exhibit E-7.
8. Copy of letter dated May 22, 2006 from the Division to the Taxpayer, designated Exhibit E-8.
9. Copy of letter dated May 24, 2006 from the Division to Senator [N.C. State Senator], designated Exhibit E-9.
10. Copy of sanitized Secretary's Decision Docket No. 2003-124, designated Exhibit E-10.
11. Copy of Tax Review Board Administrative Decision No. 144, designated Exhibit E-11.
12. Copy of letter dated July 7, 2006 from the Assistant Secretary of Administrative Hearings to the Taxpayer, designated Exhibit E-12.
13. Brief For Tax Hearing, prepared by the Division, Docket No. 2006-216, designated Exhibit E-13.

FINDINGS OF FACT

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

1. The Taxpayer was engaged in business making retail sales of tires and servicing and repairing motor vehicles during the audit period.

2. The Taxpayer collected and remitted the scrap tire tax disposal fee imposed on the sale of new tires levied under G.S. 105-187.16.
3. The taxpayer collected and remitted sales tax on line item charges for tires, parts and materials during the audit period.
4. The Taxpayer charged customers who purchased new tires a tire disposal fee to cover the expenses incurred in disposing of old tires.
5. The tire disposal fee charged by the Taxpayer to cover the expenses incurred in disposing of old tires was in addition to the scrap tire disposal tax levied under G.S.105-187.16.
6. The tire disposal fee charged by the Taxpayer to cover the expenses incurred in disposing of old tires is separately stated from the sale of new tires on the sales receipt given the customer and in the Taxpayer's records.
7. The Taxpayer did not collect or remit sales tax on the tire disposal fee charged by the Taxpayer to cover the expenses incurred in disposing of old tires.
8. The Taxpayer contends that the tire disposal fee constitutes a labor charge to offset the costs of having his employees stack the old tires in a trailer located on his place of business.
9. The Taxpayer contracted with an outside company to pick up the old tires each week and dispose of them for a charge.
10. The Department completed the field auditor's report on March 15, 2006 covering the period April 1, 2003 through December 31, 2006.
11. The Taxpayer was assessed sales tax at the general rate of State and county tax on the tire disposal fees charged to customers.
12. The Department proposed an assessment of additional tax and interest in the amount of \$15,964.02 for the period April 1, 2003 through December 31, 2005.
13. The Notice of Sales and Use Tax Assessment was mailed to the Taxpayer on March 21, 2006.
14. The Taxpayer objected to the assessment by letter dated March 17, 2006 and made a timely request for hearing.

CONCLUSIONS OF LAW

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

1. The statutory definition of “sales price” includes labor or service costs.
2. The statutory definition of “sales price” includes any expense of the retailer.
3. The statutory definition of “sales price” includes any charges by the retailer for any services necessary to complete the sale.
4. In the context of G.S. 105-164.3 (37), the tire disposal fee charged by the Taxpayer to dispose of the customer’s old tires when the customer buys new tires constitutes “an expense of the retailer.”
5. In the context of G.S. 105-164.3 (37) the tire disposal fee charged by the Taxpayer to dispose of the customer’s old tires when the customer buys new tires constitutes “labor or service costs.”
6. In the context of G.S. 105-164.3 (37) the tire disposal fee charged by the Taxpayer to dispose of the customer’s old tires when the customer buys new tires constitutes “charges by the retailer necessary to complete the sale.”
7. In Administrative Decision No. 144, the Tax Review Board found, “The mere clerical formality of separating therefrom and documenting the exact amount of labor charges does not, in our opinion, change such a single transaction from a continuous one, into a disjointed, series of unconnected separate sales, to which the installation labor rationale might otherwise apply.”
8. The tire disposal fee charged by the Taxpayer to dispose of the customer’s old tires when the customer purchases new tires is a part of the sales price and is subject to sales tax.
9. The Notice of Proposed assessment was issued to the Taxpayer pursuant to G.S. 105-241.1.
10. The Taxpayer is liable for the general rate of State tax and applicable county tax assessed.

DECISION

The Taxpayer makes retail sales of tires and other repair parts and materials used in the repair and maintenance of motor vehicles. The Taxpayer, in addition to the scrap tire disposal tax, charged his customer's a tire disposal fee to cover the expenses he incurs in hauling away old tires received from customers buying new tires. It is the Taxpayer's position that this fee constitutes a labor charge to offset the costs of having his employees take the tires and stack them in an orderly fashion on a trailer located at his place of business. The Taxpayer contracted with an outside company to pick up these tires each week and dispose of them for a charge.

Under G.S. 105-164.4, sales tax is due on the total "sales price" of the article sold. The definition of "sales price" includes labor or service costs, any expense of the retailer and any charges by the retailer for any services necessary to complete the sale. The tire disposal fee, collected by the Taxpayer from its customers, is a cost of doing business that is passed on to the customer, and the sales price of the new tires cannot be fragmented to delete this cost, whether or not the fee is separately stated.

The additional assessment of tax and interest is sustained.

Made and entered this 6TH day of December 2006.

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