



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 20, 2012

Account ID: [REDACTED]
FEIN: [REDACTED]

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

Re: Request for Private Letter Ruling

Dear Ms. [REDACTED]

We are in receipt of your letter dated March 20, 2012, in which you have requested a private letter ruling regarding the application of North Carolina sales and use tax on business transactions your firm has with its customer [REDACTED] (" [REDACTED]

It is our understanding that [REDACTED] is a "for-profit [REDACTED] facility." Pursuant to a management contract between [REDACTED] (" [REDACTED] and [REDACTED] [REDACTED] "manages and operates the [REDACTED] meal services and dining room services for [REDACTED] develops menus, provides [REDACTED] meals, and provides the general manager, registered dietitian, and dining service employees."

Pursuant to the contract, [REDACTED] purchases all items necessary to fulfill [contractual obligations] from vendors using an account in the name of [REDACTED] and [REDACTED] [REDACTED] contracts with large food distributors as well as regional supply houses and achieves favorable pricing via volume commitments on food commodities. The operator of the [REDACTED] facility, [REDACTED] [REDACTED] "takes immediate ownership of all items purchased when they are delivered to the operating site, and bears all risk of loss associated with any loss, spoilage, natural disaster, etc." The contract between [REDACTED] and [REDACTED] requires that "a monthly physical inventory count [be] conducted and provided to the client [REDACTED] for review." Per your correspondence, the purpose of this physical inventory is to enable [REDACTED] to adjust its financial records and "properly reflect the unprepared food inventory value in their financial records."

Per the terms of the [REDACTED] Agreement between [REDACTED] and [REDACTED] charges for the contract consist of direct food and supplies costs (plus a [REDACTED] procurement fee), labor and salaries, a support services allowance, a management fee, and other miscellaneous costs, charges, and expenses. "The contract stipulates an advance billing (pre-bill) and period end reconciliation." The pre-bill amount is an estimate for total charges for the coming month, and the period end reconciliation adjusts the costs to actual amount due, and also adjusts sales tax so

that the costs of food are taxed at 2.25%. Initially, the pre-bill amount, in its entirety, is taxed at 7.0%.

Analysis

Sales and purchases of food, as defined in G.S. Section 105-164.3(10) are exempt from State sales tax pursuant to G.S. § 105-164.13B and subject to only the 2% local tax. The following food items are subject to the general State and local sales tax rates: dietary supplements, food sold through a vending machine, prepared food (other than bakery items sold without eating utensils by an artisan bakery), soft drinks, or candy.

Pursuant to G.S. §105-164.3(28), "prepared food" is defined as food that is either "sold in a heated state or it is heated by the retailer" or it "consists of two or more foods mixed or combined by the retailer for sale as a single item" or it "is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons." Pursuant to North Carolina Sales and Use Tax Technical Bulletin Section 19-3, "[a]ll charges by persons engaged in the catering business that are connected with the furnishing, preparing or serving of meals, foods, and other tangible personal property to user or consumers are subject to the general rate of State tax and any applicable local sales or use tax."

Conclusion

Based on information provided, it is the Department's opinion that [REDACTED] as a part of its management agreement with [REDACTED] purchases food components on behalf of its customer, [REDACTED]. Since ownership and risk of loss transfer to [REDACTED] prior to the preparation of the food and related meals, [REDACTED] neither sells prepared foods to [REDACTED] nor provides taxable catering services under the terms of the contract. In effect, [REDACTED] purchases food and resells such food to [REDACTED]. Though current invoicing may be on a lump-sum basis, [REDACTED] operating statements (specific to [REDACTED] generate details of product charges, such as baked goods, beverage, milk and ice cream, groceries, meat, seafood, eggs, cheese, etc." Based on the nature of the management contract and its terms, North Carolina sales tax should only be applied to the sales price of food including the [REDACTED] procurement fee, provided [REDACTED] separately states the sales price of food on future invoices to [REDACTED]. The applicable rate should be 2% on such charges. To the extent any other non-food supplies are sold to [REDACTED] or become the property of [REDACTED] North Carolina sales tax should be applied, at the general State and local sales tax rate.

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 factual 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 contact me at the telephone number listed below.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

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