



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 6, 2013

FEIN: [REDACTED]
Account : [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Request for Private Letter Ruling

Dear Ms. [REDACTED]

We have completed our review of your firm's letter dated November 30, 2011, in which your firm requests a private letter ruling regarding the application of North Carolina sales and use tax on certain business transactions. Please accept our apology for the delay in responding to the request. [REDACTED]
[REDACTED]

It is our understanding that [REDACTED] ("[REDACTED]") offers a "layaway service for general merchandise." As part of this service [REDACTED] (sic) [collects] a [REDACTED] layaway service fee when the layaway service is initiated along with a [REDACTED] down payment. Should a customer cancel the layaway, the customer will be refunded the down payment and any subsequent payments made. However, [REDACTED] (sic) will retain the layaway service fee and charge the customer a [REDACTED] layaway cancellation fee." You ask for a ruling as to North Carolina sales and use tax implications on the layaway service and cancellation fees.

Per N.C. Gen. Stat. §105-164.4(a), "a privilege tax is imposed on a . . . retailer's net taxable sales or gross receipts." Per N.C. Gen. Stat. § 105-164.4(a)(1) the privilege "tax applies to the sales price of each item or article of tangible personal property that is sold at retail."

N.C. Gen. Stat. §105-164.3(37) defines "sales price" as "[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented." The term "sales price" includes "[c]harges by the retailer for any services necessary to complete the sale."

N.C. Gen. Stat. § 105-164.3(36) defines "sale or selling," in part, as "[t]he transfer for consideration of title or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means.

May 6, 2013

Page 2

A layaway service fee charged by [REDACTED] in conjunction with a sale constitutes part of the sales price of the item or article and is subject to North Carolina sales and use taxes. To the extent a sale is not consummated, any layaway fees and/or layaway cancellation fees retained by [REDACTED] are not subject to North Carolina sales and use taxes.

In the event your point of sale system(s) does not currently calculate sales and use taxes on layaway fees in conjunction with sales of taxable products, your firm should make adjustments upon receipt of this response. [REDACTED]

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 at the bottom of the first page of this letter.

Very truly yours,

[REDACTED], Director - Sales and Use Tax Division

cc: [REDACTED] Director – Examination Division
[REDACTED], Assistant Director – Examination Division
[REDACTED], Revenue Field Audit Supervisor
[REDACTED], Revenue Field Auditor