SUPLR 2013-0001

COPY

North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 22, 2013

[redacted]

Attention: [redacted]

Re: [redacted]
FEIN: [redacted]

Dear Mr. [redacted]:

We have your letter dated October 25, 2012, in which you have requested a ruling from the Department regarding your above-referenced client's North Carolina sales and use tax liability on some of its transactions in this State.

You advise that [redacted] ("[redacted]") "partners with municipalities to design, construct and manage solid waste landfills in North Carolina. The municipality will own the land, will obtain the zoning and permitting and will contract with [redacted] to construct, operate and manage the landfill for the life of the site." You have inquired whether the materials and/or equipment [redacted] purchases to construct and/or operate a solid waste disposal landfill are exempt from sales and use tax. In particular, you have inquired as to the taxability of [redacted] purchases of pollution control equipment, some of which are "required components of water and/or pollution control in all such landfills."

North Carolina sales tax statutes do not provide an exemption from tax on sales to or purchases by the State's counties and cities or by contractors on behalf of the State's counties and cities of tangible personal property to construct or operate a solid waste disposal landfill. N.C. Gen. Stat. § 105-164.14(c) does provide for an annual refund of certain sales and use taxes paid by governmental entities listed in the subsection, including a county and a city as defined in G.S. 160A-1. The refund includes sales and use taxes paid on "direct purchases of tangible personal property other than electricity, telecommunications service, and ancillary service. Sales and use tax indirectly incurred by a [qualifying] governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity" for purposes of the refund. If your client constructs a landfill that is owned or leased by a county or city, the governmental entity may be entitled to refunds of sales or use tax paid by your client on building materials, supplies, fixtures and equipment that become part of or annexed to landfill.

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Website: www.dornc.com
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Based on the limited information included in your letter request, your client should pay sales or use tax on purchases, leases, or rentals of tangible personal property, certain digital property, and taxable services purchased inside or outside this State and used to construct or operate a solid waste disposal landfill for a municipality in North Carolina, including water and/or air pollution control equipment. N.C. Gen. Stat. § 105-164.6 provides in part, that "[a]n excise tax at the applicable rate set in G.S. 105-164.4 [and the local rates as applicable] is imposed on" tangible personal property, certain digital property and sources sourced to this State. N.C. Gen. Stat. § 105-164.6(b) provides "[t]he tax imposed by [N.C. Gen. Stat. § 105-164.6] is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. If the property purchased becomes a part of a building or other structure in the State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of a contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid."

Provided your client conducts the activity described in your letter in North Carolina, your client will most likely need to apply for a sales and use tax number and file sales and use tax returns. The Department offers an online registration or a paper application can be submitted to the Department.

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,

[redacted]
Administration Officer
Sales and Use Tax Division

[redacted]

cc: [redacted], Director of Sales and Use Tax Division