

STATE OF NORTH CAROLINA

BEFORE THE SECRETARY OF REVENUE

COUNTY OF WAKE

OF NORTH CAROLINA

IN THE MATTER OF:

The Proposed Assessment of Sales and Use Tax for the period January 1, 2003 through December 31, 2003, by the Secretary of Revenue of North Carolina

vs.

Taxpayer

FINAL DECISION
Docket No. 2005-372

This matter was heard by the Assistant Secretary of Administrative Hearings, Eugene J. Cella, upon application for hearing by _____, (Taxpayer) wherein he protested our proposed assessment of tax, penalty and interest for the period January 1, 2003 through December 31, 2003. The hearing was held on December 6, 2005, by the Assistant Secretary pursuant to the provisions of G.S. 105-260.1. The Sales and Use Tax Division was represented by W. Timothy Holmes, Assistant Director, and Richard C. Stewart, Administration Officer. The Taxpayer did not appear at the hearing.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Proposed Assessment to the Taxpayer on July 6, 2005. On September 15, 2005, the Taxpayer paid the assessment in full, but objected to the assessment and timely requested a hearing before the Secretary of Revenue.

ISSUES

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

1. Does the Taxpayer owe use tax on tangible personal property purchased in [Foreign County] and sent to his home in North Carolina?
2. Do the Sales and Use Tax laws of North Carolina contain an exemption from use tax on purchases made by a member of the armed services in a war zone and shipped to the purchaser's home in North Carolina?

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 letter dated April 15, 2005 from the Examinations Division to the Taxpayer and the enclosed copy of the U.S. Customs – Purchase Detail, designated Exhibit E-2.
3. Copy of Notice of Sales and Use Tax Assessment dated July 6, 2005, designated Exhibit E-3.
4. Copy of undated letter from the Taxpayer to Department with attached portion of Notice of Tax Assessment Sales and Use, designated Exhibit E-4.
5. Copy of Notice of Penalty Assessment Sales and Use dated August 23, 2005, designated Exhibit E-5.
6. Copy of letter dated September 15, 2005 from the Taxpayer, with attached portion of Notice of Penalty Assessment Sales and Use and copy of Taxpayer check in the amount of \$398.00, designated Exhibit E-6.
7. Copy of letter dated November 4, 2005, from the Sales and Use Tax Division to the Taxpayer, designated Exhibit E-7.
8. Copy of letter dated June 15, 2005, from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit-8.
9. Brief for Hearing, prepared by the Sales and Use Tax Division, Docket No. 2005-372, designated Exhibit E-9.

FINDINGS OF FACT

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

1. The Taxpayer is a member of the armed services and purchased a rug while deployed in [Foreign Country].
2. The rug was shipped to the Taxpayer's home in [City], North Carolina.
3. The United States Custom Service sent the Department a copy of U.S. Customs – Purchase Detail, documenting the importation of the rug.

4. The Department assessed the Taxpayer use tax on the cost price of the rug.
5. A notice of sales and use tax assessment was mailed to the Taxpayer on July 6, 2005.
6. A notice of Penalty Assessment Sales and Use Tax was mailed to the Taxpayer on August 23, 2005.
7. The Taxpayer paid the assessment in full on September 15, 2005.
8. With the September 15, 2005 payment, the Taxpayer objected to the assessment and timely requested a hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

1. The rug purchased by the Taxpayer falls within the definition of “tangible personal property” defined in G.S. 105-164.3(46).
2. The Taxpayer’s purchase of a rug is subject to use tax pursuant to G.S. 105-164.6, G.S. 105-468, G.S. 105-483, G.S.105-498 and G.S. 105-517.
3. The exemptions from sales and use tax do not include an exemption for purchases made by a member of the armed services during war time in a combat zone and shipped to a North Carolina destination.
4. The Taxpayer produced no evidence to overcome the presumption of correctness of the assessment set out in G.S. 105-241.1.
5. The Taxpayer is liable for the applicable State and county additional use tax assessed for the audit period.
6. The Notices of Proposed assessment were issued pursuant to G.S. 105-241.1.

DECISION

Although the Taxpayer did not appear at the hearing, in an earlier letter to the Department he stated that he did not feel he should have to pay the State of North Carolina tax on the purchase of a rug during a time of war in a combat zone. In a telephone conversation with Department personnel, the Taxpayer stated that it was not

right that he should be called to serve his country in a war zone and then be assessed tax on a purchase made in that part of the world and sent to his home in North Carolina.

The assessment of use tax is a matter of law, and the statutes levying the use tax are clear. It is the Department's duty to administer the sales and use tax laws as they are written. The facts regarding the purchase of the rug for use in North Carolina are not contested, and there is simply no statutory basis for exempting the purchase from the use tax.

Therefore, the proposed assessment of tax, penalty and interest is deemed correct under the law and the facts and is hereby sustained. The Taxpayer's request for refund is respectfully denied.

This 6th day of January 2006.

Eugene J. Cella
Assistant Secretary of Administrative Hearings