North Carolina Department of Revenue

Beverly Eaves Purdue
Governor

David W. Hoyle
Secretary

September 20, 2011

[redacted]

Re: Cigarette Excise Tax

This letter is in response to your letter dated June 28, 2011, wherein you requested the North Carolina Department of Revenue ("Department") provide a private letter ruling as to whether [redacted] would be exempt from the cigarette excise tax on [redacted] receipt, possession and transfer of US government owned property.

The statement of facts submitted for the Department's consideration is as follows:

> '[redacted] obtained a letter ruling from Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau ("TTB"), exempting from taxation the experimental cigarettes that [redacted] will possess (but not have legal title to), in its fulfillment of a contract with the [redacted]
>
> [redacted] has a contract with [redacted] entitled "Preparation and Distribution of Research Drug Products." Under this contract, which is a functional part of [redacted], [redacted] obtains, maintains, stores and ships a variety of research materials to various research investigators that are qualified to receive these materials from [redacted]. [redacted] has agreed, consistent with this contractual arrangement, to supply [redacted] with tobacco cigarettes carefully designed to meet the needs of researchers investigating various aspects of cigarette use. In order to satisfy this contractual requirement, [redacted] entered into a purchase agreement with [redacted] to design and produce some 23 different types of tobacco cigarettes for research purposes of [redacted] and the research community. [redacted] is utilizing an existing business arrangement with [redacted] to have the required cigarettes manufactured.
>
> Payment and invoicing for the production of the cigarettes occurs as described below:

P.O. Box 871, Raleigh, North Carolina 27602-0871
State Courier 51-71-00
Website: www.dornc.com
An Equal Opportunity Employer

a. Under the contract between [redacted] and [redacted] the Federal Government has committed funds to pay for the services provided by [redacted]. On a quarterly basis, [redacted] invoices [redacted] for the cost of its services (labor, direct costs, and fees) and draws the invoiced amount from the funds committed by the Federal Government.
b. [redacted] invoices [redacted] for its services to design and have the cigarettes manufactured under the purchase order agreement. In response to these invoices, [redacted] pays [redacted] by electronic funds transfer from the funding it has received from the Federal Government.
c. [redacted] bills [redacted] and is paid by [redacted] based on the existing business arrangement between these two parties.

[redacted] will receive, inventory, analyze and store the cigarettes before shipping them to research facilities. The analytical procedures to be conducted will consist of analyses for nicotine, minor nicotine alkaloids and moisture content in the tobacco of the cigarettes; and analyses for nicotine, minor nicotinic alkaloids, menthol, and tar in smoke from samples of each cigarette batch obtained by use of a cigarette smoking machine. The cigarettes will be stored in a secured area until shipped. Shipments to research investigators will be made only on the receipt of direct, written instructions from an authorized individual at [redacted]."

[redacted] also submitted various items to the Department which include the following:

1. TTB Exemption Ruling dated May 11, 2011,
2. [redacted] Exemption Request dated March 28, 2011,
3. Pages 1-4 of [redacted] Contract with [redacted],
4. Verification that the cigarettes will be given to the research facilities free of charge, and
5. Letter from [redacted] stating they are the owner of the experimental cigarettes when such cigarettes are shipped from the manufacturer to [redacted].

Issue:

Whether [redacted] would be exempt from the cigarette excise tax on [redacted] receipt, possession and transfer of US government owned property?

Department's Response:

G.S. 105-113.8 states, "Any activities which this Article may purport to tax in violation of the Constitution of the United States or any federal statute are hereby expressly exempted from

taxation under this Article." Any sale of cigarettes to the Federal Government would be exempt from the North Carolina cigarette excise tax. Since [redacted] is paying for and is in possession of the experimental cigarettes, the Department does not have the statutory authority to impose an excise tax on those transactions with [redacted]

A distributor is defined as "a person wherever resident or located, who purchases non-tax paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes." Based on the definition of a distributor in G.S. 105-113.4(3)a, [redacted] would need to be licensed in North Carolina and report the transactions on *Form B-A-5, Schedule B* as sales to the Federal Government. In order to be licensed with the Department, [redacted] would need to provide an *Application for Cigarette License*, *Form B-A-1*.

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 there are other facts that were not disclosed that might cause the Department to reach a different conclusion, then the taxpayer requesting this ruling may not rely on it. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. 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.

Very truly yours,

[redacted]
Administrative Officer
Excise Tax Division
Phone: 919-733-8510
Fax: 919-733-1821
Email: [redacted]
Website: www.dornc.com