



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 29, 2012

Account ID: [REDACTED]

Federal ID: [REDACTED]

Attention: [REDACTED]

Re: Private Letter Ruling

Dear Mr. [REDACTED]

We have your August 4, 2011 letter in which you request a private letter ruling regarding whether your company should charge sales tax when it "provides audiovisual equipment and services to corporate clients." We also received your October 27, 2011 letter, sent by facsimile, in which you provide additional information and a sample copy of the Statement of Work. In addition, we received a copy of a Master Agreement and Attachment A – Marketing Attachment sent by electronic mail on August 20, 2012.

You state that [REDACTED] provides "video screens, sound system, lighting and so forth all of which are operated by its technicians. The company does not rent equipment *per se* but uses the equipment to provide the service to customers." You further state that [REDACTED] collects North Carolina sales tax on the 'rental' of equipment but not on the cost of operator/technicians. . . . [The company] furnishes operators for all its equipment and such operators are in control of the equipment at all times." In addition, you state in the electronic mail that your company "is not involved in any audit by the NCDOR nor . . . involved in any litigation with the NCDOR."

The Statement of Work indicates that your company "will provide audio and video equipment (or set up . . . provided audio and visual equipment) and trained equipment operators. . . ." In addition, when your company "is producing the event, [your company] will assign a trained person with an appropriately sized crew of trained persons to coordinate the event . . . and directly manage the production of the event."

Sales and Use Tax Technical Bulletin 23-6 provides that "[i]f the owner of tangible personal property furnishes an operator or crew to operate such property, such owner is not deemed to be renting or leasing the property but is rendering a service and the receipts therefrom are not subject to sales or use tax. . . ." The gross receipts derived from providing audiovisual equipment with an operator to customers are not subject to sales tax.

Purchases of tangible personal property by your company for use in providing audiovisual equipment with an operator to customers are subject to the general State and applicable local sales or use tax at the time of purchase. If your company purchased any tangible personal property since November 1, 2009 without payment of the tax at the time of purchase, your company should remit the applicable use tax due on the purchase price of such items on your next sales and use tax report. Credit may be allowed for any

overpayments of tax as noted below or as applicable pursuant to the decision rendered in *Technocom Business Systems Incorporated v. North Carolina Department of Revenue*, North Carolina Court of Appeals, No. COA11-655, 2/21/2012.

Effective July 1, 2011, N.C. Gen. Stat. § 105-164.11 provides “[w]hen tax is collected for any period on a taxable sale in excess of the total amount that should have been collected or is collected on an exempt or nontaxable sale, the total amount collected must be remitted to the Secretary. If the Secretary determines that the seller overcollected the sales tax on a transaction, the Secretary shall take only one of the actions listed in this subsection. This subsection shall be construed with other provisions of [Article 5] and given effect so as to result in the payment to the Secretary of the total amount collected as tax if it is in excess of the amount that should have been collected.

- (1) If the Secretary determines that the seller overcollected tax on a transaction, the Secretary may allow a refund of the tax. The Secretary may allow the refund only if the seller gives the purchaser credit for or a refund of the overcollected tax. The Secretary shall not refund the overcollected tax to the seller if the seller has elected to offset a use tax liability on a related transaction with the overcollected sales tax under subdivision (2) of this subsection.
- (2) If the Secretary determines that a seller who overcollected sales tax on a transaction is instead liable for a use tax on a related transaction, the Secretary may allow the seller to offset the use tax liability with the overcollected sales tax. The Secretary shall not allow an offset if the seller has elected to receive a refund of the overcollected tax under subdivision (1) of this subsection. The decision by a seller to receive an offset of tax liability rather than a refund of the overcollected tax does not affect the liability of the seller to the purchaser for the overcollected tax.
- (3) If neither subdivision (1) nor (2) of this subsection applies, the Secretary shall retain the total amount collected on the transaction.”

If your company leases or rents audiovisual equipment to customers without an operator, the gross receipts derived from the lease or rental of the audiovisual equipment and other tangible personal property without an operator are subject to the general rate of State tax plus applicable local sales or use tax pursuant to N.C. Gen. Stat. § 105-164.4(2).

This letter 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 letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Very truly yours,

Administration Officer
Sales and Use Tax Division

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