North Carolina Department of Revenue

Pat McCrory
Governor

Jeffrey M. Epstein
Secretary

May 12, 2016

[redacted]

Re: Private Letter Ruling
[redacted]
FEIN: [redacted]

Dear Mr. [redacted]

We have completed our review of your letters dated November 19, 2015 and February 12, 2016 with regard to [redacted] ("[redacted]") in which you provide factual information and request a private letter ruling regarding the application of North Carolina State and local sales and use taxes to certain business transactions.

Facts

It is the Department's understanding that [redacted] is located in [redacted] North Carolina. "Since 2009 [redacted] has bought and sold timberland in North Carolina. [redacted] also "owns timberland in North Carolina and grows trees on it."

"As an extension of that business, [redacted] proposes to lease timberland and rake, bale, and sell pine straw from that land. . . . At this time, [redacted] owns no timberland suitable for raking pine straw. If in the future [redacted] is able to acquire timberland suitable for raking pine straw, it would rake, bale, and sell pine straw from its own timberland as well as leased timberland."

Under a proposed lease, a copy of which was provided to the Department on November 19, 2015, '[redacted] will have rights to rake, bale and sell the pine straw from one or more specified tracks of land. As payment for the lease, [redacted] will pay a fixed amount for each bale of pine straw it rakes, bales, and sells from the lessor's tract(s)."

"The pine straw will be harvested and stored on the leased tract where it is harvested until it is sold and loaded onto a [redacted] truck and trailer for delivery or pick up by the customer. . . . [redacted] will not conduct any business activities on a leased tract except it may take steps to enhance the production of pine straw, such as clearing underbrush and preventing fires, and periodically inspect the tract."

"[redacted] will sell the pinestraw. [redacted] will seek customers, such as garden stores, landscapers, building contractors, roadside vendors, and pine straw dealers, that will buy a substantial volume of pine straw annually. [redacted] expects that the customers' annual purchases will be made in either one or more large volume purchases or in a significant number

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of purchases of substantial volume.] will not operate a retail store or stand.] will not sell any pine straw except that which it produces from the leased tracts (and possibly from its own timberland in the future, as referenced above), nor will it sell any other merchandise with the pine straw."

In its letter of February 12, 2016, states it does not make sales of tangible personal property. anticipates "annual sales of pine straw to equal within three years."

Question

Will sell pine straw as "the producer in the capacity of producer" and qualify for the sales and use tax exemptions provided by North Carolina General Statute ("N.C. Gen. Stat.") §§ 105-164.13(3) and 105-164.13(4b)?

Answer

Based on the facts and information presented in your letters dated November 19, 2015 and February 12, 2016, will be making sales as "the producer in the capacity of producer." As such, N.C. Gen. Stat. §§ 105-164.13(3) and 105-164.13(4b) would exempt the sales of pine straw by from North Carolina sales and use tax.

N.C. Gen. Stat. § 105-164.13(3) exempts from sales and use tax "[p]roducts of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer." N.C. Gen. Stat. § 105-164.13(4b), in pertinent part, exempts from sales and use tax "[p]roducts of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant." The Department recognizes pine straw as a product of the farm and forest.

Sales and Use Tax Bulletin § 9-1(E) provides "farmers that make retail sales of farm products that they have produced which are in their original state are not liable for collecting and remitting sales tax on these sales unless they are selling primarily in their capacity as retail merchants." A person sells primarily as a producer when the total dollar sales volume of its produced farm or forest products, in their original or unmanufactured state, regularly exceeds 50% of the total dollar sales volume of its purchased products and its produced products. If a person is classified primarily as a producer on the basis of the total dollar sales volume, sales of its produced products in their original or unmanufactured state are exempt from sales and use tax. If a person who is classified primarily as a producer makes sales of produced farm products as well as products acquired by purchase, separate records must be maintained because purchased products sold are subject to any applicable tax.

A person sells primarily as a retail merchant when purchased products and its produced products not in their original or unmanufactured state regularly exceed 50% of the total dollar sales volume of its produced farm or forest products in their original or unmanufactured state. When selling primarily as a retail merchant, all retail sales of both types of products will be subject to sales and use tax unless specific sales are statutorily exempt from sales and use tax. Such classification as a producer or retailer will remain in effect until either category of sales on a regular basis has changed to another principal type.

If a person operates more than one location, the preceding analysis is applied to the total dollar sales volume of each location separately. The total dollar sales volume to be used in

determining the classification of a producer will include all sales of tangible personal property without regard to any items or sales that might otherwise be exempt from tax by the sales and use tax statutes.

states that it does not make sales of tangible personal property. It also states it "will not sell any pine straw except that which it produces from the leased tracts . . . nor will it sell any other merchandise with the pine straw." Relying on the foregoing facts as presented by is acting as a producer making sales in the capacity of a producer. As such, 's sales of pine straw it produces from the leased tracts of land are exempt from sales and use tax pursuant to the exemptions provided in N.C. Gen. Stat. §§ 105-164.13(3) and 105-164.13(4b).

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 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 we may be of additional assistance, you may contact the Sales and Use Tax Division at the phone number listed on page one.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: , Director – Sales and Use Tax Division
, Assistant Director – Sales and Use Tax Division
President – Corporation