North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

August 17, 2015

Account ID: [redacted]
FEIN: [redacted]

[redacted]

Re: [redacted]
Private Letter Ruling Request

Dear Mr. [redacted]

The Department received the Form NC-PLR, Request for Private Letter Ruling, remittance of $500.00, your letter dated July 7, 2015, and the additional information provided by [redacted] on July 22 and 24, 2015. You have inquired as to the taxability of your client's specific purchase of an item.

It is our understanding that '[redacted], a North Carolina corporation ([redacted]'), is a general contracting firm that provides construction management services for various marine, highway, utility and storm water projects. [redacted] a [redacted] corporation registered in North Carolina as [redacted] Company ([redacted]'), is a general contracting firm that provides construction management services for various highway, utility and general commercial projects."

'[redacted] filed for bankruptcy in a [redacted] proceeding pursuant to the United States Bankruptcy Code in the United States Bankruptcy Court for the [redacted] District of North Carolina (the 'Bankruptcy Court'). On April 5, 2013, [redacted] purchased from [redacted] as a debtor-in-possession, a work trestle" ("Trestle"). "The Bankruptcy Court authorized the sale on April 26, 2013." The related bill of sale and exhibits were provided for the Department's review and identified as **Exhibit B**.

You further state, '[redacted] withheld sales tax on the sale of the Trestle and is currently holding such withheld amount pursuant to an escrow agreement (. . . **Exhibit C**, the 'Escrow Agreement'). The withheld amount will be released upon the escrow agent's receipt of written confirmation from the Department that no sales tax was due on the sale of the Trestle. Section 5(a) of the Escrow Agreement."

"The Trestle is described . . . as a 'work trestle,' which in the hands of [redacted] was equipment used in its construction management business. [redacted] did not hold itself out as a retailer

engaged in the business of making sales of trestles at retail and no place of business was maintained in North Carolina for such purpose."

N.C. Gen. Stat. §105-164.3(1k) defines the term "business," in part, as excluding "an occasional and isolated sale or transaction by a person who does not claim to be engaged in business." Based on the information provided, [redacted] was not in the business of selling trestles and did not hold itself out to be selling such items in its regular course of business. Therefore, sales tax is not due on the Trestle transaction as such is a casual or isolated sale. The Department does not take exception with the funds being released from the Escrow account.

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.

Please contact me if you have any questions.

Very truly yours,

[redacted], Director
Sales and Use Tax Division