

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA
DEPARTMENT OF REVENUE

[Taxpayer],

Petitioner,

v.

NORTH CAROLINA DEPARTMENT
OF REVENUE,

Respondent.

FINAL DECISION AND ORDER

CASE NUMBER
08 REV 2915

THIS MATTER came before the North Carolina Department of Revenue (“Department”) from the Decision Granting Summary Judgment for Respondent (“Decision”) of Temporary Administrative Law Judge (“ALJ”) Eugene J. Cella dated June 26, 2009. After a full review of the entire record of this matter, including the official record as defined in N.C.G.S. § 150B-37(a), and upon consideration of the cross-Motions for Summary Judgment, briefs, exceptions, written arguments, proposed orders, and other documents filed or submitted by the parties, the Department hereby decides as follows:

ISSUE

The issue to be decided in this matter is whether Petitioner, [Taxpayer], can claim refunds of sales and use tax where another governmental entity, [NC County], issued the checks to the private construction companies who built four schools in [NC County].

1. Under the Findings of Fact section of the Decision which granted summary judgment for Respondent, the ALJ indicated he was summarizing the undisputed facts. The parties stated in their respective Motions for Summary Judgment that there were no issues of material fact. (Petitioner’s Motion for Summary Judgment p.1; Respondent’s Motion for Summary Judgment p.1) The Department is in agreement with the ALJ’s summary of the undisputed facts listed in the ALJ’s Decision.

FINDINGS OF FACT

Upon consideration of Respondent’s Motion for Summary Judgment and Petitioner’s Motion for Summary Judgment; the parties’ briefs and the undisputed documents attached to the parties’ briefs; oral argument; and other matters of record; the Court summarizes the undisputed facts as follows:

1. *Petitioner is a local school administrative unit in [NC County].*

2. *The refunds sought in this case involve taxes on building materials used to construct the following four school buildings: [School 1], [School 2], [School 3], and [School 4] (collectively “New Schools”).*
3. *Petitioner signed contracts with private construction companies to build the New Schools.*
4. *The private construction companies paid sales and use tax on the building materials.*
5. *[NC County] issued the checks that paid the private construction companies.*
6. *For all schools except [School 1], Petitioner owned the school.*
7. *For [School 1], [NC County] borrowed some of the funds to build the school from a bank. To facilitate the loan, Petitioner transferred the title to [School 1], to [NC County]. [NC County] gave the bank a security interest in the property as collateral for the loan. Petitioner leased the school from [NC County] for a nominal rent and has an option to purchase [School 1] after the loan is repaid. [NC County] and Petitioner signed an agency agreement, and Petitioner, as agent for [NC County], entered into a contract with the construction company that built [School 1].*
8. *Petitioner filed two refund claims seeking refunds of sales and use tax paid by the private construction companies.*
9. *Originally, Respondent allowed one of Petitioner’s refund claims. Later, Respondent audited both of Petitioner’s refund claims. Respondent issued a proposed assessment seeking a return of the monies allowed in the first refund claim. Respondent partially denied the second refund claim and applied the amounts allowed to the proposed assessment.*
10. *[NC County] did not file any refund claims for the New Schools.*
11. *Petitioner did not request a penalty waiver before the hearing.*
12. *Respondent waived penalties during the hearing.*]

2. The Department adopts the Conclusions of Law of the ALJ.

[

CONCLUSIONS OF LAW

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 cannot satisfy the statutory requirement of N.C. Gen. Stat. § 105-164.14(c) (1999) that Petitioner have paid the tax.*
3. *N.C. Gen. Stat. § 105-164.14(c) (1999) is the statute authorizing refunds of sales and use tax. The statute expressly requires payment of the tax and states: “governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it.”*
4. *[NC County] – not Petitioner – paid the cost of the building.*
5. *Petitioner cannot claim refunds of taxes which it did not pay.*
6. *The penalties on the Final Determination are waived.*]

DECISION

The Department hereby decides that Petitioner was not entitled to summary judgment as a matter of law; Respondent was entitled to summary judgment as a matter of law; and the Decision of the ALJ in the above-captioned case granting Respondent’s Motion for Summary Judgment is correct as a matter of law.

ORDER

NOW, THEREFORE, the Department hereby orders that Petitioner’s Motion for Summary Judgment is DENIED; Respondent’s Motion for Summary Judgment is GRANTED; and the Final Determination dated November 21, 2008 issued by Respondent to Petitioner is sustained as to the tax, interest, and accrued interest due. Penalties on the Final Determination are waived.

APPEAL

Pursuant to N.C.G.S. § 150B-45, a party wishing to appeal the final decision of the Department in a contested tax case arising under N.C.G.S. § 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 and Order. Pursuant to N.C.G.S. § 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, and the Department’s Final Agency Decision and Order with the Clerk of Wake County Superior Court with 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the petition must be sent to the North Carolina Department of Revenue,

ATTN: Janice W. Davidson, P. O. Box 871, Raleigh, North Carolina 27602-0871 at the time the appeal is initiated to insure timely filing of the record.

This the 8th day of September, 2009.

NORTH CAROLINA DEPARTMENT OF REVENUE

/s/ Janice W. Davidson

BY: _____

Janice W. Davidson, Esquire
Agency Legal Specialist, II
North Carolina Department of Revenue