North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

May 15, 2012

Account ID: [redacted]
FEIN: [redacted]

[redacted]

Attention: [redacted]

Re: [redacted]
Private Letter Ruling

Dear Mr. [redacted]

We have your application, payment of five hundred dollars ($500.00), and letter dated February 6, 2012, in which you request a ruling from the Department regarding your above-referenced client's North Carolina sales and use tax liability on test kits used for [redacted] cancer diagnosis.

You advised that your client, [redacted]. ("the Company"), "[redacted] has introduced [redacted] cancer risk test for assessing [redacted] cancer risk in the United States (US). [redacted]. The cost of the test kit . . . is nominal and they are freely distributed to participating physicians within the state." The Company has an office located in [redacted] North Carolina and has sales representatives in this State that will provide test kits free of charge to participating physicians.

"Participating physicians will use the 'test kit' as part of their service provided to their . . . patients. The test kit itself is a pre-printed box which contains a patient interview form, cotton swab and packaging to return the sample swab and interview form to its offices in [redacted] North Carolina for processing. Each test kit costs approximately [redacted] and [is] purchased directly from [redacted]. Once at the [North Carolina] office, the sample swab and patient information is received, documented and then sent to [redacted] lab in [redacted] for test processing and results preparation. Once complete, the report is uploaded to a computer server and retrieved by the North Carolina office. The [North Carolina] office then forwards the report to the requesting physician. Upon completion of test cycle, a third party processing service located in [redacted] processes an invoice and follows up with the physician, the patient, and the patient's health care provider for payment."

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You have inquired whether the Company is subject to sales or use tax on the processing and distribution of test results and on the distribution of test kits to physicians. You have suggested that the test kits are drugs exempt from tax under the provisions of N.C. Gen. Stat. § 105-164.13(13).

N.C. Gen. Stat. § 105-164.4(a) imposes a sales tax on the sales price of tangible personal property, and certain digital property and services. N.C. Gen. Stat. § 105-164.6 imposes a use tax on tangible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State. N.C. Gen. Stat. § 105-164.3(49) defines the term "use" as "[t]he exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser. . . . ." N.C. Gen. Stat. § 105-164.3(44) defines the term "storage" as "[t]he keeping or retention in this State for any purpose, except sale in the regular course of business, of tangible personal property or digital property purchased from a retailer. The term does not include a purchaser's storage. . . [w]hen the purchaser acquires the property for the purchaser's use outside the State and subsequently takes it outside the State and uses it solely outside the State. . . ." N.C. Gen. Stat. § 105-164.13(13)a provides an exemption from sales tax of drugs required by federal law to be dispensed only on prescription.

Based on the information provided, it is our opinion that the Company's charges to its customers for the processing of the test kits and the distribution of the test results are not subject to sales or use tax. Any tangible personal property, taxable digital property, and taxable services the Company uses in this State to process the test kits and/or to distribute the test results is subject to sales or use tax (4.75% State tax, 2% local tax, and 0.5% [redacted] County public transportation tax, for a total rate of 7.25%).

You have not furnished information that indicates the test kits contain a drug required by federal law to be dispensed only on prescription or are otherwise exempt from tax. The Company's purchase of test kits from [redacted] and received in North Carolina are subject to North Carolina sales and use tax, notwithstanding some of the kits may be delivered to out-of-state physicians.

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