



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

February 19, 2010

[REDACTED]

Attention: [REDACTED], Business Administrator

Re: Request for Private Letter Ruling
Collection of sales tax on consignment sales

Dear Mr. [REDACTED]:

This letter is in response to your letter dated January 26, 2010, with attachment, wherein you requested that the North Carolina Department of Revenue ("Department") issue a private letter ruling regarding collection of sales tax at consignment sales held by [REDACTED] (" [REDACTED] ").

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

The [REDACTED] Consignment Sale Board, a ministry of [REDACTED] has two (2) consignment sales each year. The Board consists of fourteen (14) volunteers, all of whom are members of [REDACTED]. Additionally, during these sales, [REDACTED] relies on over 100 volunteers, most of whom put in over fourteen (14) hours per week.

The Spring/Summer Sale is held the first Saturday of March of each year and your Fall/Winter Sale is held the second Saturday of August of each year. For each sale, individuals register online to become a consignor. Consignors are accepted on a first come basis. For the Spring/Summer sale, [REDACTED] accepts 350 consignors and for the Fall/Winter sale, [REDACTED] accepts 325 consignors. Consignors pay an [REDACTED] registration fee which is used to offset expenses incurred to run the sale (online registration system fee, supplies for the sale, racks, shelves, etc.) Consignors are responsible for 'tagging' their items for sale. The tag includes their unique consignor number assigned by your program, a description of the item and the price. [REDACTED] encourages consignors to price their items no more than 30% of the original sales price. The week of the sale, consignors bring their items to the church and your

volunteers quality check each item. These volunteers then organize accepted items by size/category in the rooms throughout the church building.

The sale begins on Thursday night for the fourteen (14) hour volunteers. Your consignors shop on Friday night and on Saturday the sale is open to the public. The cashiers pull tags on all items sold and calculate the amount due for the shopper. You accept cash, check and VISA/Mastercard. The tags are collected by your sort and tally team who sort all tags by consignor number and then tally the tags for each consignor to determine the dollar amount sold for each consignor.

Your finance team then cuts checks to the consignors for their proceeds, which is 70% of the total dollar amount of their items sold. You mail consignor checks out on the eleventh business day following the sale. The Consignment Sale Board meets within a month after each sale to determine the allocation of your net proceeds from the sale in keeping with your families and children mission. [REDACTED]

In addition to the monetary donations from your sales, you offer families in your church and community that are struggling financially the opportunity to shop for free [REDACTED] on Friday. Also, at the end of the sale, consignors must pick up their unsold items by 6:00 on the Saturday of the sale. Any items remaining at 6:00 are donated to an organization within the community that serves family and children.

It is your belief that your consignment sales are exempt from sales tax based on your interpretation of Sales and Use Tax Technical Bulletin 17-1, A, 2. It is your contention that although the sales are held twice a year rather than on 'an annual basis', two sales rather than one sale a year is not significant to warrant a non-exempt status since in each instance you are raising funds for your mission.

You have reviewed Sales and Use Tax Technical Bulletin 34-4 Sale of Household Goods, and Sales and Use Tax Technical Bulletin 34-6 Consignment Sales. It is your position that while you are a consignment sale, you do not 'maintain a place of business at which you sell tangible personal property on a regular basis. Additionally, you do not believe you are 'engaged in the business of consigning tangible personal property'. Because you do not rent space to conduct your sale and have only two sales per year, you contend that you are more in line with Sales and Use Tax Technical Bulletin 34-4 than Sales and Use Tax Technical Bulletin 34-6 since you sell tangible personal property on an occasional basis on behalf of the owner of the goods. The owner receives 70% of the sale proceeds and the remaining proceeds are used for the benefit of your organization's mission. Since your net proceeds are used for the benefit of your organization's mission, it is your belief that your sales qualify as exempt sales under Sales and Use Tax Technical Bulletin 17-1, A. 2.

Issue:

Are the consignment sales made by [REDACTED] subject to sales tax?

Department's Response:

North Carolina General Statutes provide for exemptions from sales tax for different types of organizations.

G.S. 105-164.13 (31a) provides an exemption for:

“Food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.”

G.S. 105-164.13 (35) provides an exemption for:

“Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the following conditions are met:

- a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.
- b. The proceeds of the sale are actually used for the organization's activities.
- c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period.”

While the statutes provide an exemption from sales tax for food sold by a “church or religious organization,” they do not provide an exemption for other types of sales made by these groups. The exemption provided for in G.S. 105-164.13 (35) does not apply to a “church or religious organization” even though the organization may do some charitable work.

Sales and Use Tax Technical Bulletin 34-4 states: “Occasional sales of household goods on which the sales tax has been paid are exempt from the tax when sold by the owner in his capacity as owner and not in the capacity of a retail merchant. Such sales are deemed to be casual or isolated sales by persons not holding themselves out as engaged in business.”

[REDACTED] holds consignment sales twice a year on a regular basis. While the items sold might be household goods, the regularity of the sales means they would not qualify for the occasional sale exemption mentioned in the Bulletin.

Since there is no statutory exemption available, the consignment sales held by [REDACTED] would be subject to sales tax. You should register with the Department using Form NC-BR, which is available on the website at www.dorncc.com. A sales tax account number will be assigned for use in reporting sales tax collected and remitted.

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, you may reach me at the number listed at the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

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