



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 18, 2014

Account ID: [REDACTED]

FEIN: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Re: [REDACTED]
Private Letter Ruling Request

Dear Ms. [REDACTED]

We have the Form NC-PLR, Request for Private Letter Ruling and your letter dated October 25, 2013, as well as your letter dated November 20, 2013 and accompanying remittance of \$5,000.00. You have inquired as to your client's North Carolina sales and use tax liability on its purchases of ice houses for use in this State.

You advise that your client, [REDACTED] (the "Company"), currently owns and operates [REDACTED] ice houses throughout the State. "Each ice house is a free-standing structure which manufactures and packages up to [REDACTED] of fresh ice daily. The structure is approximately 8'W x [REDACTED] and is permanently connected to municipal water and electric utilities. Each ice house is anchored to a [REDACTED] foundation and located on real estate [REDACTED]. The ice houses are classified and permitted for installation as "modular manufacturing units" under the North Carolina Building code, and as such, each one must bear notice of such classification."

Approximately ninety-five percent of each ice house is dedicated to the production and packaging of ice, and the remaining five percent is dedicated to dispensing ice to consumers. "The Company purchases ice houses from a company located outside the State of North Carolina, not only to operate for its own benefit as described above, but to sell to third party owner/operators who operate their ice houses [REDACTED] in a manner similar to those owned and operated by the Company."

You state that "[i]nitially, the Company was advised to pay sales and use taxes as if the ice houses were vending machines; however, recently, the Company was informed by [a Certified Public Accountant] that these ice houses should qualify as ice manufacturing machines, which are subject to a privilege tax instead of a sales and/or use tax." You are requesting that the Department clarify the Company's tax liability with respect to its purchases of ice houses for use to make ice sold at retail and the Company's sales of ice houses.

N.C. Gen. Stat. § 105-164.3(10) defines "food" as "[s]ubstances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. . . ." N.C. Gen. Stat. § 105-164.3(11) defines the term "food sold through a vending machine" as "[f]ood dispensed from a machine or another mechanical device that accepts payment."

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N.C. Gen. Stat. § 105-164.13(50) provides an exemption from sales and use tax for the sale at retail and the use, storage, or consumption in this State of “[f]ifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine, other than tobacco.” [Underlining added.] N.C. Gen. Stat. § 105-164.13B provides that “[f]ood is exempt from [the 4.75% general State rate of sales and use tax] unless the food is included in one of the following subdivisions in this subsection. The following food items are subject to tax:

- (1) Repealed by Session Laws 2005-276, s. 33.10, effective October 1, 2005.
- (2) Dietary supplements.
- (3) Food sold through a vending machine. . . .”

N.C. Gen. Stat. § 105-187.51 imposes a 1% privilege tax on the sales price of mill machinery and mill machinery parts or accessories purchased by a manufacturing industry or plant for storage, use, or consumption in this State. The maximum tax is \$80.00 per article. N.C. Gen. Stat. § 105-187.51(1) provides that “[a] manufacturing industry or plant does not include the following:

- a. A delicatessen, café, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared for consumption on or off its premises. . . .” [Underlining added.]

As the Company is “principally engaged in the retail sale of foods [ice] prepared by it for consumption on or off its premises,” the Company is not considered a manufacturing industry or plant; therefore, the Company’s purchases of ice houses used to produce the ice dispensed and sold at retail are subject to the 4.75% general State and applicable local and transit rates of sales and use tax. If the Company’s out-of-state vendor is not engaged in business in this State and therefore, not required to collect North Carolina sales or use tax, the Company should accrue use tax on the purchase price of its purchases of ice houses used to make ice sold at retail in this State. The Company should collect the 4.75% general State and applicable local and transit rates of sales and use tax on its retail sales of ice houses to customers located in this State, unless the purchaser provides a properly completed Certificate of Exemption.

The Company’s sales of ice through the ice houses are sales of food sold through a vending machine and are subject to the 4.75% general State and applicable local and transit rates of sales and use tax. If the ice houses are coin-operated, then, under the provisions of N.C. Gen. Stat. § 105-164.13(50), fifty percent of the sales price of the ice sold at retail through the ice houses is subject to the 4.75% general State and applicable local and transit rates of sales and use tax.

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 you have any questions, you may reach me at the number listed below.

Very truly yours,

Administration Officer
Sales and Use Tax Division

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