North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

August 6, 2010

[redacted]

Attention: [redacted]

Re: Private letter ruling request
FID: [redacted]
Taxpayer: [redacted]

Dear Mr. [redacted]:

We have your letter of May 11, 2010, requesting a private letter ruling regarding the application of North Carolina sales and use tax to receipts from your firm's transactions involving alarm systems.

In your letter you state, "[redacted] (hereinafter, "[redacted] is a [redacted] owned by [redacted]… The focus of this inquiry is on [redacted] However, this inquiry also discusses [redacted] (hereinafter "[redacted]") as a related entity [redacted]. [redacted] is also owned by [redacted]… [redacted] and [redacted] are sister entities rather than parent and subsidiary; they are both owned by [redacted]…

"[redacted] wishes to begin conducting business in North Carolina. It will use a similar contract and billing arrangements with its North Carolina customers as those used by [redacted] with its [redacted] customers."

"[redacted]"

"[redacted] is a [redacted] vendor selling tangible personal property to be used by [redacted] in performing its installation and repair obligations to prospective North Carolina customers. This tangible personal property includes all necessary wiring, sensors, monitoring equipment and keypad interfaces required to operate a functioning alarm system and any such tangible personal property which might be consumed by [redacted] in performing repairs to alarm systems already installed on those customers' premises. For convenience, this request refers hereinafter to all such tangible personal property as "widgets".

"[redacted], [redacted] sells the widgets to [redacted] takes delivery at [redacted] Tallahassee warehouse on a [redacted] truck. [redacted] would pay [redacted] sales tax on these purchases to [redacted] in [redacted] which would remit the sales tax to the [redacted] Department of Revenue. In exchange, [redacted] would take the widgets, along with an itemized receipt from [redacted] which lists as separate line-items: the purchase price for the widgets, the applicable [redacted] sales tax paid on the purchase, and the total sales price…

"The [redacted] truck would then drive up to North Carolina with the widgets. [redacted] would use or consume some of these widgets in installing private alarm systems on the premises of its North Carolina customers…

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
An Equal Opportunity Employer

'[redacted] would use or consume the remaining widgets in conducting needed repairs to alarm systems already installed, at the request of its North Carolina customers…

"Occasionally, in emergency situations or when a customer is in need of a widget that is too big to fit in [redacted] trucks, [redacted] will have its [redacted] vendor "drop-ship" the needed widget(s) using a common carrier for delivery directly to [redacted] North Carolina customer. The shipment may be exempted from [redacted] sales tax under the sale for export into interstate commerce exemption - in which case, [redacted] would presumably be obligated to pay North Carolina use tax on the item shipped from [redacted]

'[redacted] would also sell to [redacted] a monitoring/maintenance package, which [redacted] would apply/resell to each of its North Carolina customers' alarm systems… North Carolina customers would contract with [redacted] to receive monitoring/maintenance services for a given year in exchange for a monthly fee. [redacted] would then monitor each of the alarm systems installed on the premises of North Carolina customers on [redacted] behalf, from [redacted] monitoring station located in Tallahassee...

"Lastly, [redacted] will also provide its customers with a fire suppression system testing and certification service (hereinafter "T&C" Service"). Customers who elect to participate in this program pay an additional monthly fee to [redacted] attributable to the T&C Service. In exchange, [redacted] periodically tests the client's fire suppression system and certifies to the client that it is in good working order…"

In your letter of June 4, 2010, you provided the following additional information regarding the monitoring/maintenance fees. "A [redacted] customer…enters into a service contract with [redacted] The contract requires the customer to pay a monthly monitoring/maintenance fee… for **access** to [redacted] maintenance services. This means that if the customer is current on his monthly payments, he can, on request, have a [redacted] maintenance technician make a "house call" to come diagnose and repair any problems with this security system…"

REQUEST FOR PRIVATE LETTER DETERMINATION

[redacted] requests private letter determinations from the Department regarding the following tax questions:

1. For a typical installation job, using parts and labor, where the client receives a non-itemized invoice, how would the transaction be taxed for sales and use tax purposes in North Carolina?

Response: North Carolina treats the installation of a security system as a sales and installation contract, notwithstanding that it is billed to the customer as a non-itemized invoice. Where your firm provides the customer with a non-itemized invoice, the total charge shown on the invoice will be subject to North Carolina State and local taxes.

2 For a typical installation job, using parts and labor, where the client receives an itemized invoice, how would the transaction be taxed for sales and use tax purposes in North Carolina?

Response: Where the client receives an invoice separately itemizing parts and labor, North Carolina State and local sales tax is due on the sales price of the parts and materials. Pursuant to NCGS 105-164.13 (49), installation labor charges are exempt from sales tax provided they are separately stated from the sale of tangible personal property on the customer's invoice and in your client's books and records at the time of the sale.

3. For a typical repair job, using parts, labor and a trip fee, where the client receives a non-itemized invoice, how would the transaction be taxed for sales and use tax purposes in North Carolina?

Response: For a repair job where the client receives a non-itemized invoice, which includes parts, labor and trip fee, the total charge shown on the invoice will be subject to North Carolina State and local taxes.

4. For a typical repair job, using parts, labor and a trip fee, where the client receives an itemized invoice, how would the transaction be taxed for sales and use tax purposes in North Carolina? In your response, please indicate which particular items on the sample invoice will be taxed, unless all (or none) are taxable?

Response: For a repair job where the client receives an itemized invoice separately stating parts, labor and a trip fee, North Carolina State and sales tax is due on the parts and the trip fee. Pursuant to NCGS 105-164.13 (49), the installation of repair parts is not subject to sales tax provided it is separately stated from the sale of tangible personal property on the invoice and in your client's books and records at the time of the sale.

5. For purposes of this question, assume the facts in question number (4) apply. If the [redacted] technician diagnoses the problem with the system and repairs the system using standard equipment kept in the technician's truck, is the trip charge taxable, and, if so, could the tax be passed on to [redacted] customers?

Response: If the intent of the service call is to troubleshoot, and it is not known whether there will be a sale of tangible personal property until the service call has been made, any separately stated trip fee is not subject to tax even if a sale of tangible personal property occurs as a result of the troubleshooting.

6. For purposes of this question, assume the facts in question number (4) apply. If the client informs [redacted] that a specific part needs to be replaced, so that the technician performs no diagnostic work on the system, but repairs the system using standard equipment kept in the technician's truck, is the trip charge taxable, and, if so, could the tax be passed on to [redacted] customers?

Response: If the technician knows that a specific part needs to be replaced at the time the service call is made, the trip charge will be considered part of the sales price of the repair part and subject to North Carolina State and local sales tax. [redacted] should collect and remit tax on the charges for the repair part and the trip charge even if the trip charge is separately stated on the invoice at the time of the transaction. Pursuant to NCGS 105-164.13 (49), installation of repair parts is not subject to sales tax provided it is separately stated from the sale of tangible personal property on the invoice and in your client's books and records.

7. Under the first "drop ship" scenario, where [redacted] vendor ships equipment directly to one of [redacted] North Carolina customers and takes advantage of the [redacted] tax exemption for exports in interstate commerce, which North Carolina taxes would [redacted] have to pay on such a purchase and what is the basis in North Carolina law for this treatment?

Response: [redacted] is obligated to collect and remit North Carolina use tax on the sales price of the widget, which includes any shipping charges associated with the delivery of the widget pursuant to NCGS 105-164.4(a) and NCGS 105-164.26.

8. Would monthly charges to [redacted] North Carolina customers for monitoring services be taxed? If so, please indicate the legal basis for these taxes and whether [redacted] would pass these tax costs on to its customers.

Response: The security monitoring services are not subject to North Carolina sales or use taxes if the charges are separately stated on the invoice or billed on a separate invoice.

9. Would monthly charges to [redacted] North Carolina customers for T&C services be taxed? If so, please indicate the legal basis for these taxes and whether [redacted] would pass these tax costs on to its customers.

Response: [redacted] monthly charges for T&C services, which you describe as a "labor-only service", are not subject to North Carolina sales or use taxes.

10. For each of the above questions, if the tax is passed on to [redacted] North Carolina customers, should it be itemized separately on the invoices [redacted] provides to those customers?

Response: Yes.

11. For each of the transactions discussed in questions (1), (2), (3), (4), (5) and (6) can [redacted] claim a North Carolina tax credit for any equipment it pays [redacted] sales tax on, at the time of purchase and, if so, what administrative requirements must [redacted] meet in order to claim such tax credits?

Response: North Carolina does allow a credit for sales tax legally and properly paid to State of [redacted] against any use tax due in North Carolina. Likewise, North Carolina counties allow a credit for sales tax legally and properly paid to local governments in [redacted] against any use tax due to the North Carolina county. However, as stated in response to questions 1 and 2, North Carolina considers the installation of a security system to be a sales and installation contract and as such, [redacted] should register and remit North Carolina sales and use tax on its sales of tangible personal property if sold or delivered to North Carolina customers. [redacted] is considered to be a retailer of the tangible personal property its sells, whether the transaction is an installation of a new security system or a repair to an existing system. [redacted] should provide [redacted] with a properly completed Form E-595E, Streamlined Sales and Use Tax Certificate of Exemption, to exempt its purchases of tangible personal property intended for resale from 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