North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

April 29, 2013

[redacted]

Re: Private Letter Ruling

Dear Mr. [redacted]

We are responding to your letter dated August 25, 2011, in which you requested a private letter ruling regarding the application of North Carolina sales and use tax on business transactions. Your request was assigned to a former member of my staff. Please accept my apology for the time that has elapsed since you submitted your letter.

It is our understanding that in your proposed or consummated business scenario, you act as an online "affiliate" and operate a "website that encourages people to use a link to the business who actually [sells] the product." In your scenario, the "potential customer visits [your] website for products. If they are interested, they click on the link that takes them to the actual company. The customer may visit the website and browse, buy or do nothing" and you "have no way of knowing who actually ends up buying the products, although [you] would get a small percentage of the sale(s)." You assert in your correspondence that you "do not have an inventory of any products" and that you merely "market and promote products from companies" and furthermore "do not handle in any manner the order, payment, shipment or customer service."

Pursuant to N.C. Gen. Stat. §105-164.4, a privilege tax is imposed on a retailer. A "retailer" per N.C. Gen. Stat. §105-164.3(35) is defined, in part, as a "person engaged in the business of . . . [m]aking sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property, or services for storage, use, or consumption in this State."

N.C. Gen. Stat. § 105-164.8(b)(3) provides in part, "[a] retailer who makes a remote sale is engaged in business in this State and is subject to [sales and use tax] if "[t]he retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales thus subject to taxation by this State result from or are related in any other way to the solicitation or transaction of business. A retailer is presumed to be soliciting or transacting business by an independent contractor, agent, or other representative if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet Web site or otherwise, to the retailer.

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Based on the information presented in your letter, you are not a "retailer" for the fact pattern included in your letter. You are not liable for North Carolina sales and use tax pursuant to N.C. Gen. Stat. §§ 105-164.4 and 105-164.8(b)(3) on sales that ultimately transpire between a retailer and its customer, resulting from your role as an online affiliate that provides a link to a respective retailer.

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 a member of my staff at the telephone number listed on the bottom of the first page of this letter.

Very truly yours,

[redacted], Director – Sales and Use Tax Division