SUPLR 2013-0021

COPY

North Carolina Department of Revenue

Pat McCory
Governor

Lyons Gray
Secretary

August 5, 2013

Account ID: [redacted]
Federal ID: [redacted]

[redacted]

Attention: [redacted] Vice President-Finance

Re: Private Letter Ruling

Dear Mr. [redacted]:

We have your letter dated August 18, 2010, in which you have requested a private letter ruling as to whether your firm would be subject to sales tax on ready-mixed concrete that is produced on site with labor/equipment furnished by a subcontractor while utilizing natural materials that were purchased directly by your firm from a local quarry.

In your letter you state that "[redacted] is a concrete subcontractor working on a construction job at [redacted] in [redacted], North Carolina. We are contracting with [redacted] ([redacted]), Post Office Box [redacted], phone number 888-[redacted]. As stated in the attached exhibit from contract between [redacted] and [redacted] will be providing the labor and equipment necessary to mix the concrete on the job site. The materials will be purchased by [redacted] from the quarry in its unmanufactured state. The quarry is responsible for providing shipment of the materials from its mining location to job site".

In your letter you state that "our interpretation of North Carolina tax code indicates that [redacted] would not be subject to the tax on this ready-mixed concrete if they purchase the material directly from the quarry, the quarry delivers the material to the job site, and [redacted] is hired on only a labor and equipment basis to mix the materials for [redacted] on job site."

N.C. Gen. Stat. § 105-164.4(a) provides that sales tax is "imposed on a . . . retailer's net taxable sales or gross receipts . . .to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in [Section 105-164.4]

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N.C. Gen. Stat. § 105-164.3(36) defines "sale or selling" 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. The term includes the following:

a. Fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work.
b. Furnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.
c. A transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration. . . ."

Pursuant to N.C.G.S. 105-164.3 (36), the contract between [redacted] and [redacted] is not deemed a taxable sale of tangible personal property or service and is, therefore exempt from sales tax.

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