North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 12, 2014

FEIN: [redacted]

[redacted]

Attention: [redacted]

Re: [redacted]
Private Letter Ruling Request

Dear Mr. [redacted]

We have the Form NC-PLR, Request for Private Letter Ruling, remittance of $5,000.00, and your letter dated November 15, 2013. You have requested a ruling from the Department regarding your client's North Carolina sales and use tax liability for particular transactions. You have inquired whether your client's moisture control service plans are "service contracts" as defined in N.C. Gen. Stat. § 105-164.3(38b) and if your client's charges for such are subject to sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.4(a)(11).

You advise that your client, [redacted] ("the Company"), "sells both pest control and moisture control service plans to its customers." The letter ruling request concerns the Company's services provided under its moisture control service plans. "The Company's moisture control service plans are designed to limit the wood moisture content levels of the wooden components of a building. Lowering the wood moisture content level helps to limit or eliminate insect and rodent infestations, odors associated with mildew contamination, and moisture damage to the building. Moisture control service plans typically involve a one-year coverage plan and annual renewals. The initial contract encompasses installation in a building of the items that are a part of the moisture control system that the Company has designed for the customer, subsequent monitoring of the system, and any improvements, repairs, or replacements that may be needed in order to meet the moisture control objective. The renewal plan involves continued monitoring and inspection of the moisture control system and moisture content of the covered building area, and making any improvements, repairs, or replacements that may be needed."

N.C. Gen. Stat. § 105-164.4(a)(11) provides "[t]he general rate of tax applies to the sales price of a service contract." N.C. Gen. Stat. § 105-164.3(38) defines the term "service contract" as "[a] warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract by with the seller agrees to maintain or repair tangible personal property."

We have reviewed the information provided, including the '[redacted] Moisture Condition and Installation Service Plan." As it appears that the moisture control service plans the

Company enters into with its customers involve maintaining and repairing the customers' real properties, the Company's moisture control service plans submitted for the Department's review are not "service contracts" within in the meaning of N.C. Gen. Stat. § 105-164.3(38b), and, therefore, are not subject to North Carolina sales and use tax pursuant to N.C. Gen. Stat. 105-164.4(a)11. The Company continues to be subject to the 4.75% general State rate and applicable local and transit rates of sales and use tax for repair parts, supplies, other tangible personal property, and taxable services it uses in providing the moisture control service plans to its customers.

You have advised that the Company has affiliates that perform the same services as the Company. As we have not reviewed any service plans or other contracts entered into by any affiliates of the Company, we are unable to rule regarding the taxation of those service plans or contracts, and this response is only applicable to your specific client.

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]

[redacted]
Administration Officer
Sales and Use Tax Division

[redacted]

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