

COPY

North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 10, 2013

[REDACTED]

Attention: [REDACTED]

Re: Private Letter Ruling

Dear Ms. [REDACTED]

We received your letter dated August 23, 2010 in which you request a private letter ruling as to the applicability of North Carolina sales and use tax to receipts from the sale of art products which you fabricate in your business and sell via an online store as well as at craft shows and flea markets.

In your letter you state that "I recently applied for a sales and Use Registration # to conduct business as [REDACTED] in [REDACTED] County. I am an artist/crafter who will be selling my art via an online store and at craft shows and flea markets." You also state in your letter "since I already pay sales tax on the materials I purchase to fabricate my art and products, may I have a letter ruling on collecting sales tax on labor for my art and products? Are there any other tax liabilities I need to consider?"

N.C. Gen. Stat § 105-164.4(a) imposes a privilege tax on a retailer's net taxable sales or gross receipts, as appropriate at the general rate of tax. Effective, July 1, 2011, the general State rate of sales tax was reduced from 5.75% to 4.75%. N.C. Gen. Stat § 105-164.4(a)(1) states that the general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section. N.C. Gen. Stat. § 105-164.8(c) provides, in part, "[a] retailer who is required to collect the tax [at the general State rate of sales tax] must collect . . . a local sales tax. . . . A 'local sales tax' is a tax imposed under Chapter 1096 of the 1967 Sessions Laws or by Subchapter VIII of [Chapter 105]." The local rates of tax vary depending on the location of the sale or where the purchaser or the purchaser's donee takes title to the property purchased from your business.

N.C. Gen. Stat § 105-164.3(37) defines "sales price," in part, as "the total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money." The term includes all of the following: (1) The retailer's cost of the property sold. (2) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer. (3) Charges by the retailer for any services necessary to complete the sale. (4) Delivery charges. (5) Installation charges. . . ."

Pursuant to N.C. G.S. 105-164.4a, the gross receipts received by your firm from the sale of art and other fabricated products are subject to North Carolina sales and use tax at the general State and local rates of tax. The tax is due on the sales price, as defined in N.C. Gen. Stat 105-164.3(37), of each item of tangible

personal property that is sold at retail. Sales and Use Tax Technical Bulletin Section 41-2 A. 1 provides, in part, “[w]hen the sale is made by the person who fabricated the article from materials which he furnished, either directly or indirectly, the total sales price, including the charge for labor performed and services rendered in producing such article, is subject to the tax.”

N.C. Gen. Stat. § 105-164.4B(a) provides, in part, “[w]hen a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.” Additionally, “[w]hen a purchaser or a purchaser’s donee receives a product at a location specified by the purchaser and the location is not a business location of the seller, the sale is sourced to the location where the purchaser or the purchaser’s donee receives the product.”

In that you reference that you may make online sales, please be advised that pursuant to Sales and Use Tax Technical Bulletin Section 42-1 A. “[s]ales with the State of tangible personal property that the vendor delivers to the purchaser at a point outside the State, or that the vendor delivers to a common carrier or to the mails for transportation and delivery to the purchaser at a point outside the State, are not subject to the applicable local sales or use tax if the property is not returned to a point within the State, and the vendor furnishes acceptable proof of transportation to a point outside the State.”

Your firm should not pay sales and use taxes on the purchase of the raw materials used to fabricate the items of the tangible personal property that will be offered for sale. Your firm should provide a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, to its vendors as the vendors’ authority to exempt the transactions from 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,

Administration Officer III
Sales and Use Tax Division

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