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SC INFORMATION LETTER #92-19

TO: Vickie Jinnette Ringer
Public Information Director

FROM: Sally Major, Tax Analyst
Tax Policy and Appeals Department

DATE: June 3, 1992

SUBJECT: Nexus - Quill Corp. v. North Dakota
(Use Tax)

REFERENCE: Act 612, Part II, Section 29 of 1990
Act 168, Section 10 of 1991

AUTHORITY: S.C. Code Section 12-4-320 (1991 Supp.)
SC Revenue Procedure #87-3

SCOPE: An Information Letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Commission which are not related to a specific set of facts.

On May 26, 1992, the United States Supreme Court decided the case of Quill Corp. v. North Dakota, No. 91-194 (1992). This case concerns the collection of use tax by a mail order company who did no business in North Dakota other than sell items through mail order catalogues with delivery by common carriers. In Quill, the Supreme Court found that requiring mail order companies to collect the use tax when the companies have no physical contact with the state is a violation of the Commerce Clause of the United States Constitution. The Court further recognized that the taxation did not violate the Due Process Clause and, therefore, Congress could in the future enact legislation which would require that mail order companies collect the use tax. If Congress affirmatively acts by enacting legislation allowing such taxation, the Commerce Clause would not be violated.

On June 13, 1990, the Governor approved a law which declared South Carolina an "economic presence" state with respect to the use tax. Under the statute, any out-of-state retailer who exploits the South Carolina market through mail order sales, television shopping networks and shows, telephone "900" service, and other marketing techniques, must collect and remit the use tax. The statute also provided that the South Carolina Tax Commission could impose a moratorium period through January 1, 1992, with respect to the enforcement of the law. In the

next legislative session, the legislature extended the permissible period for the moratorium through July 1, 1996. In Information Letter #90-29, the Commission indicated that it would not enforce collection of use tax based on "mere economic presence" until a Revenue Procedure is issued by the Commission concerning the application and implementation of this law.

As a result of the Quill decision, the Commission will continue its moratorium and not require the collection of the use tax for companies which have merely an "economic presence" in this State. The State will continue to follow the guidelines provided in Revenue Ruling #89-13 for determining when out-of-state retailers are required to collect and remit the use tax. If Congress does enact legislation which would allow states to require out-of- state retailers with no physical presence in a state to collect and remit use tax without violating the Commerce Clause, the Commission will end the moratorium period and begin to enforce the State's "economic presence" statute.

NOTE: Corporations who are not currently required to collect use taxes may voluntarily register to collect and remit the use tax. Contact Al Nix at (803) 737-4814 for information concerning registration.