



North Carolina Department of Revenue

Pat McCrory
Governor

Jeffrey M. Epstein
Secretary

August 2, 2016

Re: [REDACTED]

Private Letter Ruling Request
Account ID: [REDACTED]
FEIN: [REDACTED]

Dear Ms. [REDACTED]

We received the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, and your letter on behalf of [REDACTED] Inc., ([REDACTED]) dated April 23, 2013. You inquired as to whether [REDACTED] is exempt from the collection and remittance of sales tax on its yard sale activities. We apologize for the delayed response.

Overview

It is our understanding [REDACTED] is a "public charity organization exempt from tax under Internal Revenue Code § 501(c)(3). Its stated exempt purpose includes the conduct of a multi-year [REDACTED] program that enables [REDACTED] to be productive, [REDACTED] individuals through comprehensive [REDACTED] care. During the fiscal year ended, June 30, 2012, [REDACTED]'s [REDACTED] program served [REDACTED] people and provided [REDACTED] days of service to [REDACTED]. [REDACTED]'s [REDACTED] program involves providing to those individuals representing its class of beneficiaries services such as [REDACTED].

[REDACTED] is a primary focus of [REDACTED] as program participant beneficiaries, also referred to as [REDACTED] receive training by participating in one of the activities sponsored by the organization. [REDACTED]

Through the training, [REDACTED] obtain skills [REDACTED] relations. [REDACTED] also provides [REDACTED] program. Aftercare is designed to [REDACTED]

You advise in your letter that "[e]ach year [REDACTED] receives non-cash contributions from the general public that include clothing, household goods, vehicles, food, non-prescription drugs, medical supplies, furniture, miscellaneous supplies and perishables." Although [REDACTED] makes every effort to use these items during the year, "the volume of non-cash contributions received regularly exceeds the amount that [REDACTED] can find use for in its exempt function services. In some cases, items donated such as perishables are in danger of expiration before [REDACTED] is able to use them. . . . Instead, [REDACTED] can more efficiently remove these surplus contributions received at what it terms 'yard sales.' In addition to resolving the issues above associated with the surplus contributions, yard sale activities serve multiple benefits for the organization.

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[REDACTED] will hold at least three but no more than four yard sales per year to sell the surplus clothing, household goods and miscellaneous supplies donated since the previous yard sale. . . . All items sold in the yard sale are donated; no items sold are ever purchased by [REDACTED]. Items purchased by the general public at the yard sale are taken into possession by the purchaser immediately. Historically, proceeds from yard sales were deposited into the general fund and used by [REDACTED] as needed for organization expenses. However, beginning with the next yard sale to occur after April 2013, [REDACTED] has resolved to dedicate proceeds of yard sales towards its specific program services as follows: the first yard sale of the year will support [REDACTED]; the second yard sale of the year will support the [REDACTED]; the third yard sale of the year will support [REDACTED]; and the fourth yard sale of the year (if applicable) will support utilities, repairs, and maintenance expenses associated [with] [REDACTED]'s [REDACTED] program for [REDACTED].

"Historically, [REDACTED] has collected and remitted sales tax on all tangible property sold during yard sales."

As of August 2, 2016, the information on [REDACTED]'s website located at [REDACTED], provides that [REDACTED] operates a thrift store and offers custom [REDACTED] inside the thrift store. Items sold in the thrift store include ". . . gently used furniture, clothing, electronics, and more. Unlike many other thrift stores in the area, [REDACTED] Thrift Store has a wide selection of furniture and housewares. With over [REDACTED] square feet of merchandise, we are the largest thrift store in the region!"

"The store is also home to [REDACTED] Shop, providing quality, full custom [REDACTED] services. Art, textiles, and family heirlooms in [REDACTED]'s high quality and thoughtful [REDACTED] grace many [REDACTED] homes. We use all archival materials and can suggest the most complementary [REDACTED] styles and colors for your special item. [REDACTED] also provides dry mounting, shadow boxes, and [REDACTED] repair."

Issue

You have inquired as to the taxability for North Carolina sales and use tax purposes of the sale of tangible personal property at [REDACTED]'s yard sales.

Ruling

N.C. Gen. Stat. § 105-164.4(a)(1) provides, in part, "[a] privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer's net taxable sales or gross receipts. . . . The general rate of tax applies 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 this section." Items sold at retail subject to the general rate of tax by a retailer, other than a modular home, manufactured home, qualified jet engine, and an aircraft, are subject to the local and transit rates of tax imposed under Subchapter VIII of Chapter 105 and under Chapter 1096 of the 1967 Session Laws.

N.C. Gen. Stat. § 105-164.3(34) defines "retail sale or sale at retail" as "[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent."

N.C. Gen. Stat. § 105-164.3(35)a. defines "retailer," in part, as "[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property, or services for storage, use, or consumption in this State."

N.C. Gen. Stat. § 105-164.13(35) provides for the exemption from sales and use tax on "[s]ales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the following conditions listed in this subdivision are met. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity.

- a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.
- b. The proceeds of the sale are actually used for the organization's activities.

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- c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period."

Based on the information provided, the proceeds from the yard sales are not exempt from sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.13(35). [REDACTED] meets the definition of "retailer" as defined in N.C. Gen. Stat. § 105-164.3(35)a. because [REDACTED] is engaged in the business of making retail sales in the thrift store. Since [REDACTED] is a retailer engaged in the business of retail sales in the thrift store, all sales transactions by [REDACTED] are retail sales and are subject to North Carolina sales and use tax at the applicable rate under the provisions of N.C. Gen. Stat. § 105-164.4(a). The items sold in [REDACTED]'s thrift store are the same types of items that are sold at [REDACTED]'s yard sales. Items sold at the yard sales such as furniture, clothing, and household goods are subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.

Motor vehicles sold by [REDACTED] at a yard sale or otherwise are subject to the 3.00% highway use tax under the provisions of N.C. Gen. Stat. § 105-187.2 thru § 105-187.4 and the highway use tax is payable to the North Carolina Division of Motor Vehicles at the time of titling of a motor vehicle. Sales of motor vehicles are exempt from sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(32).

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 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,

[REDACTED]
Administration Officer
Sales and Use Tax Division

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