

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Sales and)
Use Tax for the period October 1, 1992)
through September 30, 1998, by the)
Secretary of Revenue)
vs.)
[Taxpayer])

FINAL DECISION
Docket No. 99-370

This matter was heard before the Acting Assistant Secretary of Revenue, Marilyn R. Mudge, in the City of Raleigh on April 10, 2001 upon application for hearing by the Taxpayer with regard to a proposed assessment for the period October 1, 1992 through September 30, 1998. The hearing was held by the Acting Assistant Secretary pursuant to G.S. 105-260.1. The Taxpayer was represented by [a CPA]; [Taxpayer's Chairman of the Board]; and [Taxpayer's General Manager and CEO]. Representing the Sales and Use Tax Division were Anna Pope and Andy Sabol.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales and Use Tax Assessment to the Taxpayer on November 8, 1998 for use tax due on taxable purchases from vendors who did not collect this State's tax. By letter dated November 30, 1998, the Taxpayer's CPA requested a hearing in connection with the proposed assessment. The Taxpayer's primary objection is to the Department's denial of refund claims for sales and use taxes it paid on purchases for use.

ISSUES

The issues to be decided in this matter are as follows:

1. Is the Taxpayer liable for use tax on its purchases of tangible personal property for storage, use, or consumption?
2. Is the Taxpayer eligible for a refund of sales and use tax paid pursuant to G.S. 105-164.14(b)?

EVIDENCE

The following items were introduced into evidence by the parties:

1. Copy of memorandum dated March 13, 2001 from the Secretary of Revenue to the Acting Assistant Secretary of Administrative Hearings, designated Exhibit E-1.
2. Copy of face sheet of auditor's report and comments dated October 30, 1998, designated Exhibit E-2.
3. Copy of letter dated November 30, 1998, with attachments, from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-3.
4. Copy of letter dated January 15, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-4.
5. Copy of letter dated February 24, 1999 from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-5.
6. Copy of letter dated March 16, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-6.
7. Copy of letter dated April 28, 1999 and Constitution and Bylaws from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-7.
8. Copy of letter dated April 29, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-8.
9. Copy of letter dated June 3, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-9.
10. Copy of letter dated October 14, 1999 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-10.
11. Copy of letter dated October 14, 1999 from the Assistant Secretary of Revenue to the Taxpayer's CPA, designated Exhibit E-11.
12. Copy of letter dated November 4, 1999 from the Assistant Secretary of Revenue to the Taxpayer's Attorney, designated Exhibit E-12.
13. Schedule of refund claims submitted to the Department with letters denying claims, designated Exhibit E-13.
14. Copies of Articles of Incorporation and Bylaws submitted by the Taxpayer, designated Exhibit E-14.
15. Copy of Return of Organization Exempt from Income Tax, designated Exhibit E-15.
16. Copy of document entitled "[Taxpayer] Community Services Information," designated Exhibit E-16.

17. Copy of letter dated February 16, 2000 from the Taxpayer's CPA to the Department, designated Exhibit E-17.
18. Copy of letter dated March 3, 2000 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-18.
19. Copy of letter dated June 5, 2000 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-19.
20. Copy of letter dated September 24, 2000 from the Taxpayer's CPA to the Sales and Use Tax Division, designated Exhibit E-20.
21. Copy of letter dated October 3, 2000 from the Sales and Use Tax Division to the Taxpayer's CPA, designated Exhibit E-21.
22. Copy of letter dated October 6, 2000 from the Assistant Secretary to the Taxpayer's CPA, designated Exhibit E-22.
23. Copy of letter dated October 13, 2000 from the Taxpayer's CPA to the Assistant Secretary, designated Exhibit E-23.
24. Copy of letter dated November 9, 2000 from the Assistant Secretary to the Taxpayer's CPA, designated Exhibit E-24.
25. Copy of letter dated December 27, 2000 from the Assistant Secretary to the Taxpayer's CPA, designated Exhibit E-25.
26. Copy of letter dated March 5, 2001 from the Acting Assistant Secretary of Revenue to the Taxpayer's CPA, designated Exhibit E-26.

The following items were introduced by the Taxpayer during the hearing:

1. Brochure entitled 2000-2001 Community Services Information, designated Exhibit TP-1.
2. Excerpts from newsletter, designated Exhibit TP-2.
3. Copy of letter from [a gentleman with a Ph.D.], designated Exhibit TP-3.
4. Copy of letter dated September 21, 2000 from [a CPA] to the Taxpayer.

FINDINGS OF FACT

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

1. [Taxpayer] is a nonprofit corporation that coordinates soccer leagues in the [an area in North Carolina]. The corporation is recognized as a 501(c)(3) corporation by the Internal Revenue Service.

2. The Taxpayer generates receipts primarily from dues and fees paid by its approximately 23,000 members. The amount of dues and fees paid by each member varies based on the type of league in which the member is participating. Secondary sources of revenue include advertising and donations.
3. The Taxpayer's articles of incorporation set out the purposes for which the corporation is organized as follows: "To foster, promote, and advance the cause of youth soccer within the territory of the jurisdiction of the [Taxpayer] and to guard the interest of the teams in the [Taxpayer] [and] [t]o foster local, state, national, and international amateur sports competition in the best interest of those players participating."
4. In addition to coordinating league play for children and adults, the Taxpayer provides the following: financial aid to approximately 250 children who could not otherwise participate in soccer leagues; an annual college scholarship valued at \$2,500.00; allowing other organizations to use its fields; and maintenance of fields owned by local governments and schools in exchange for use of the fields by the Taxpayer. The Taxpayer conducts free clinics providing instruction and training related to the sport of soccer for coaches and players.
5. The Taxpayer was not registered for sales and use tax purposes at the time the audit began.
6. The Taxpayer made purchases of supplies, equipment, clothing, and similar items from out-of-State retailers who did not collect the North Carolina sales or use tax; the Taxpayer makes no retail sales.
7. The Taxpayer did not accrue and remit to the Department the applicable use tax on out-of-State purchases.
8. The auditor assessed use tax, penalties, and interest for the audit period.
9. The Taxpayer does not contest its liability for payment of the use tax or object to the amount of use tax assessed.
10. The Taxpayer had previously filed refund claims under G.S. 105-164.14(b) for sales and use tax paid on property purchased for use; the claims were denied.
11. The Taxpayer timely requested a hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

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

1. The Taxpayer is liable for use tax on purchases from out-of-State retailers who did not collect the North Carolina tax.
2. The Notice of Proposed Assessment for the period was properly issued pursuant to G.S. 105-241.1.

3. The Taxpayer is an amateur sports organization that coordinates the play of soccer for its members and promotes the sport of soccer.
4. The Taxpayer is not an educational institution or charitable organization within the meaning of G.S. 105-164.14(b).
5. The Taxpayer is not eligible for a refund of sales and use tax paid on its purchases of tangible personal property for use.
6. The Taxpayer's requests for refunds were properly denied.

DECISION

The Taxpayer sponsors and participates in a number of activities which promote the sport of soccer in [an area in North Carolina].

The Taxpayer made purchases of various equipment and supplies for use by the organization from out-of-State retailers who did not collect the North Carolina sales or use tax; it did not accrue and remit to the Department the applicable use tax on those purchases. The Taxpayer acknowledges that the use tax is due and has stated that it agrees with the amount of the use tax liability shown to be due in the audit report. The underlying issue which is the basis for the hearing is whether the organization is entitled to a refund of that tax and any other taxes paid on items purchased for use by the organization.

G.S. 105-164.14(b), which was in effect in 1983 when the Taxpayer first filed a claim for refund with the Sales and Use Tax Division, authorized semiannual refunds to “. . . educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid. . . .” The Division advised the Taxpayer that the organization did not qualify for refunds since it was not one of the types of organizations specifically set out in the statute. The Division denied refunds on two later occasions. The statutory provisions authorizing refunds to nonprofit educational institutions and nonprofit charitable organizations are G.S. 105-164.14(b)(2) and (3), respectively. In addition to being nonprofit, an organization must be either a hospital; an

educational institution; a church, orphanage, or other charitable or religious institution or organization; or a qualified retirement facility whose property is excluded from property tax.

The Taxpayer's status as a nonprofit organization has not been debated; the Division acknowledges that, based on organizational documents, the Taxpayer is indeed nonprofit. However, it is the Division's opinion that the organization is neither a charitable organization nor an educational institution.

The Court of Appeals has described a charitable institution as one that is "engaged in the relief or aid to a certain class of persons, a corporate body established for public use, or a private institution created and maintained for the purpose of dispensing some public good or benevolence to those who require it." Southminster v. Justus, 119 N.C. App. 669, 674, 459 S.E.2d 793, 796 (1995). The Taxpayer does not fall within this description and is not a charitable institution.

The Taxpayer argues, however, that it engages in several activities it contends are either charitable or educational in nature. It provides financial aid to some children who cannot pay the membership fees, it permits Hispanic soccer leagues to use its fields, it provides coach training, conducts free soccer clinics, and provides basic instruction in soccer fundamentals. The Taxpayer has also partnered with various city, county, and state agencies to develop and maintain soccer fields. It does not follow, however, that because of these activities the Taxpayer is a charitable or educational institution. Many of the enumerated activities are as beneficial to the Taxpayer as they are to third parties. Its clinics and soccer instruction promote interest in the sport and undoubtedly attract members. Similarly, the joint undertakings with government agencies provide the Taxpayer with additional playing fields needed to accommodate its growing membership. Many for profit corporations engage in similar activities without becoming charitable institutions themselves.

Even if these activities are deemed to have a charitable or educational component, the Taxpayer was not created for such purposes. According to its own articles of incorporation, it

was created to promote and encourage the sport of soccer and to coordinate soccer leagues in [a area in North Carolina].

The Taxpayer introduced evidence tending to show that the Department has issued refunds of sales and use tax paid by other organizations that appear to be organized for the promotion of sports. Because the determination of an organization's eligibility for a refund of sales and use tax under G.S. 105-164.14(b) is based on an organization's specific structure and activities, decisions pertaining to other organizations cannot be used as the basis for determining the Taxpayer's eligibility.

In order for an organization to qualify for refunds under G.S. 105-164.14(b), it must meet the statutory requirement, and the Taxpayer has not shown that it was organized for one or more of the purposes intended by law. The Taxpayer is a recreational organization, organized to promote soccer and to serve the interest of its teams and players. It is neither a charitable nor an educational institution. The Division was correct in denying the refund claims.

There being no intentional disregard of the law, the penalty is hereby waived. The proposed assessment of tax is sustained and is hereby declared to be finally determined and immediately due and collectible with interest as allowed by law. In addition, no refund of sales or use taxes paid by the Taxpayer is in order.

Made and entered this 9th day of July, 2001.

Signature _____

Marilyn R. Mudge
Acting Assistant Secretary of Revenue