North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

January 20, 2012

Account ID: [redacted]
Federal ID: [redacted]

[redacted]

Re: [redacted]

Dear Mr. [redacted]

We received your letter dated November 9, 2010, in which you requested a private letter ruling to clarify your understanding of the correct application of sales and use and mill machinery privilege taxes to purchases of animals, animal cages, equipment feed and bedding by [redacted] ("Taxpayer").

Mr. [redacted] advised by facsimile of July 6, 2011 that Taxpayer is a subsidiary of [redacted] Taxpayer has two divisions, [redacted] (acquired in 2008) and [redacted] (acquired in 2009). We were advised that Taxpayer and the formerly called, [redacted] and [redacted], are not under audit or review by the Department, or in litigation with the Department.

In your November 9, 2010 letter, you state that Taxpayer "engages in helping global partners accelerate drug discovery and development by [redacted]. [Taxpayer's] customers include leading pharmaceutical, biotechnology, government, and academic organizations around the world. The major service areas of drug research and development include basic research; discovery; safety and efficacy; clinical; and process manufacturing."

You advised, Taxpayer "provides discovery services that help customers [redacted]. By contracting with pharmaceutical companies to [redacted]

Phone (919) 733-2151 Fax (919) 733-1821
501 North Wilmington Street, Raleigh, North Carolina 27640
P.O. Box 871 Raleigh North Carolina 27602-0871
Website: www.dornc.com
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[redacted]. [Taxpayer] will engage in various studies to [redacted] animals and work with clients to determine [redacted]." You advised, "[a]nimals arrive weekly to use in studies and they are purchased from commercial animal breeders."

"Some of the equipment used by [Taxpayer] during the above mentioned services includes [redacted] clean rooms with hepa filters, cages, commercial cage washers, and liquid nitrogen freezers. The [redacted] clean rooms are required for test-conducive environments. The animal cages must be washed thoroughly twice a week to ensure clean health requirements [redacted]. The liquid nitrogen freezers store [redacted] cells." You advised, "[s]ome necessary accessories required to perform the above mentioned services are bedding and animal feed."

It is your opinion that "[p]urchases of animals from commercial and non-commercial breeders or producers by [Taxpayer], as well as the purchases of animal cages, cage washers, freezers, equipment and supplies (e.g. microscopes and lab supplies), bedding and animal food by [Taxpayer], are exempt from sales and use tax. The purchases of animals, animal cages, cage washers, freezers, equipment and supplies (e.g. microscopes and lab supplies), bedding and animal food by [Taxpayer] are subject to the 1% privilege tax with a maximum tax of $80.00 per article."

N.C. Gen Stat § 105-187.51B provides that a 1% privilege tax with a maximum tax of $80.00 per article is imposed on a research and development company in the physical, engineering, and life sciences that is included in industry 54171 of North American Industry Classification System (NAICS) that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements: is capitalized for income tax purposes, is used by the company for research and development of tangible personal property, and would be considered mill machinery or mill machinery parts or accessories under G.S. 105-187.51 if purchased by a manufacturer.

The 2007 NAICS definition of 54171, Research and Development in the Physical, Engineering, and Life Sciences, provides such "industry comprises establishments primarily engaged in conducting research and experimental development in the physical, engineering, and life sciences, such as agriculture, electronics, environmental, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary, and other allied subjects."

The activity of the Taxpayer's establishment should be considered for purposes of the following responses to your questions. We have listed the questions as stated in your letter below followed by the Department's responses:

1. **Are animals that are purchased from commercial and non-commercial breeders by [Taxpayer] exempt from sales and use tax?**

   Sales and Use Tax Technical Bulletin Section 58-24A. states, in part, "[p]urchases of animals from a commercial animal breeder or producer by manufacturers, research laboratories, other business or individuals are exempt from tax." N. C. Gen Stat. § 105-164.13(4b) provides an exemption from sales and use taxes for "[p]roducts of a farm sold in their original state by the producer of the products if the producer is not primarily a

retail merchant. Our response assumes the breeder does not purchase the animals for resale.

2. **Are animals that are purchased from commercial and non-commercial breeders by [Taxpayer] in performing the services above exempt from the 1% privilege tax with a maximum tax of $80.00 per article?**

   N. C. Gen Stat. § 105-187.52 provides that "[t]he privilege taxes imposed . . . are in lieu of the State use tax. Except as otherwise provided in [Article 5F - Manufacturing Fuel and Certain Machinery and Equipment] the collection and administration of these taxes is the same as the . . . tax imposed by Article 5 [Sales and Use Tax]. . . ." Purchases of animals from breeders are not subject to the 1% mill machinery privilege tax. Our response assumes the breeder does not purchase the animals for resale.

3. **Since [Taxpayer] is providing testing for manufacturers, to what extent could [Taxpayer] in performing the above mentioned services, qualify for the research and development exemption from sales tax (e.g. lab supplies, microscopes, etc.)?**

   We have reviewed a copy of the [redacted] Agreement and copies of two protocols used by [redacted]. Based upon the [redacted] Agreement and the two sample protocols provided, purchases of equipment or an attachment or repair part for equipment by [Taxpayer] may qualify for the 1% privilege tax with a maximum tax of $80.00 per article provided the Taxpayer's facility primarily engages in activities included in 54171 of the NAICS and the purchases fulfill the other requirements of N. C. Gen. Stat. § 105-187.51B(a)(2).

4. **Would cages used by [Taxpayer] qualify for the 1% privilege tax with a maximum tax of $80.00 per article?**

   If [Taxpayer] purchases cages for use by animals used in the performance of research services for others, the cages are subject to the 1% privilege tax with a maximum tax of $80.00 per article provided the Taxpayer's facility primarily engages in activities included in 54171 of the NAICS and the purchases fulfill the other requirements of N. C. Gen. Stat. § 105-187.51B(a)(2).

5. **To what extent would the cage washers, clean room and liquid nitrogen freezers used by [Taxpayer] qualify for the 1% privilege tax with a maximum tax of $80.00 per article, per Technical Bulletin 56-1 D?**

   If [Taxpayer] purchases cage washers, clean room and liquid nitrogen freezers for use in the performance of research services for others, the items are subject to the 1% privilege tax with a maximum tax of $80.00 per article provided the Taxpayer's facility primarily engages in activities included in 54171 of the NAICS and the purchases fulfill the other requirements of N. C. Gen. Stat. § 105-187.51B(a)(2).

6. **Would the bedding and feed used by [Taxpayer] in the above mentioned services qualify for the 1% privilege tax with a maximum tax of $80.00 per article?**

   N.C. Gen Stat. § 105-164.13(2a) provides an exemption for "litter materials, and feed for animals" held or produced for commercial purposes. Litter materials and feed for

animals “held” by a research facility in conjunction with the performance of research and development activities qualify for the sales and use tax exemption. Article 5F does not impose the 1% privilege taxes on such items.

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.

Very truly yours,

[redacted]

[redacted]
Administration Officer
Sales and Use Tax Division

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