



North Carolina Department of Revenue

Pat McCorry
GovernorLyons Gray
Secretary

August 6, 2013

Account ID: [REDACTED]
Federal ID: [REDACTED]

[REDACTED]

Re: [REDACTED]
Private Letter Ruling Request

Dear Ms. [REDACTED]:

We have your letter dated October 18, 2010 in which you request a private letter ruling as to whether your client, [REDACTED] ("[REDACTED]"), qualifies as a manufacturer for North Carolina sales and use tax purposes.

In your letter you state "[REDACTED] grows apples, berries, etc. and sells some of them in their natural state. However, some of the raised produce along with other purchased produce is converted to jellies, jams, pies and other finished products. All sales are directly to the public.

"With 41.25% of sales coming from manufacturing (conversion of inventory into a new product), the only other major source of revenue is the sale of the natural product as it comes off the tree/bush. Therefore, it is clear that any commercial manufacturing equipment (stove, refrigerator, oven, freezers, etc.) would only be used by this business in the manufacturing process (production of jellies, jams, baked goods, and other finished products). As well, the manufacturing process takes place in a separate building not used for other sales-related activities."

In your letter you also state that ". . . in researching this issue, I have read the NC tax-related Statutes but can't find a clear definition of manufacturing. The manufactured/converted goods are a significant income producer for [REDACTED] and we believe that this operation is clearly manufacturing and qualifies for the Machinery, Equipment and Fuel Tax Account. . . ."

G.S. § 105-187.51(a)(1) imposes a privilege tax on the following persons: “[a] manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State. A manufacturing industry or plant does not include the following:

- (a) A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.
- (b) A production company.”

In your letter you state that your client’s principal source of revenue is from growing apples, berries, etc. and selling them in their natural state. While your client does make jellies, jams, baked goods, and other finished products for sale to the public, your client is not principally engaged in the business of manufacturing or producing a new and different product for sale. In addition, G.S. § 105-187.51(a)(1) provides that a manufacturing industry or plant does not include a retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises. Therefore, equipment purchased and used by [REDACTED] in the preparation of food products such as jellies, jams and baked goods which it sales for consumption on or off its premises are subject to the applicable State and local rates of 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.

Very truly yours,

[REDACTED]

Administration Officer
Sales and Use Tax Division

[REDACTED]

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