

1. *[Taxpayer] provides a “drop-off” catering service whereby a [Taxpayer] employee brings meals to a customer’s location along with items such as napkins, utensils and other items necessary to consume the meals and further, sets up the meals and items in a “buffet-style” arrangement. No supervision or serving of the meal is done. After the customer’s event, [Taxpayer] returns to clean up and retrieve any items left behind.*
2. *Petitioner charges customers a service charge for the drop-off catering service which is a separately stated charge on the customer’s invoice.*
3. *The separately invoiced service charge is not a mandatory charge. Each customer has the option of either picking the meals up from [Taxpayer]’s location or requesting that [Taxpayer] provide the drop-off service. Only when the customer requests the drop-off service is the service charge set forth on the invoice.*
4. *[Taxpayer] never serves food.*]

CONCLUSIONS OF LAW

The Department adopts all Conclusions of Law set forth in the Decision of the ALJ.

[*Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law:*

1. *There is no genuine issue as to any material fact.*
2. *Respondent is entitled to judgment as a matter of law that Petitioner’s service charges are subject to sales tax because the definition of sales price in N.C. Gen. Stat. § 105-164.3(37)(a) includes service charges.*
3. *Sales tax applies to charges to customers for drop-off catering services because the definition of sales price for sales tax purposes expressly includes “all costs of transportation to the retailer” and specifically lists “service costs” and “[d]elivery charges” as components of the taxable sales price. N.C. Gen. Stat. § 105-164.3(37)(a)(2-4)*
4. *The statutory definition of sales price does not allow taxpayers such as Petitioner to segregate service charges and thereby avoid North Carolina sales tax.*
5. *The exemption for tips does not apply because the exemption requires employees directly serve the food. [Taxpayer]’s employees delivered the food; but did not serve the food.]*

DECISION

The Department hereby decides that Respondent was entitled to summary judgment as a matter of law. The Department therefore upholds the Decision of the ALJ in the above captioned case granting Respondent’s Motion for Summary Judgment. The Final Determination dated

September 10, 2008 issued by the Department to Petitioner is sustained as to the tax, penalties, and interest shown due, plus interest accruing until the tax is paid in full.

APPEAL

Pursuant to N.C. Gen. Stat. § 150B-45, a party wishing to appeal the final decision of the Department in a contested tax case arising under N.C. Gen. Stat. § 105-241.15 may commence such an appeal by filing a Petition for Judicial Review in the Superior Court of Wake County within 30 days after being served with a written copy of this Final Agency Decision. A taxpayer who files a petition for judicial review must pay the amount of tax, penalties, and interest the final decision states is due. N.C. Gen. Stat. § 105-241.16. The Department will calculate accrued interest and provide a payoff amount upon request.

Under N.C. Gen. Stat. § 150B-47, the Department is required to file the official record in the contested case under review, any exceptions, proposed findings of fact, or written arguments submitted to the Department, as well as the Department's Final Agency Decision, with the Clerk of Wake County Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the petition must be sent to the following address: North Carolina Department of Revenue, ATTN: Janice W. Davidson, 1429 Rock Quarry Road, Suite 105, Raleigh, North Carolina 27610, at the time the appeal is initiated to insure timely filing of the record.

This the 14th day of January, 2010.

NORTH CAROLINA DEPARTMENT OF REVENUE

/s/ Janice W. Davidson

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