



## North Carolina Department of Revenue

Beverly Eaves Perdue  
Governor

David W. Hoyle  
Secretary

November 30, 2012

FEIN: [REDACTED]  
Account ID: [REDACTED]

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

Attention: [REDACTED]

Re: [REDACTED]  
Private Letter Ruling Request

Dear [REDACTED]

We have your letter dated September 4, 2012, in which you request a ruling from the Department regarding the taxation of your above-referenced client's sales of incontinence products.

You advise that your client is a "retail supplier of medically necessary [REDACTED] supplies, [REDACTED] products, [REDACTED] supplies and incontinence products." The incontinence products include disposable under pads, undergarments, underwear liners, adult diapers, and diaper pull-ups. A portion of your client's sales are made to customers for whom the charges for the products are reimbursed by the State's Medicaid program through the North Carolina Department of Health and Human Services. You have asked whether your client's sales of incontinence products are exempt from sales and use tax as sales of prosthetic devices or whether they are exempt when sold pursuant to a doctor's prescription.

N.C. Gen. Stat. § 105-164.13(12) provides an exemption from sales tax on sales of any of the following items:

- a. Prosthetic devices for human use.
- b. Mobility enhancing equipment sold on prescription.
- c. Durable medical equipment sold on prescription.
- d. Durable medical supplies sold on prescription.

N.C. Gen. Stat. § 105-164.3(30b) defines "prosthetic device" as "[a] replacement, corrective, or supporting device worn on or in the body that meets one of the conditions of this subdivision. The term includes repair and replacement parts for the device." The conditions of the subdivision are as follows:

- a. Artificially replaces a missing portion of the body.
- b. Prevents or corrects a physical deformity or malfunction.
- c. Supports a weak or deformed portion of the body.

N.C. Gen. Stat. § 105-164.3(21a) defines "mobility enhancing equipment." N.C. Gen. Stat. §§ 105-164.3(8b) and (8c) set out the definitions of "durable medical equipment" and "durable medical supplies."

North Carolina is a member state of the Streamlined Sales Tax Agreement, a multistate effort to simplify and modernize sales and use tax administration. The Streamlined Sales Tax Governing Board published a Health

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Care Item List Addendum in 2007 which lists various health care items, describes the purposes of the items, and specifies how member states should classify the items. The document shows that "Diapers – Adults" should be classified by member states as "clothing." A copy of this document is enclosed.

Pursuant to the provisions of N.C. Gen. Stat. §§ 105-164.3 (8b) and (8c), 105-164.3(21a), and 105-164.3(30b), as well as the determination by the Streamlined Sales Tax Governing Board regarding the classification of adult diapers, your client's sales of incontinence products are not sales of prosthetic devices, mobility enhancing equipment, durable medical equipment, or durable medical supplies. Therefore, the incontinence products are not exempt from tax under the provisions of N.C. Gen. Stat. § 105-164.13(12) but are subject to the State and applicable local rates of sales or use 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.

If you have any questions, you may reach me at the number listed below.

Very truly yours,

Administration Officer  
Sales and Use Tax Division

Enclosure

cc: , Director of Sales and Use Tax Division