North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 25, 2013

Federal ID:
Account #:

Attention:

Re:
Private Letter Ruling Request

Dear Mr.

We have your second letter in which you have requested a private letter ruling as to the applicability of North Carolina sales and use tax to products and services offered by your client, . In response to our letter of July 28, 2010, you resubmitted the request for "help in accordance with the private letter rules as opposed to requesting general advice." You provided a copy of your client's "Personal ("Agreement")" for the Department's review along with your second letter. Please accept our apology for the delay in responding to your request.

In your initial letter you state that ". . . is in the business of providing in home medical monitoring services and will supply the monitor and/or other related monitoring equipment as part of their service. The monitor includes two-way hands-free communication, a 24-hour battery backup, up to 16 daily reminders and 4 speed dial buttons." You further state that your client has ". . . only recently started . . ." and has ". . . been paying sales tax when they buy the monitors and not charging [tax] on the monthly or annual service fees, or the activation fees."

Per our review of the Agreement, item four states in part, "Subscriber agrees to pay [a monthly sum] for the rental and servicing of the personal emergency response system for the term of this agreement." Item nine provides, "TELEPHONE SERVICE IS NECESSARY AND SUBSCRIBER'S RESPONSIBILTY." Item twenty-two provides in part, "Subscriber's payments to are for the installation, rental and service of a personal emergency response system designed to reduce certain risks of loss." Item twenty-six states in part, "[s]hould there arise any conflict between this agreement and Subscriber's purchase order or other document, this agreement will govern, whether such purchase order for document is prior to or subsequent to this agreement."

N.C.Gen. Stat. §§ 105-164.4(a)(2),105-467, 105-483, 105-498, 105-507.2, and 105-517 impose tax at the general State and applicable local rates on the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is

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the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property. N.C. Gen. Stat. § 105-164.3(17) defines lease or rental in part as, "[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.

Based on the content and language of the Agreement, the gross receipts derived from the transactions covered by the Agreement constitute the lease or rental of tangible personal property and are subject to the North Carolina general State and applicable local sales and use tax. North Carolina does not currently impose sales and use tax on monitoring services provided such applicable charges are separately stated and clearly identified on invoices or other documentation issued by your client to its customers. If the monitoring charges are not separately stated, such charges are deemed part of the gross receipts derived from the lease or rental of the equipment and are subject to the general State and applicable local sales and use tax. The information presented is not clear as to the purpose for the activation fee. However, absent clarification or additional information, such charges constitute part of the gross receipts from the lease or rental of the equipment and are subject to the general State and applicable local sales and use tax.

As it relates to the out-of-state customer scenarios included in your attachment, Section 23-7 of the Sales and Use Tax Technical Bulletins provides that "[i]f a lessee leases tangible personal property from a North Carolina lessor for the original purpose of using it outside this State and if the property is, in fact, used outside this State, the initial lease payment will be subject to the applicable State and any local sales tax in North Carolina if the property is delivered to the lessee in this State and immediately thereafter taken outside this State for use." Based on the scenarios included in your attachment, you indicate the equipment is shipped to the out-of-state customers, therefore, North Carolina sales and use tax would not be due on the lease receipts.

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.

Very truly yours,

[redacted]
Administration Officer
Sales and Use Tax Division

[redacted]

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