



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

December 7, 2012

Attention: [REDACTED]

Dear Ms. [REDACTED]

Your letter in which you request a determination concerning whether your company has nexus and is "engaged in business" for North Carolina sales and use tax purposes was received by this Department on April 4, 2011.

The information furnished in your letter indicates your firm has no sales personnel, advertising, or brick and mortar store in North Carolina, but that you, the managing member of the limited liability company, may relocate to North Carolina and establish a home based office.

G.S. 105-164.3(9) defines "[e]ngaged in business" as "[a]ny of the following:

- a. Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business, for selling or delivering tangible personal property, digital property, or a service for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, or solicitor operating in this State in the selling or delivering. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial.

...

- c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met. . . ."

G.S. 105-164.8(b)(3) provides that "[a] retailer who makes a remote sale is engaged in business in this State and is subject to the tax . . . if . . . [t]he retailer solicits or transacts business in this State by employees, independent contractors, agents, or other representatives, whether the remote sales thus subject to taxation by the State result from or are related in any other way to the solicitation or transaction of business. . . ." (Emphasis added)

Based on the information presented in your letter, it is our opinion that your firm will be engaged in business for North Carolina sales and use tax purposes and required to register to collect and remit State and local sales or use taxes on all of its North Carolina taxable retail sales.

This letter 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 letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling 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: , Director – Sales and Use Tax Division
, Assistant Director – Sales and Use Tax Division