North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W.Hoyle
Secretary

September 23, 2011

[redacted]

Re: Request for Private Letter Ruling
[redacted]

Dear [redacted]:

We are in receipt of your letter dated June 6, 2011, in which you have requested a private letter ruling regarding the application of North Carolina sales and use tax and mill machinery excise tax on business transactions your client, [redacted], may have in this State. It is our understanding that [redacted] is a [redacted] limited liability company that will own, manage and operate a refined coal production facility in North Carolina which will produce refined coal for sale to a North Carolina electric power generation plant for consumption in the generation of electric power.

You ask for a written determination regarding: (1) whether the production of refined coal is manufacturing for purposes of the exemption from sales and use tax provided in G.S. 105-164.13(8) and subject to the privilege tax imposed by G.S. 105-187.51; and (2) whether sales of refined coal by [redacted] to a North Carolina power generation plant would be exempt sales of fuel to a manufacturer as provided under G.S. 105-164.13(57).

The refined coal production facility owned, managed, and operated by [redacted] "will be located at an electric power generation plant in the State which burns [redacted] coal. . . . [the] facilitiy will produce refined coal from raw coal feedstock that it purchases from the utility that owns the electric power generation plant. The refined coal produced by [redacted] will then be sold to the utility for its use in the generation of electric power."

"The [facility] will produce refined coal using [redacted] During combustion of the refined coal, [redacted] chemical reaction [redacted]."

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"The physical appearance of the refined coal will not differ materially from that of the raw coal feedstock from which the refined coal is produced, but the combustion characteristics of the raw coal and the refined coal will differ dramatically. Independent combustion tests of raw coal refined by [redacted] concluded that the refining process effectively reduced [redacted] air emissions [redacted]."

In determining whether an operation or facility is classified as manufacturing for North Carolina sales and use tax purposes, as well as the privilege tax imposed under G.S. 105-187.51, consideration must be given to facts and circumstances. [redacted] purchases raw coal feedstock, applies [redacted] and, effectively transforms or converts these ingredient materials into a finished product of manufacture for sale. The result of this process (i.e., the finished product of manufacture for sale) is clean-burning, refined coal with [redacted] emissions that are reduced [redacted] compared to the combustion of raw coal feedstock. The production of refined coal by [redacted] is manufacturing for purposes of the exemption from sales and use tax provided in G.S. 105-164.13(8) and for purposes of the privilege tax imposed by G.S. 105-187.51. Accordingly, [redacted] purchases of coal and the chemical compounds which are combined to produce the refined coal will be exempt from sales and use tax as ingredient or component parts of tangible personal property that constitute a part of manufactured products for sale and exempt at the time of purchase pursuant to G. S. 105-164.13(8).

As noted in your request, G.S. 105-187.51 imposes a privilege tax on "[a] manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State." The rate of tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased, with a maximum tax of eighty dollars ($80.00) per article. Pursuant to Sales and Use Tax Technical Bulletin 58-1 C. 8. ". . . [s]torage tanks, bins or other facilities for . . . raw materials . . . are not classified as mill machinery or mill machinery parts or accessories and are therefore subject to the general rate of State tax and any applicable local sales or use tax. However, tanks, bins and other facilities in which mixing, blending or other processing action takes place are classified as mill machinery or mill machinery parts or accessories and are therefore subject to the 1% privilege tax when such items are used in the manufacturing operation."

The sale, by [redacted] of refined coal to a North Carolina electric power generation plant will qualify for the exemption provided under G.S. 105-164.13(57) as "fuel . . . sold to a manufacturer for use in connection with the operation of a manufacturing facility" provided such customer uses the refined coal as "fuel" in the production of electricity as indicated in your request. Additionally the customer should issue Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of

Exemption, or other evidence of exemption as your client's authority to exempt sales transactions to such customer.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the factual situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

If you have any questions, you may contact me at the telephone number listed below.

Very truly yours,

[redacted]
Administration Officer
Sales and Use Tax Division

cc: [redacted], Director - Sales and Use Tax Division