



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 30, 2012

[REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. [REDACTED]

We have your letter of October 27, 2011 and email of May 14, 2012. We also have an [REDACTED] invoice regarding your client's activities regarding sales tax enforcement. It is our understanding that as a normal practice, your client, [REDACTED] has a blanket Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, on file for purchasers that claim exemption and the purchaser is therefore designated in your store's cash register system as an exempt purchaser.

Your client specifically inquires "[if your client's] cashiers are responsible for determining whether the items farmers, who have a properly executed Form E-595E, purchase are tax exempt from Sales tax. Does a farmer's verbal statement that an item is for farm use, relieve [REDACTED] stores of further liability in sales tax collection?"

Sales and Use Technical Bulletin Section 52-5 provides that a seller is relieved of liability when:

When a customer makes a qualifying purchase as indicated on the Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, and furnishes a properly completed Certificate of Exemption or the information required on the form to a seller at the time of the sale, the seller is relieved of the liability for any additional tax that is subsequently determined to be due, and the purchaser has assumed liability for the tax. If the seller obtains a fully completed exemption certificate or captures the relevant data elements within 90 days subsequent to the date of sale, the Department shall relieve a seller of the tax otherwise applicable. In the absence of proper documentation to support an exemption from tax, the seller will be held liable for any additional tax determined to be due.

For a sale for resale, a seller is relieved of liability for any additional tax that is subsequently determined to be due when the seller secures a sales and use tax registration number from a purchaser at the time of the sale. For a sale exempt from tax other than as a sale for resale, the liability is relieved when the seller secures the information as to a purchaser's name, address, type of business, reason for exemption, and exemption number in lieu of obtaining an exemption certificate. **If a paper certificate is provided, it must be signed by the purchaser.** The Department shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. A

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recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

This relief from liability does not apply:

1. To a seller who fraudulently fails to collect tax;
2. To a seller who solicits purchasers to participate in the unlawful claim of an exemption and;
3. To a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:
 - a. The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in the State and;
 - b. The Department's Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, clearly and affirmatively indicates (graying out exemption reason types on the form and posted on the state's web site) that the claimed exemption is not available in this State.

If the seller has not obtained an exemption certificate or all relevant data elements at the time of the sale or within 90 days subsequent to the date of sale, the seller may, within 120 days subsequent to a request for substantiation by the Department, either:

1. Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtains a certificate that claims an exemption that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser's type of business; or
2. Obtain other information establishing that the transaction was not subject to the tax.

Upon substantiation the Department shall relieve the seller of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. The state must establish that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

Per the client's invoice provided for our review, we observed the following statement: "I certify that the property purchased on this invoice is exempt from sales and use tax as specified on the applicable certificate on file at this location. If the property is used in a manner which renders it subject to a different rate of tax, the undersigned purchaser agrees to assume liability for additional tax and payment thereof directly to the North Carolina Department of Revenue." In addition, the invoice only includes a portion of a purchaser's address, a portion of a purchaser's phone number, a place for the

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purchaser's exemption number, and a place for a purchaser's signature. The elements in your client's example invoice provided for our review does not meet all requirements for a seller to be relieved from liability as indicated in Sales and Use Tax Technical Bulletin Section 52-5.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration. 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 we can be of further assistance, please advise.

Very Truly Yours,

Administration Officer
Sales and Use Tax Division

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