



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 30, 2012

Account ID: [REDACTED]
FEIN: [REDACTED]

Re: [REDACTED] Request for Private Letter Ruling

Dear Ms. [REDACTED]

We have completed our review of your letter dated December 7, 2010, in which you requested a private letter ruling regarding the application of North Carolina sales and use tax on business transactions of your client, [REDACTED] ("[REDACTED]").

Per your correspondence, it is our understanding that [REDACTED] [REDACTED] is an LLC "[t]hat is headquartered in the state of [REDACTED]. The Company utilizes a network of independent sales consultants who facilitate orders of products to consumers. The products are shipped directly via a common carrier from a warehouse located in [REDACTED] to [its] customers located within [North Carolina]. [The] independent sales consultants never own the product nor do they take delivery of the product. [REDACTED] collect[s] sales taxes on behalf of [its] consultants and remit[s] the tax directly to [North Carolina]."

It is our further understanding that independent sales consultants "solicit persons to host a party" and that "[a]t the party, the sales consultant will display [REDACTED] merchandise and take orders from those who attend the party and desire to make purchases." As an incentive for hosting parties, [REDACTED] grants hostesses a "price reduction on a certain number of items" and "[t]he number of items that are eligible to be purchased at a reduced price is dependent upon the total amount of sales for the overall party." Although [REDACTED] does not provide coupons nor a manufacturer's rebate, a discount is offered on purchases by the hostess at the point of sale, valid only at the party and not at a later date.

N.C. Gen. Stat. §105-164.3(37) provides that sales price is defined as "[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services." Pursuant to N.C. Gen. Stat. §105-164.3(37)(b)(1), the term sales price does not include "[d]iscounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale." North Carolina is a member of the Streamlined Sales and Use Tax Governing Board. Streamlined Governing Board Rule 327.7, Sales Price – Employee Incentive Program Points,

provides that "employee incentive program credit is not an employee discount." Therefore, such credits have been determined not to be a discount that reduces the sales price before application of sales and use taxes.

Since the number of items that may be purchased for a reduced price is related to the overall sales obtained at a hostess party, [REDACTED] is effectively granting points or credits to hostesses, which are then redeemed toward tangible personal property in like manner as the adopted interpretative rule referenced above. Based on the information presented and our understanding of the facts, your client [REDACTED] should collect North Carolina sales and use tax on the gross (non-discounted) amount of sales that would be invoiced to hostesses on purchases, prior to any adjustments related to the overall sales achieved at the party given by the hostess.

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