

STATE OF NORTH CAROLINA

BEFORE THE ASSISTANT SECRETARY  
OF REVENUE FOR ADMINISTRATIVE  
TAX HEARINGS

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Sales and Use )  
 Tax for the period April 1, 2003 through )  
 April 30, 2006, by the Secretary of )  
 Revenue of North Carolina )  
 )  
 vs. )  
 )  
 [Taxpayer] )

**FINAL DECISION**  
**Docket No. 2007-41**

This matter was heard by the Assistant Secretary of Administrative Hearings, Eugene J. Cella, upon application for hearing by [Taxpayer] wherein they protested the proposed assessment of tax and interest for the period April 1, 2003 through April 30, 2006. 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 did not appear.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Proposed Assessment to the Taxpayer on October 17, 2006 and by letter dated November 16, 2006, the Taxpayer timely requested a hearing before the Secretary of Revenue.

**ISSUE**

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

Does the Taxpayer owe use tax on its rentals of chairs, tables, tents and other equipment that it used in preparing and serving catered meals that were marked up and charged as a line item on the invoice given to its customers?

**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 October 11, 2006 covering the period April 1, 2003 through April 30, 2006, designated Exhibit E-2.
3. Copy of Notice of Sales and Use Tax Assessment by the Department to the Taxpayer, dated October 17, 2006, designated Exhibit E-3.
4. Copy of letter dated July 20, 2006 from the Taxpayer to the Sales and Use Tax Division ("Division"), designated Exhibit E-4.
5. Copy of letter dated August 14, 2006 from the Division to the Taxpayer's accountant, designated Exhibit E-5.
6. Copy of letter dated November 16, 2006, from the Taxpayer to the Division, designated Exhibit E-6.
7. Copy of letter dated December 21, 2006 from the Division to the Taxpayer, designated Exhibit E-7.
8. Copy of letter dated January 12, 2007 from the Taxpayer to the Division, designated Exhibit E-8.
9. Copy of letter dated January 24, 2007 from the Division to the Taxpayer, designated Exhibit E-9.
10. Copy of Sales and Use Tax Technical Bulletin 19 dated January 1, 2007, designated Exhibit E-10.
11. Copy of Taxpayer's Certificate of Exemption issued by the Taxpayer to rental agency dated January 5, 2005, designated Exhibit E-11.
12. Copy of Taxpayer's invoice to customer, dated June 1, 2005, designated Exhibit E-12.
13. Copy of letter dated February 28, 2007, from the Assistant Secretary of Administrative Hearings to the Taxpayer, designated Exhibit E-13.
14. Copy of Brief for Tax Hearing prepared by the Division, designated Exhibit E-14.

## **FINDINGS OF FACT**

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

1. The Taxpayer is engaged in business as a full service catering company.
2. The Taxpayer was registered to collect North Carolina sales and use tax during the audit period.
3. The Taxpayer issued certificates of resale to the rental agencies as their authority not to charge tax on the rental of items such as chairs, tables, tents and other tangible personal property used in its catering business.
4. The Taxpayer charged its customers, as a separate line item on the sales invoices, a fee for the tables, chairs, tents, and other items including a markup added to the amounts paid for the rental of the items from the rental company.
5. The Taxpayer collected and remitted tax on the amounts charged to its customers for the rented tables, chairs, tents, and other items.
6. It is the Taxpayer's position that their customers are the users of the items in question and that they correctly passed on and included the charges for these items on the total amount charged the customer. It is the Taxpayer's position that they should not be assessed use tax on charges incurred in the rental of the tables, chairs, tents, and other items.
7. The Taxpayer did not enter into a rental agreement with their customer that clearly stipulated that it was leasing or renting the property to the customer.
8. The Department proposed an assessment of additional tax and interest in the amount of \$22,641.92 for the period April 1, 2003 through April 30, 2006.
9. The Notice of Sales and Use Tax Assessment was mailed to the Taxpayer on October 17, 2006.
10. The Taxpayer objected to the portion of the assessment representing use tax by letter dated November 16, 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. G.S. 105-164.6, G.S. 105-467, G.S. 105-483, G.S. 105-498 and G.S. 105-517 levy the State and county use tax at the applicable rates on tangible personal property used, consumed, or rented in this State.
2. Sales and Use Tax Technical Bulletin 19-3 provides that all charges by persons engaged in the catering business are connected with the furnishing, preparing or serving of meals, foods, and other tangible personal property to users and consumers are subject to the general rate of State tax and any applicable local sales and use tax.
3. The Taxpayer used the chairs, tables, tents and other tangible personal property in providing its catering services.
4. The fact that the Taxpayer collected and remitted sales tax on the marked-up cost of the chairs, tables, tents and other tangible personal property does not constitute a lease for re-lease.
5. The Taxpayer owes use tax on the amount paid to rental agencies on its rentals of chairs, tables, tents and other tangible personal property used in providing its catering services.
6. The assessment of tax is presumed to be correct and the burden is upon the Taxpayer to show the extent, if any, to which the assessment is in error.
7. The Notice of Proposed assessment was issued to the Taxpayer pursuant to G.S. 105-241.1.
8. The Taxpayer is liable for the general rate of State tax and applicable county tax assessed.

## **DECISION**

Therefore the proposed assessment of tax and interest is deemed correct under the law and the facts and is hereby sustained. The proposed assessment of tax and

accrued interest is hereby declared to be finally determined and immediately due and collectible with interest as allowed by law.

This 26<sup>th</sup> day of June 2007.

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Eugene J. Cella  
Assistant Secretary of Administrative Tax Hearings