



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

June 10, 2010

[REDACTED]

Attention: [REDACTED], Assistant Vice President

Re: Private letter ruling request

Federal ID: [REDACTED]

Account ID: [REDACTED]

Dear [REDACTED]:

We have reviewed the information you submitted at our May 11, 2010, conference in which we discussed the application of tax to building projects under taken by your firm at the [REDACTED] Water Treatment Plant. Attending the conference, in addition to you and I, were [REDACTED] Assistant Finance Director of the [REDACTED] Finance Department; [REDACTED] Director of the Sales and Use Tax Division; and [REDACTED], Assistant Director of the Sales and Use Tax Division. During our discussions you confirmed that you were specifically interested in a determination on the rate of tax that applies to the structures that house the [REDACTED] process, the Waste [REDACTED] Collection System, and the [REDACTED] Facility.

Sales and Use Tax Technical Bulletin 58-1 D. provides, in part,

"The following items are not considered 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:

1. tangible personal property attached to or in any way a part of any building or structure of any kind whatsoever..."

Sales and Use Tax Technical Bulletin 58-1 C. (8) provides, in part,

"Storage tanks, bins or other facilities for water, fuel, raw materials or manufactured products 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."

With regard to the [REDACTED] structure, the foundation and roof shown in the diagrams provided constitute part of the building or structure and, in accordance with Sales and Use Tax Technical Bulletin 58-1 D, are subject to the general rate of State tax and any applicable local tax. The materials to construct the part of the structure that will function as a tank where the [REDACTED] processing and mixing takes place are subject to the 1% privilege tax. Likewise the materials to construct the structure beneath the [REDACTED] tank, which will support the tank and provide the elevation necessary for the utilization of gravity in the [REDACTED] process, will be subject to the 1% privilege tax.

We also discussed the augur cast piles, which you stated went 30 to 40 feet underground below the [REDACTED] tank and will be necessary to support the weight of the tank and stabilize the structure under the tank. Based on the description you provided and the fact that the augur cast piles are necessary to support the weight of the tank beyond the basic structure, the augur cast piles will be considered an accessory to the [REDACTED] tank and will be subject to the 1% privilege tax.

As we advised you during the conference, the materials to construct walls and foundation and any tangible personal property attached to or in any way a part of the Waste [REDACTED] Collection System structure and the [REDACTED] Facility structure are subject to the general rate of State tax and any applicable local sales or use tax.

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.

If you have any questions, please advise.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

[REDACTED]
cc: [REDACTED], Director of the Sales and Use Tax Division
[REDACTED], Assistant Director of the Sales and Use Tax Division