DIRECTIVE

Subject: Nexus of A Manufacturer's Representative
Tax: Corporate Franchise and Income Taxes
Statutes: G.S. 105-122 and G.S. 105-130.3; 17 NCAC 5C.0102(a)(4)
Issued By: Corporate Income, Excise and Insurance Tax Division
Date: April 27, 1998
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This directive states the Department's long standing position that a foreign corporation that is a manufacturer's representative and has an employee or agent in this State is doing business in this state and must file a corporate franchise and income tax return in this State. This position results from the application of G.S. 105-122, G.S. 105-130.3, and 17 NCAC 5C.0102(a)(4). G.S. 105-122(a) and G.S. 105-130.3, respectively, impose a State franchise tax and a State income tax on a corporation that is doing business in this State. Under 17 NCAC 5C .0102(a)(4), "doing business" includes "the rendering of a service to clients or customers in North Carolina by agents or employees of a foreign corporation".

A manufacturer's representative is a corporation that contracts with a manufacturer to solicit orders on behalf of that manufacturer. When the manufacturer's representative performs that contract through the use of employees or agents to solicit orders in this State, it is rendering a service in this State to its client, the manufacturer, and is therefore doing business in this State.

> *Example:* Company A is a foreign corporation that manufactures sporting equipment. Company A's headquarters and manufacturing facilities are located outside of North Carolina. Company A has no offices, inventory, property, or employees in North Carolina. Company A has contracted with Company B to solicit orders for Company A's products across the Southeast, including North Carolina. All customer orders are approved and shipped via common carrier from a point outside of North Carolina.
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> Company B is a foreign corporation that has no offices or property in North Carolina. However, Company B employs or contracts with sales agents that are present in North Carolina and solicit orders on behalf of Company A and other manufacturers. All orders are received to

Company A for approval and shipped via common carrier from a point outside of North Carolina.

In this example, Company A is not required to file a North Carolina corporate franchise and income tax return because its business activity in North Carolina is protected by 15 U.S.C. § 381, more commonly known as Public Law 86-272. That federal law prohibits a state from taxing a corporation whose only activity in the state is the solicitation of orders of tangible property when the orders are sent out of the state for approval and the goods are shipped from a point outside the state. Company A's use of Company B, an independent sales agent, to solicit orders for its products does not exceed the "mere solicitation" provisions of this law.

Company B, however is required to file a North Carolina corporate franchise and income tax return because it is doing business in North Carolina; it has employees or agents in North Carolina who are rendering a service to Company A. Public Law 86-272 does not prevent the application of tax to Company B because Company B is rendering a service and that law does not apply to services. Company B is not simply soliciting orders for tangible property it owns or controls.

If you have questions about this directive, you may call the Corporate, Excise and Insurance Tax Division of the North Carolina Department of Revenue at (919) 733-8510. You may also write to the Division at P.O. Box 871, Raleigh, N.C., 27602-0871.