North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

August 14, 2015

FEIN: [redacted]
Account#: [redacted]

[redacted]

Attention: [redacted], CPA

Re: Private Letter Ruling Request
[redacted]

Dear [redacted]

We have completed our review of your letter dated July 7, 2014 and the subsequent information provided November 24, 2014 in which you request a private letter ruling from the Department regarding the application of North Carolina state and local sales tax to your client's business transactions. Additionally, we received a copy of a letter penned by [redacted] President, dated September 23, 2013.

Facts

According to your letters of July 7, 2014 and November 24, 2014 [redacted] ("[redacted]") "business is to set up display booths for clients" by providing the materials, equipment and services necessary to set-up the display booth(s) for a client. A client will provide [redacted] with specifications, venue, show date(s), move in date and time, and dismantle date and time. [redacted] retains title to all property used to set up the display booths for clients. Additionally, we note that the letterhead for [redacted] states "display equipment" and "rental and set-up."

[redacted] provides a client with a Proposal/Acceptance Form ("Proposal") which lists equipment and materials to be provided, each with a separate and identifiable charge for each item unless the Proposal states "no charge" for a particular line item. Upon acceptance, the Proposal is signed by the client and is submitted to [redacted]

In addition to the Proposal, the client receives a Final Confirmation and Agreement of Show Planning Information form ("Final Confirmation") which establishes a detailed list of the materials and equipment to be provided by [redacted] venue, dates, times, and other precise aspects for a show/exhibit. The Final Confirmation does not establish the specific quantities for all items and materials but does establish the number of booths spaces to be set-up and the equipment and materials to be provided by [redacted] The Final Confirmation is signed, dated and returned to [redacted] by the client prior to the event.

[redacted]

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An invoice is issued to the client listing a single line item charge for [redacted] services. An example provided for the Department's review is invoice number [redacted] dated [redacted] with the description "[s]ervices as agreed for show on [redacted]." Additionally, the invoice reflects sales tax at the rate of 6.75% in the amount of [redacted]. Along with your letter of November 24, 2014, you provided all documents pertaining to the [redacted] Show for [redacted] Service and advised that such were "typical of any show event."

Issue

Are the charges billed for transactions by [redacted] as discussed above subject to North Carolina State local, and transit sales tax?

Answer:

Article 5[1] of The Revenue Act, North Carolina General Statute ("NCGS") § 105-164.1 *et. seq.,* and Subchapter VIII: Local Government Sales and Use Tax ("Local Tax"), impose State, local, and transit sales and use taxes on retail sales of tangible personal property, digital property, and certain services, except where an exemption or exclusion is permitted by law. The term sale is inclusive of lease and rental[2]. Lease or rental is "a transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term lease or rental does not include any of the following:

a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100.00) or one percent (1%) of the total required payments.
c. The providing of tangible personal property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this sub-subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property."

NCGS §105-164.4(a)(2) provides sales tax is applicable to 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 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 on the separate retail sale of the property.[3]

Based on the documents provided, a portion of the "gross receipts" for the rental of the equipment and materials used to construct the booth(s) is the charge for the set up and/or dismantlement of the booth(s). The materials and equipment are the subject of the lease or rental and the gross proceeds received by your client include the charges for set up and/or dismantlement, when applicable; therefore, such charges are taxable. [redacted] is responsible for collecting and remitting North Carolina State and local sales taxes on any gross receipts derived from the lease or rental of tangible personal property.

[1] Article 5 is "known as the North Carolina Sales and Use Tax Act ('Act')." N.C. Gen. Stat. § 105-164.1.
[2] NCGS §105.164.3(17) and NCGS §105.164.3(36)
[3] NCGS §105-164.4(a)(2)

This letter 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 letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling 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]
Administration Officer
Sales and Use Tax Division

[redacted]

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