



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

March 21, 2012

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED] and [REDACTED] Private Letter Ruling Request
for Uniform Sales Tax Rate where Retail Buildings Straddle Dividing Line between Two Counties

Dear Mr. [REDACTED]

We have received your letter dated March 13, 2012, requesting a private letter ruling with respect to the application of local sales and use tax for the above referenced store locations of your client. The ruling of the Department in this letter becomes effective for transactions occurring on or after April 1, 2012, and supersedes the advice given to you by the Department in a letter dated January 23, 2009.

Both of the above referenced stores are located partially in Wake County and partially in Durham County. Currently, there are cash registers in the [REDACTED] store located in each of the counties, while the cash registers in the [REDACTED] store are located solely in Wake County. You have asked how the local sales and use taxes should be applied in these locations.

In North Carolina, addresses are assigned by the local government that has jurisdiction over the property. You state that the business addresses for both stores are within Wake County. The property tax records for both Wake and Durham Counties list the same property location addresses for each of the stores.

Wake County currently imposes a local sales and use tax at the rate of 2% on most tangible personal property. While Durham County currently imposes a local sales and use tax at the same rate, the rate in Durham County is scheduled to increase to 2.25% effective for sales or purchases occurring on or after April 1, 2012. In addition, the voters of Durham County have authorized the imposition of an additional local sales and use tax at the rate of 0.5%, but as of this time the Durham County Board of Commissioners has not levied a tax pursuant to this authorization.

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Pursuant to G.S. 105-264, the Secretary of Revenue has the authority to interpret all laws administered by the Secretary. In addition, G.S. 105-264.1 provides that the Secretary's interpretation of a law administered by the Secretary applies to a local law administered by a unit of local government when the local law refers to the State law to determine the application of the local law.

G.S. 105-164.4 imposes a privilege tax on a retailer's net taxable sales. G.S. 105-164.4B describes the principles that apply in determining where to source the sale of a product. G.S. 105-467 provides that the same principles apply to sourcing the sale of a product for purposes of the local sales and use taxes.

Although your request for a ruling does not specify that the request relates only to general over-the-counter sales of tangible personal property, based on previous conversations with you the Department assumes that is the specific issue that you would like addressed in this ruling. Please be advised that a different analysis may apply to a different type of transaction (such as when a customer orders a product for delivery or when a customer purchases telecommunications service from a representative located at one of these locations).

G.S. 105-164.4B(a) outlines the general principles for sourcing the sale of a product. G.S. 105-164.4B(a)(1) specifically addresses over-the-counter transactions in which the purchaser receives the product at the business location of the seller. As you stated in your letter, the term "business location" is not defined for purposes of these principles. You argue that this term could reasonably be interpreted in several ways. You have noted that the captions of G.S. 105-164.4B(a)(2) and (3) specifically include the word "address" while the bodies of those subdivisions use the word "location." You argue that this implies that the word "location" should be interpreted as having the same meaning as "address."

As you are no doubt aware, it is well-established that "the law is clear that captions of a statute cannot control when the text is clear." *In re Forsyth County*, 285 N.C. 64, 203 S.E.2d 51 (1974). In this case, however, it is not clear what the General Assembly intended by the term "business location." Therefore, the captions used in this subsection are useful in determining the meaning of the term. The Department now determines that when an establishment has a single address, that address will be used to determine the "business location" of the establishment. This ruling supersedes the advice given by the Department to you in our letter January 23, 2009. Based on your representations, each of the stores in question here has an address located in Wake County. Therefore, the Department determines that the business locations of these stores are Wake County and that sales sourced under G.S. 105-164.4B(a)(1) should be sourced to Wake County. This ruling does not address the treatment for sales and use tax purposes of an establishment that has multiple addresses that fall within different counties.

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

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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.

Sincerely,

[REDACTED]
General Counsel
North Carolina Department of Revenue

[REDACTED]