



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

May 17, 2011

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED], Senior Manager
Multistate Tax Services

Dear Mr. [REDACTED]:

We are in receipt of your June 23, 2010 letter. In your letter you state that "we are submitting this request for a Private Letter Ruling and Letter of General Applicability on behalf of our client [REDACTED] ([REDACTED]), seeking confirmation from the Department of Revenue ('Department') that: (1) [REDACTED] is not an 'affiliate' as is contemplated within the context of North Carolina's remote seller nexus law (Private Letter Ruling); and (2) North Carolina's remote seller nexus law does not, *in and of itself*, apply to the transactions between [REDACTED] and its customers such that its customers would have sales tax nexus in North Carolina as a result of doing business with [REDACTED]. (Letter of General Applicability)."

It is our understanding that "[REDACTED] is a private company . . . headquartered in [REDACTED], North Carolina and . . . is registered with the Department for sales and use taxes. Currently, they help retailers all over the world sell their products online by enabling them to efficiently distribute their products across [REDACTED], driving customers to those [REDACTED] and converting those shoppers to customers." It is also our understating that "[REDACTED] has various products and service solutions depending on the sophistication and needs of its customers. Each offering is designed to increase its customer's profits related to its online sales, either by increasing revenue or reducing costs. For all offerings, there is no sale or transfer of any tangible personal property by [REDACTED] digitally or by physical means. [REDACTED] business is based on the [REDACTED] model."

You also advise that "[REDACTED] does not, in any way, market or promote the sale of tangible personal property by any of its customers. . . . There is no instance whereby a consumer buys any tangible personal property from a retailer as a result of visiting and learning of a product on [REDACTED] website. In other words, there is no 'click through' functionality. [REDACTED] merely enables its customers (i.e., retailers) to maximize the presence and visibility of the products that they are attempting to sell across the selected [REDACTED] [REDACTED] . . ."

N.C.G.S. 105-164.8(b) states that "[a] retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if at least one of the following conditions is met:

. . .

- (3) The retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer. This presumption applies only if the cumulative gross receipts from sales by the retailer to purchasers in this State who are referred to the retailer by all residents with this type of agreement with the retailer is in excess of ten thousand dollars (\$10,000) during the preceding four quarterly periods. This presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the seller that would satisfy the nexus requirement of the United States Constitution during the four quarterly periods in question. . . ."

[REDACTED], Sales and Use Tax Division Director; [REDACTED], General Counsel; and [REDACTED], Administration Officer; met with you, [REDACTED], Vice President of Finance; and [REDACTED], [REDACTED] Operations Manager, on Thursday, April 21, 2011, at your office. The product offerings by [REDACTED] that were demonstrated and discussed during the meeting and the subject of the private letter ruling request, include the following: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. A customer can chose from one of the three following service offerings associated with each product offering: [REDACTED], [REDACTED] and [REDACTED].

On the basis of the information furnished and as a result of the meeting, the Department concludes that [REDACTED] is not an affiliate as contemplated by the language of the statute of N.C.G.S. 105-164.8(b3) for the product offerings indicated above based on the current agreements and manner of operation.

We are unable to issue a Letter of General Applicability concerning the tax status of [REDACTED] customers. Each customer of [REDACTED] would be required to obtain their own respective ruling from the Department.

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]
Administration Officer
Sales and Use Tax Division

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