



North Carolina Department of Revenue

Beverly Eaves Perdue
GovernorDavid W. Hoyle
Secretary

April 11, 2012

Account ID: [REDACTED]
FEIN: [REDACTED][REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Re: Private Letter Ruling

Dear Ms. [REDACTED]

We have your letter dated December 29, 2011, in which you request a ruling from the Department regarding your firm's North Carolina sales and use tax liability on its various transactions in this State.

You have advised that your firm performs electrical work for various customers who are manufacturers located in this State. Your firm purchases tangible personal property, specifically conduit and wire, which it uses to maintain and repair its customers' production equipment. Your firm does not have service contracts with its customers, but rather performs work on an as-needed basis, upon receipt of customers' purchase orders. You have inquired as to your firm's sales and use tax liability on its purchases of conduit and wire it uses to perform electrical work for its customers.

We have reviewed the sample bid proposal and invoice your firm provides its customers, as well as a sample customer purchase order you furnished. Based on this documentation, which we presume is representative of your firm's activities, it appears that your firm operates as a contractor fulfilling performance contracts to provide electrical work for its customers. Section 31-1.A of the North Carolina Sales and Use Tax Technical Bulletins ("Technical Bulletins") provides that "[c]ontractors are deemed to be consumers of tangible personal property which they use in fulfilling performance contracts and, as such, are liable for payment of the general rate of State tax and any applicable local sales or use tax on such property unless the property is exempt from tax by statute. In order to establish if a transaction constitutes a performance contract, the tenor of the agreement is for the contractor to perform a job, retaining the right to control the means, the method, and the manner of accomplishing the desired result. A performance contract does not provide for a sale of specific items; rather, the contractor agrees to furnish the necessary materials, labor, and expertise to accomplish the job. With a performance contract, responsibility for the job and title to the

Phone (919) 733-2151 Fax (919) 733-1821
501 North Wilmington Street, Raleigh, North Carolina 27640
P.O. Box 871 Raleigh, North Carolina 27602-0871Website: www.dornc.com

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materials purchased by the contractor remain with the contractor until the job is completed and accepted by the purchaser/owner. The contractor is liable for accidents or injury at the job site and loss or damage due to vandalism, neglect, theft, and fire.”

When a contractor or a subcontractor makes taxable purchases of tangible personal property from suppliers inside or outside this State who charge the applicable State and any local sales or use tax thereon, he shall remit the tax on such purchases to his suppliers. When a contractor or subcontractor makes taxable purchases of tangible personal property for use in this State from a supplier outside this State who does not collect the applicable State tax and any local sales or use tax thereon, such contractor or subcontractor must remit the tax directly to the Department.

For a performance contract, the charge for materials and labor may be shown separately in the job cost file but shall not be shown separately on the customer's invoice. The tax shall not be added to the agreed-upon price as a separate charge on the invoice but shall be included in the computation of the cost of the materials necessary to perform the contract. If the vendor/contractor does show the materials and installation separately and adds the sales tax as a separate item on the invoice or statement provided to the purchaser/owner, the vendor/contractor shall be deemed to be making sales and collecting sales tax for which he shall be liable for payment to the Department.

Purchases by contractors and subcontractors of mill machinery or mill machinery parts or accessories for use by them in the performance of contracts with manufacturing industries and plants, and purchases by subcontractors of mill machinery or mill machinery parts or accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants, are subject to a 1% privilege tax with a maximum tax of \$80.00 per article where applicable. Such mill machinery or mill machinery parts or accessories must be for use by a manufacturing industry or plant in the production process. Contractors and subcontractors may obtain the Streamlined Sales and Use Tax Agreement Certificate of Exemption, Form E-595E, from the Department, to be executed by them and furnished to their vendors in connection with such purchases as the vendors' authority to exempt the transactions from the sales and use tax.

Sections 58-1.C and D of the Technical Bulletins list items that are classified as mill machinery and mill machinery parts or accessories and those that are not considered mill machinery and mill machinery parts or accessories. Tangible personal property attached to or in any way a part of any building or structure of any kind whatsoever, such as freight elevators, plumbing and sprinkler systems, electric wiring and electric fixtures, electric lamps and tubes, are not considered mill machinery or mill machinery parts or accessories. Electrical equipment, including control panels, or wiring and related conduit affixed to mill machinery to furnish power to mill machinery and equipment, is classified as an accessory to such machinery and is therefore subject to the 1% privilege tax; however, electrical equipment or wiring and related conduit which is used for general distribution of power to or in a manufacturing industry or plant is subject to the general rate of State tax and any applicable local sales or use tax.

We are enclosing Section 31-1 and 58-1 of the Technical Bulletins for your review. Based on the limited information we have reviewed, it appears that your firm's purchases of conduit and wire that are used for general distribution of power to or in a customer's facility are subject to the general rate of State tax and any applicable local sales or use tax. When your firm purchases wiring and related conduit which is affixed to mill machinery to furnish power to mill machinery and equipment, your firm should provide its vendor with a properly-completed Form E-595E as that vendor's authority to exempt the transaction from sales and use tax. Your firm should then accrue and remit

the 1% privilege tax to the Department by using Form E-500J, Machinery and Equipment Tax Return.

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

Enclosures

cc: , Director of Sales and Use Tax Division