# North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

March 30, 2012

Account ID: [redacted]
FEIN: [redacted]

[redacted]

Attention: [redacted]

Re: [redacted]
Private Letter Ruling Request

Dear Mr. [redacted]

We have your letter dated May 9, 2011, in which you request a ruling from the Department regarding your above-referenced client's North Carolina sales and use tax for a particular transaction.

You advise that your client, [redacted] ("[redacted] is engaged in business in North Carolina and " . . . desires to transfer a certain business segment with assets located in North Carolina." [redacted] has multiple corporate partners, including Corporation A ("Corp A"). You further explain that in the transaction in question, ". . . [redacted] will form a new LLC that will hold all of the assets. [redacted] will contribute beneficial interests in assets and liabilities to the newly formed LLC. Following this, [redacted] will distribute interests in LLC and cash to Corp A, Corporation B ('Corp B')(a wholly owned subsidiary of Corporation A), Corporation C ('Corp C') and Partnership A. In the exchange, Corp A, Corp B, and Corp C have interests in [redacted] entirely redeemed, while Partnership A is partially redeemed."

You advise that "[a]ll tangible personal property was purchased, capitalized, depreciated and operated by [redacted] and all applicable sales and use taxes were paid on the items at the time of purchase or taxable use. [redacted] will also transfer beneficial ownership in certain real property and intangible property to LLC." Both the LLC and [redacted] are engaged in the business of developing, manufacturing, and selling healthcare products and are not engaged in the business of selling or leasing furniture, fixtures, or equipment. Legal title to the assets which [redacted] will transfer to the LLC has always been owned by [redacted] corporate partners. You advised, "[p]ursuant to Internal Revenue Code § 721, no gain or loss was recognized on the contribution of assets from [redacted] to the LLC."

We have restated your questions below, followed by our associated responses.

Question One: Is the transfer of rights to certain tangible personal property by [redacted] to LLC in the proposed transaction subject to North Carolina sales or use tax?

Response: N.C. Gen. Stat. § 105-164.3(36) defines the term "sale or selling" as "[t]he transfer for consideration of title or possession of tangible personal property or digital property or the performance for consideration of a service…." Retailers engaged in business in this

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State are required to collect sales tax on their taxable sales of tangible personal property, digital property, or services made in this State. N.C. Gen. Stat. § 105-164.3(1k) provides that the term "business" does not include "…an occasional and isolated sale or transaction by a person who does not claim to be engaged in business."

Based on our phone conference and the information we received, [redacted] is not engaged in the business of selling or leasing the furniture, fixtures, or equipment, which it will transfer to the LLC. All applicable sales and use taxes were paid on the items at the time of purchase or use by [redacted] Therefore, it is our opinion the transaction in question is not subject to North Carolina sales or use tax. If, however, [redacted] is in the business of selling similar or identical property to the assets being transferred to the LLC, sales or use tax may be due on the sales price or purchase price attributable to any assets transferred for consideration to the LLC.

Question Two: Is the distribution of LLC interests to certain corporate partners in complete or partial redemption of such partners' interests subject to North Carolina sales or use tax?

Response: The distribution of LLC interest to corporate partners in complete or partial redemption for the transaction discussed herein is not subject to North Carolina sales or use 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, 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