



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

December 23, 2011

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]
FID: [REDACTED]
Account ID:: [REDACTED]

Dear Mr. [REDACTED]

We have your January 18, 2011 letter in which you requested a ruling on whether [REDACTED] should collect sales tax on sales of equipment. We requested additional information on March 14, 2011 and Mr. [REDACTED] provided the following facts in a letter dated March 18, 2011:

- [REDACTED] (" [REDACTED] organized [REDACTED] LLC (" [REDACTED] in late 2009 for the sole purpose of holding the real estate and building owned by [REDACTED]
- After transferring those assets into [REDACTED] distributed 100% of its interest in [REDACTED] to [REDACTED] shareholders (in a taxable dividend at the appraised fair market value). . . . [O]wnership of [REDACTED] and [REDACTED] are exactly the same.
- Near the end of 2010, a decision was made to remove the unsold assets from [REDACTED] so the company could be shut down by year end, March 31, 2011.
- In order to keep like assets together, a separate LLC, [REDACTED] (" [REDACTED] was organized by [REDACTED]
- The remaining assets of [REDACTED] were appraised and sold to [REDACTED] at the end of 2010. . . . [REDACTED] will continue selling these assets through 2011.

[REDACTED] was incorporated as member-managed LLC on November 23, 2010. The initial member of the company was listed as [REDACTED]. Under the Asset Purchase Agreement dated December 29, 2010, between [REDACTED] and [REDACTED] purchased substantially all of the assets of [REDACTED] for [REDACTED], including "all personal property owned by Seller, all inventory, and all intangible rights and property. . . ."

It is your contention that [REDACTED] "will not engage in business" as defined in N.C. Gen. Stat. § 105-164.3(1k) because "[i]t is merely completing the occasional equipment sales began" with [REDACTED] liquidation. In addition, you state that [REDACTED] will "only exist through December 31, 2011. If any assets remain unsold, they will be auctioned off before that time."

N.C. Gen. Stat. § 105-164.3(1k) defines business as: "[a]n activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business."

Based on the information provided, it is our opinion that [REDACTED] was organized for the purpose of selling the assets it acquired from [REDACTED]. Any sales of assets by [REDACTED] are not occasional and isolated sales or transactions. [REDACTED] was created for the sole purpose of selling the tangible personal property (assets) purchased from [REDACTED]. Therefore, sales of tangible personal property by [REDACTED] will be subject to sales or use tax. If you have additional information you would like for us to consider regarding any federal Code or regulation that apply to the Asset Purchase Agreement, please feel free to resubmit your request along with such information for reconsideration.

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 questions or if we can be of further assistance, please advise.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

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