Pat McCrory
Governor

Jeffrey M. Epstein
Secretary

September 16, 2015

[redacted]

Re: Request for Private Letter Ruling Regarding Massage Therapists

Dear [redacted]

This letter is in response to your letter dated August 15, 2015 that was attached to Form NC-PLR, Request for Private Letter Ruling, along with your five hundred dollar ($500.00) check, where you are seeking from the North Carolina Department of Revenue ("Department") a private letter ruling ("PLR") per N.C. Gen. Stat. § 105-264(d) regarding whether or not massage therapists are required to obtain an individual privilege license.

The statement of facts submitted for the Department's consideration is as follows:

> I own a [redacted] and we employ licensed massage therapists. When I started the business, I was told by industry participants that our therapists needed to obtain a NC Art of Healing Privilege License to work in our clinics. Recently, a fellow [redacted] shared with me an email he received indicating that massage therapists do not need an Art of Healing Privilege License – see attached email and highlighted sections of the relevant statue [sic].
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> As I read the statue [sic] and the explanation provided by NC Revenue Office Manager II, Heath Long, it would appear massage therapists do not need to secure an Art of Healing Privilege License. For example, in the case notes it says "Masseurs are not required to obtain a privilege license."

Issue(s):

> Whether [redacted] massage therapists are required to have a North Carolina Art of Healing Privilege License.

Department's Response:

> North Carolina Gen. Stat. § 105-41 provides in part, that a "…*person who practices a professional art of healing*" (emphasis added), must procure from the North Carolina Department of Revenue (Department) a statewide privilege license and pay for such license a tax of fifty dollars ($50.00) annually. While the occupation of "massage therapist" is not specifically listed in N.C. Gen. Stat. § 105-41, there is case law addressing the applicability of the privilege license statute to "masseurs."
>
> In the case of *Smith v. Keator*, the N.C. Court of Appeals determined that for purposes of N.C. Gen. Stat. § 105-41, the term "professional" art meant a skill requiring "knowledge of advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study." *Smith v. Keator*, 21 N.C. App. 102, 105 (1974), citing *Paterson v. University of the State of New York*, 14 N.Y.2d. 432, 437 (1964). The Court also defined "healing" to mean "the curing of diseases or injuries". *Smith v.*

Keator, 21 N.C. App. 102, 105 (1974). In this context, the Court ruled that "masseurs" were not persons "practicing any professional art of healing" and thus were not within the scope of N.C. Gen. Stat. § 105-41 requiring a privilege license from the State, but were subject to regulation by local government. *Smith v. Keator*, 21 N.C. App. 102, 105 (1974), *aff'd* 285 N.C. 530 (1974).

The North Carolina Massage and Bodywork Therapy Practice Act (Practice Act) does not distinguish a "massage therapist" from a "masseur" or "masseuse," (See N.C. Gen. Stat. § 90-623(b)). Further, the Practice Act specifically indicates the practice of massage shall not include listed medical procedures, (See N.C. Gen. Stat. § 90-623(d)).

Therefore, the Department concludes that a "massage therapist" is not required to obtain a privilege license pursuant to N.C. Gen. Stat. § 105-41, from the State. This Private Letter Ruling is limited to licensing requirements by the Department, and the Department will not issue any opinion addressing any other licensing requirements for which you or your business may be subject.

This ruling is based solely on the facts described in the statement of facts submitted to the Department for consideration of the transactions described. If the facts and circumstances described are not accurate or if there are other facts not previously disclosed that may result in the Department reaching a different conclusion, this ruling may not be relied upon. If a taxpayer relies on this letter ruling and the Department discovers, upon examination, that the facts situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, the letter ruling will not afford the taxpayer any protection from adverse tax consequences. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. A letter ruling has no binding effect on the Department with regard to any person other than the taxpayer who requested and received the ruling. It should be noted this document shall not be cited or relied upon as precedent and that a change in statute, regulation, or case law could void this ruling.

I hope this clarifies for you the issue of the art of healing privilege license tax as it relates to a massage therapist. If I can be of further assistance, please do not hesitate to let me know.

Yours Respectfully,

[redacted]
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cc: [redacted] Director, Excise Tax Division