



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

July 27, 2012

Account ID: [REDACTED]
FEIN: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Re: Private Letter Ruling Request

Dear Mr. [REDACTED]

We have your letter dated November 3, 2011, in which you request a ruling from the Department regarding the taxation of your firm's sales of graphic designs and package designs. We apologize for the delay in our response.

You advise that your firm offers "both design services and package prototypes (also referred [to] as comps and/or mock-ups)." Your firm uses "both computers and computer software to perform these [activities]." You explain that the design services include "graphic design," which consists of "creating (or) revising computer graphic artwork" to be used as logos, letterheads, business cards, website graphics, banners, posters, billboards, advertisements, artwork for product packaging, and computer-generated renderings. The "package design" service your firm provides "consists of creating (or) revising structural electronic files that are used to manufacture product packaging." The files your firm creates or revises include "electronic CAD files used to manufacture product packaging (folding cartons, sleeves, containers)" and "electronic blue-print files for product shipping and retail display items." Your firm may also create "package" prototypes, where the firm will "create, ship and deliver physical packaging items to clients." When a client "has a new packaging concept in development, [your firm takes] the electronic files that are used to manufacture the package and create a one-off printed prototype," which it sells to manufacturers to use in the testing and development of new packaging.

The graphic artwork your firm creates is "sold as an electronic file, delivered either by DVD, CD, USB hard drive, or uploaded via e-mail or FTP websites. The client then takes ownership of the electronic artwork files and may use the artwork files for whatever use/cause they deem appropriate." Typically, your clients use the graphic artwork files for printed brochures, advertisements, and websites.

Based on the information furnished, the fees your firm charges in association with the graphic artwork files it creates for its customers are not subject to sales and use tax. This includes charges for the hours of fabrication labor to create the file, as well as charges for reserved rights or copyrights to the artwork. Your firm's purchases of tangible personal property it uses to produce the graphic artwork, but which does not become a part of the file, are subject to the general State and local sales or use tax, unless specifically exempt from tax under the provisions of N.C. Gen. Stat. § 105-164.13.

The fees your firm charges to create (1) a package structural file which will be sold to a manufacturer to manufacture packaging or (2) an actual packaging prototype which will be sold to a manufacturer for use in researching and developing new product packaging are not subject to sales and use tax where a customer provides your firm with a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, as your firm's authority for not collecting sales tax on the transaction. Instead, manufacturers are subject to a 1% privilege tax imposed on purchases of mill machinery and mill machinery parts or accessories and must remit the tax directly to the Department.

Your firm's sales of package structural files or packaging prototypes to customers in this State who are not manufacturers are subject to sales and use tax unless they are specifically exempt from tax under the provisions of N.C. Gen. Stat. § 105-164.13. Your firm's purchases of tangible personal property it uses to produce the packaging structural files or packaging prototypes, but which does not become a part of the structural file or the prototype, are subject to sales or use tax, unless specifically exempt from tax under the provisions of N.C. Gen. Stat. § 105-164.13.

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,

Administration Officer
Sales and Use Tax Division

cc: , Director of Sales and Use Tax Division