



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

March 3, 2010

Account ID: [REDACTED]

[REDACTED]

Attention: [REDACTED]

Dear Mr. [REDACTED]:

We have your letter dated October 13, 2009, in which you have requested a private letter ruling regarding whether [REDACTED] County can include sales and use tax paid in connection with a school construction or renovation project in its annual governmental entity claim for refund. We apologize for the delay in our response.

It is our understanding that [REDACTED] County is considering entering into two agreements with the [REDACTED] County Board of Education ("School Board"). The first agreement is an agency agreement wherein [REDACTED] County would appoint the School Board as its sole agent to carry out construction and renovation projects on School Board-owned property that is leased to [REDACTED] County. The second agreement is a master lease wherein School Board real property is leased to [REDACTED] County. At the completion of each construction or renovation project, the real property affected would be removed from the master lease. [REDACTED] County would be paying for the cost of construction or renovation. [REDACTED] County intends to claim sales and use tax refunds on the construction projects and appropriate to the School Board the refund amounts as supplemental funding for school capital building and renovation projects. The intent of the agreements is to provide additional resources for the School Board and the County Commissioners for use in the construction and maintenance of school buildings.

You have asked whether [REDACTED] County would have a sufficient leasehold interest in the School Board real property to claim a sales or use tax refund on school construction or renovation projects, under the provisions of N.C. Gen. Stat. § 105-164.14(c) if it indeed enters into these agreements. You have provided draft copies of the above-referenced agreements.

We have reviewed the draft lease agreement, which you have advised is enforceable under North Carolina Law. While we can advise you regarding sales and use tax issues, we are unable to comment as to whether any agreement ██████████ County enters into with any other party is a valid agreement.

N.C. Gen. Stat. §105-164.14(c) provides for annual refunds of sales and use taxes paid by the governmental entities named therein on direct purchases of tangible personal property and services, other than electricity, telecommunications service, and ancillary service. Sales and use tax liability indirectly incurred by a qualifying governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity. If ██████████ County leases school sites and/or school buildings under a valid lease agreement for the purpose of constructing and/or repairing public schools, ██████████ County would be entitled to include the tax paid by contractors on eligible building materials in its annual claim for refund.

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

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cc: ██████████, Director of Sales and Use Tax Division