North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

December 13, 2010

[redacted]

Re: FEIN #: [redacted]
Account ID: [redacted]

Dear Ms. [redacted],

This letter is in response to your letter of April 15, 2010 regarding purchases of electricity by your customer, [redacted]. You advised "[o]n April 7, 2010 the [redacted] received a certificate of exemption form E-595E…" from this customer. You also advised "[t]he statute provides that in order to qualify for a reduced tax rate, the electricity must be measured by a separate meter or other device. This customer has two meters on the same parcel that serve the manufacturing plant, warehouse area, and *administrative office space (as this space is metered with operations).*"

The Streamlined Sales and Use Tax Agreement Certificate of Exemption dated April 7, 2010 identifies the type of business as manufacturing with an industrial production/manufacturing # [redacted] for this customer. You have asked "if this customer qualifies for the reduced tax rate based on the information presented" for our review. Please note that we do not have sufficient information in the packet you provided to determine if your customer is, in fact, a manufacturer. We are accepting that this customer does qualify as a manufacturer based on the certificate alone. However, please note the Industrial production/manufacturing number listed in Section 5 does not match the purchaser's tax ID number listed in Section 3 of the Streamlined Sales and Use Tax Agreement Certificate of Exemption.

Effective for sales during the period August 1, 1996 through June 30, 2007, former N.C. Gen Stat. §105-164.4(a)(1f)b. stated, in part, "[t]he rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity described in this subdivision and measured by a separate meter or another separate device." Specifically, this rate applies to "[s]ales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity to be used for residential heating purposes."

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Effective for sales during the period July 1, 2007 through September 30, 2007, former N.C. Gen Stat. § 105-164.4(a)(1i) stated, in part, "[t]he rate of two and six-tenths percent (2.6%) applies to the sales price of electricity that is measured by a separate meter or another separate device and sold to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants."

Effective for periods October 1, 2007 through June 30, 2008, former N. C. Gen. Stat. § 105-164.4(a)(1j), provided the rates that applied to the sales price of electricity described in this subdivision and measured by a separate meter or another separate device. The rates in effect were 1.8% for sales during October 1, 2007 through June 30, 2008, 1.4% for sales during July 1, 2008 through June 30, 2009, and 0.8% for sales during July 1, 2009 through June 30, 2010. The reduced rates of tax on sales of electricity applied to "[s]ales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants."

Based on the plain language of former statues N.C. Gen. Stat. §§ 105-164.4(a)(1f)b., 105-164.4(a)(1i), and 105-164.4(a)(1j), it is our opinion that the partial exemption does not apply to all sales of electricity to manufacturing industries or plants. The former statutes limit the partial exemption to electricity (1) measured by a "separate meter or another separate device" and (2) used in connection with the operation of a manufacturing industry or plant. If all sales of electricity to manufacturing industries or plants were exempt, it would have been unnecessary for the legislature to limit the partial exemption to only that electricity used in connection with the operation of the manufacturing industries or plants and measured with a separate meter or another separate device.

Based on the fact that the electricity sold to your customer is measured by two devices and both meters serve the manufacturing plant, warehouse area and the administrative office space, it is our opinion that the reduced rate of tax on sales of electricity does not apply. Therefore, it is our opinion that the 3% rates of tax applies to the sales of electricity to the customer at issue.

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 fact 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.

Sincerely,

[redacted], Assistant Director
Sales and Use Tax Division

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