

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:

The Proposed Assessment of Utility Sales Tax for the)
Period October 1, 1996 through December 31, 1999,)
by the Secretary of Revenue of North Carolina)
vs.)
[Taxpayer])

FINAL DECISION
Docket No. 2002-230

This matter was brought before the Assistant Secretary of Administrative Hearings, Eugene J. Cella, in the City of Raleigh on June 18, 2002, upon application for hearing by the Taxpayer wherein it protested the proposed assessment of tax, penalty, and interest for the period October 1, 1996 through December 31, 1999. The hearing was held by the Assistant Secretary pursuant to the provisions of G.S. 105-260.1. Neither the Taxpayer nor a representative attended the hearing. Andrew Sabol, Assistant Director, represented the Sales and Use Tax Division.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Proposed Assessment to the Taxpayer on May 13, 2000. On June 12, 2000, the Taxpayer notified the Division that it objected to the assessment and requested a hearing before the Secretary of Revenue. The Taxpayer contends that it was not liable for collecting and remitting utility sales tax on its receipts derived from providing telecommunications services through coin-operated pay telephones.

ISSUES

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

1. Is the Taxpayer liable for the 3% sales tax on its gross receipts derived from providing local telecommunications service through the operation of coin-operated pay telephones?
2. Is the Taxpayer liable for the 6½% sales tax on its gross receipts derived from providing intrastate toll telecommunications service through the operation of coin-operated pay telephones?

EVIDENCE

The following items were introduced into evidence by the parties:

1. Memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary of Revenue for Administrative Hearings, designated Exhibit E-1.
2. Utility sales tax audit report and supporting auditor remarks, designated Exhibit E-2.
3. Notice of proposed assessment dated May 13, 2000, designated Exhibit E-3.
4. Memorandum dated November 15, 1999 from the Taxpayer to the Department, designated Exhibit E-4.
5. Letter dated April 10, 2000 from the Division to the Taxpayer, designated Exhibit E-5.
6. Letter dated June 12, 2000 from the Taxpayer to the Department, designated Exhibit E-6.
7. Letter dated June 15, 2000 from the Division to the Taxpayer, designated Exhibit E-7.
8. Letter dated July 3, 2000 from the Taxpayer to the Division, designated Exhibit E-8.
9. Letter dated July 18, 2000 from the Division to the Taxpayer, designated Exhibit E-9.
10. Letter dated June 7, 2001 from the Division to the Taxpayer, designated Exhibit E-10.
11. Letter dated September 18, 2001 from the Division to the Taxpayer, designated Exhibit E-11.
12. Letter dated April 5, 2002 from the Assistant Secretary to the Taxpayer, designated Exhibit E-12.
13. Division's Brief for Tax Hearing, designated Exhibit E-13.

DECISION

1. An assessment of tax is presumed to be correct
2. The burden is upon a taxpayer who takes exception to an assessment to overcome that presumption.
3. Notice of the time and place for hearing was mailed to Taxpayer's last known address by first class mail, postage prepaid, on April 5, 2002, and has not been returned by the postal service.
4. The Taxpayer received notice of the time and place for hearing but neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing.

5. No evidence was presented at the hearing that would tend to contradict the assessment or overcome the presumption of correctness.

Wherefore, the assessment is sustained in its entirety and is declared to be final and immediately due and collectable.

Made and entered this 21st day of June, 2002.

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue