North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

July 9, 2010

FEIN: [redacted]

[redacted]

Attention: [redacted]

Re: Request for Private Letter Ruling

Dear Mr. [redacted]:

We received your recent letter, in which you have requested a private letter ruling regarding the application of North Carolina sales and use tax on business transactions your firm may have with customers in this State.

It is our understanding that your firm works with its customers to provide free, temporary memberships to consumers who visit your customers' websites. In the scenario you describe, a North Carolina consumer may visit your customer's website, which is domiciled in another state ([redacted]). If the consumer selects the online option to receive a free, temporary membership from your customer, the consumer is directed to your firm's website. The consumer is asked to provide your firm with basic information. After providing this information, the consumer is presented with a variety of online offers, such as an offer to download a ringtone. If the consumer chooses to find out more about an offer (chooses to download a ringtone), the consumer is taken from your firm's website to another party's (the ringtone retailer's) website. The consumer downloads the ringtone from the ringtone retailer's website, and your firm is notified by the ringtone retailer that the ringtone download offer has been completed. Your firm issues a user name and password to the consumer, which allows free, temporary access to your customer's website for a specified period of time. The North Carolina consumer pays no compensation to your firm. If the consumer purchases a ringtone, the payment is made to the ringtone retailer.

N. C. Gen. Stat. § 105-164.4(a)(1) provides that sales tax is a privilege tax imposed on a retailer engaged in business in this State who makes retail sales of taxable tangible personal property to customers located in this State. N.C. Gen. Stat. § 105-164.4(a)(6b) provides that the sales tax is due on digital property that is delivered or

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accessed electronically, is not considered tangible personal property, and would be taxable if sold in a tangible medium. The following digital property is subject to the sales tax:

a. An audio work.
b. An audiovisual work.
c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.
d. A photograph or greeting card.

N.C. Gen. Stat. § 105-164.3(1e) provides that an "audio work" is a series of musical, spoken, or other sounds, including a ringtone.

It is our understanding that consumers in North Carolina are not purchasing any tangible personal property or digital property from your firm and your firm does not receive compensation from consumers interested in free, temporary memberships from your customers' websites. Based on the information presented and our understanding of the facts, your firm is not liable for collecting North Carolina sales and use tax from consumers located in this State who may use your firm's website to obtain free, temporary memberships to your customers' websites.

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 below.

Very truly yours,

[redacted]
Administration Officer
Sales and Use Tax Division

[redacted]

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