Pat McCrory
Governor

Jeffrey M. Epstein
Secretary

April 14, 2016

[redacted]

Re: Request for Private Letter Ruling Regarding the [redacted]

Dear [redacted]

This letter is in response to your letter (with enclosures) dated March 3, 2016 that was attached to Form NC-PLR, Request for Private Letter Ruling, along with your five hundred dollar ($500.00) check, where you are seeking from the North Carolina Department of Revenue ("Department") a private letter ruling ("PLR") per N.C. Gen. Stat. § 105-264(d) regarding the [redacted]

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

> "Our interpretation of Chapter 105 – Article 105-Article 2A Tobacco Products Tax-Part 1. General Provisions-Section 105-113.4-Definitions (1k), (11a), (13a) – We believe the [redacted] does not fit the definition of a "consumable product" as the "contents are not depleted as a vapor product is used" as the definition states under (1k). Next we do not believe the [redacted] is a "tobacco product" as it does not contain tobacco as the definition states under (11a). Lastly we do not believe the [redacted] is a "vapor product" as there is no heating element, no electronics, no batteries and is not a similar product or device as defined under (13a). Therefore based on this interpretation of Article 2A, the [redacted] is not a vapor product for which the $.05/ml tax would apply."
>
> "Our interpretation of Chapter 105 – Article 105-Article 2A Tobacco Products Tax-Part 3. Tax on Other Tobacco Products-Section 105-113.35 Tax on Tobacco Products other than Cigarettes (the entire section) – We believe that the [redacted] categorized as an OTP taxable transaction because according to the definitions, the [redacted] is neither a tobacco product nor a vapor product for the 12.8% or the $.05/ml tax respectively." [sic]

Issue(s):

1. Whether the [redacted] is included within the North Carolina statutory definition of a "Consumable product", "Tobacco product", and/or "Vapor product" for excise tax purposes.
2. Whether the [redacted] is taxable under N.C. Gen. Stat. § 105-113.35.

Department's Response:

1. Whether [redacted] is included within the North Carolina statutory definition of a "Consumable product", "Tobacco product", and/or "Vapor product" for excise tax purposes.

   North Carolina Gen. Stat. § 105-113.4 (11a) provides in part that a "tobacco product" is "[a] cigarette, cigar, or any other product that contains tobacco and is intended for inhalation or oral use. *The term includes a vapor product."* (emphasis added).

   N.C. Gen. Stat. § 105-113.4 (13a) goes on to define a "vapor product" in part as "[a]ny nonlighted, noncombustible product that employs a mechanical heating element, battery, or other electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine in a solution. The term includes *any vapor cartridge or other container of nicotine* in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, *or similar product or device*." (emphasis added).

   In addition, N.C. Gen. Stat. § 105-113.4(1K) defines a "consumable product" as "[a]ny nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used."

   In reviewing the materials submitted with your request for a private letter ruling, an enclosure entitled "How Does It Work" explained that the [redacted] works through the "volatilization" of nicotine through the device. "Volatilization" is defined as "to make volatile; especially: to cause to pass off in vapor." *Merriam-Webster Dictionary,* http://www.merriam-webster.com/dictionary/volatilization (last visited 12 April 2016).

   Therefore, the Department concludes that under the plain language of N.C. Gen. Stat. § 105-113.4 (11a) and (13a), the [redacted] is considered both a "Tobacco product" and a "Vapor product" and therefore meets the definition of a "Consumable product" as defined in N.C. Gen. Stat. § 105-113.4 (1k), as well.

2. Whether the [redacted] is taxable under N.C. Gen. Stat. § 105-113.35.

   The tax on "Other Tobacco Products" is set out in N.C. Gen. Stat. § 105-113.35. An excise tax is levied on both tobacco products and vapor products. As indicated above, the [redacted] falls within both the definition of a tobacco product and a vapor product. However, based on the product information provided with your request, the Department concludes the [redacted] is a vapor product, as the literature on how the [redacted] product works clearly indicates the product is volatilized and thus, inhaled as a vapor. Since the Department determines the [redacted] to be a "Vapor product" , it is subject to the $.05 per fluid milliliter of consumable product excise tax levied in N.C. Gen. Stat. § 105-113.35 (a1), as well as any other applicable subsections of N.C. Gen. Stat. § 105-113.35.

This ruling is based solely on the facts described in the statement of facts submitted to the Department for consideration of the transactions described. If the facts and circumstances described are not accurate or if there are other facts not previously disclosed that may result in the Department reaching a different conclusion, this ruling may not be relied upon. If a taxpayer relies on this letter ruling and the Department discovers, upon examination, that the facts situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, the letter ruling will not afford the taxpayer any protection from adverse tax

consequences. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. A letter ruling has no binding effect on the Department with regard to any person other than the taxpayer who requested and received the ruling. It should be noted this document shall not be cited or relied upon as precedent and that a change in statute, regulation, or case law could void this ruling.

I hope this clarifies your issues regarding the [redacted] product and its relation to the North Carolina excise taxes. If I can be of further assistance, please do not hesitate to let me know.

Yours Respectfully,

[redacted]
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cc: [redacted] Director, Excise Tax Division.