North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

September 30, 2020

[redacted]

Re: Private Letter Ruling Request – Proper Sourcing of Receipts under N.C. Gen. Stat. § 105-130.4(*l*)

Dear [redacted]:

This letter is in response to your letter dated January 23, 2020, wherein you requested a private letter ruling on behalf of clients, [redacted] and [redacted]. Specifically, you requested that the North Carolina Department of Revenue ("Department") provide guidance as to the proper treatment of: (i) sales from [redacted] to [redacted], (ii) sales from [redacted] to unaffiliated wholesalers or retailers, and (iii) sales from [redacted] to the [redacted] for subsequent sale from the [redacted] to unaffiliated wholesalers or retailers under the applicable North Carolina Statute.

The statement of facts submitted for the Department's consideration of your request is summarized as follows:

[redacted] is a wholly-owned subsidiary of [redacted] and operates a warehouse in North Carolina in furtherance of its wholesale/distribution activities in that state as well as other states. [redacted] holds other wholly-owned subsidiaries (the [redacted]) that also act as wholesalers/distributors in selling tangible personal property throughout the nation from various distribution centers located outside of North Carolina.

[redacted] is a wholly-owned subsidiary of [redacted] and owns a line of private/control label products ("products") for which it contracts with third parties to manufacture or otherwise supply on [redacted] behalf.

Historically, [redacted] directed third-party manufacturers/suppliers to sell and ship much of its products to third-party public warehouses (located outside of North Carolina). Those third-party public warehouses then sold and shipped the products to [redacted] and the [redacted]. Under that distribution model, [redacted] received its receipts from the third-party manufacturers/suppliers who directly billed [redacted] and the [redacted].

In order to streamline distribution and reduce intermediary costs, [redacted] new distribution model includes selling the products directly to [redacted]. For products [redacted] sells to [redacted] directions are for the manufacturers/suppliers to deliver the products to [redacted] warehouse in North Carolina, wherein such warehouse serves as a consolidation warehouse for the [redacted] products. After [redacted] receives the products purchased from [redacted] at its consolidation warehouse in North Carolina, it warehouses, sorts, and aggregates the products, preparing them for later sale to unaffiliated wholesalers or retailers located both inside and outside of North Carolina, or to the [redacted] who in turn sell to unaffiliated wholesalers or retailers located outside of North Carolina.

Sales from [redacted] to [redacted]

[redacted] sells and ships (or directs third-party manufacturers/suppliers to ship) products to [redacted] consolidation warehouse in North Carolina. Title to and risk of loss for the products pass to [redacted] at the delivery location in North Carolina. [redacted] products that are sold to [redacted] are always delivered to [redacted] in North Carolina. [redacted] has no direction or control over the further distribution of the products after [redacted] delivers the products to [redacted] consolidation warehouse in North Carolina.

Sales from [redacted] to Unaffiliated Wholesalers or Retailers

After [redacted] receives the products at its consolidation warehouse in North Carolina, it warehouses, sorts, and aggregates the products. [redacted] subsequently sells those products in a variety of ways, including directly to unaffiliated wholesalers or retailers. Of the products sold by [redacted] to unaffiliated wholesalers or retailers:

- A portion of the products will be sold by [redacted] to unaffiliated wholesalers or retailers for delivery to the wholesalers/retailers' locations in North Carolina;

- A portion of the products will be sold by [redacted] to unaffiliated wholesalers or retailers for delivery to the wholesalers/retailers' locations outside of North Carolina.[1]

In both factual scenarios described above, title to and risk of loss for the products pass to the unaffiliated wholesalers or retailers at the delivery location of each wholesaler/retailer, irrespective of whether that location is in North Carolina or outside of North Carolina.

Sales from [redacted] to the [redacted]

[redacted] also sells the products to the [redacted]. The [redacted] then sell the products to unaffiliated wholesalers or retailers located outside of North Carolina.

- A portion of the products are sold by [redacted] to the [redacted] and shipped from North Carolina for delivery to the [redacted] locations outside of North Carolina. [redacted] transports the products to the [redacted] locations outside of North Carolina. The [redacted] subsequently re-sell the products from facilities located outside of North

[1] Throughout this letter, when the phrase "outside of North Carolina" is used to describe [redacted] and wholesalers or retailers, it is intended to convey that the person is not within the territorial limits of North Carolina. When "outside of North Carolina" is used to describe the location of products, it is intended to convey that the products are shipped, delivered, transported, received, or otherwise accepted at a physical location not within the territorial limits of North Carolina.

Carolina to unaffiliated wholesalers or retailers for delivery to the wholesalers/retailers' locations outside of North Carolina;

- A portion of the products are sold by [redacted] to the [redacted] and picked up by the [redacted] at [redacted] consolidation warehouse in North Carolina. After picking up the products from [redacted] consolidation warehouse, the [redacted] transport the products to their locations outside of North Carolina for subsequent sale to unaffiliated wholesalers or retailers outside of North Carolina.

For the products sold by [redacted] to the [redacted], title to and risk of loss for the products pass as follows: i) if [redacted] ships the products to a [redacted] located outside of North Carolina, title to and risk of loss for the products pass at the delivery location of that [redacted], outside of North Carolina; and ii) if a [redacted] picks up the products from [redacted] consolidation warehouse in North Carolina, title to and risk of loss for the products pass at [redacted] consolidation warehouse in North Carolina.

For the products sold by the [redacted] to unaffiliated wholesalers or retailers, title to and risk of loss for the products pass at the delivery location of each wholesaler/retailer as just described, at locations outside of North Carolina.

RULINGS REQUESTED:

(a) [redacted] receipts arising from sales of products by [redacted] to [redacted] which [redacted] ships (or directs third-party manufacturers/suppliers to ship) to [redacted] consolidation warehouse located in North Carolina constitute both (i) total sales in North Carolina during the income year and are therefore included in the sales factor numerator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted] and (ii) total sales everywhere during the income year and are therefore included in the sales factor denominator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted].

Department's Response: We agree. Pursuant to the aforementioned statute and the Department's regulation, 17 NCAC 05C.1005, receipts from the sales of tangible personal property are in this State if the property is delivered or shipped to a purchaser within this State regardless of the f.o.b. point or other conditions of sale. The property shall be deemed to be delivered or shipped to a purchaser within this State if the recipient is located in this State, even though the property is ordered from outside this State. In this scenario, the products sold by [redacted] are shipped to [redacted] consolidated warehouse located in North Carolina. Therefore, the receipts should be sourced to the sales factor numerator.

For purposes of determining the denominator of the sales factor, the term "sales" means generally all gross receipts derived by a taxpayer from transactions and activities in the course of its regular trade or business operations which produce apportionable income within the meaning of N.C. Gen. Stat. § 105-130.4(a)(1). Therefore, these receipts should be included in the denominator of the sales factor.

(b) With respect to products originally purchased from [redacted] and shipped to [redacted] consolidation warehouse located in North Carolina, [redacted] receipts arising from sales of these products to unaffiliated wholesale or retail customers located outside of North Carolina (i) DO NOT constitute total

sales in North Carolina during the income year and are therefore not included in the sales factor numerator under N.C. Gen. Stat.§ 105-130.4(*l*) for [redacted]; but (ii) do constitute total sales everywhere during the income year and are therefore included in the sales factor denominator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted].

Department's Response: We agree. In this scenario, [redacted] is the seller of the property and the purchasers are located outside of North Carolina. If the property is shipped to the purchasers outside of North Carolina, then the receipts should not be included in the numerator of the sales factor.

(c) With respect to products originally purchased from [redacted] and shipped to [redacted] consolidation warehouse located in North Carolina, [redacted] receipts arising from sales of these products to unaffiliated wholesale or retail customers located in North Carolina constitute both (i) total sales in North Carolina during the income year and are therefore included in the sales factor numerator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted]; and (ii) total sales everywhere during the income year and are therefore included in the sales factor denominator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted].

Department's Response: We agree for reasons stated in the response to (a) above.

(d) With respect to products originally purchased from [redacted] and shipped to [redacted] consolidation warehouse located in North Carolina, [redacted] receipts arising from sales of these products to the [redacted] (for subsequent sale from the [redacted] to unaffiliated wholesalers or retailers outside of North Carolina) that [redacted] pick up at [redacted] consolidation warehouse in North Carolina, constitute both (i) total sales in North Carolina during the income year and are therefore included in the sales factor numerator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted]; and (ii) total sales everywhere during the income year and are therefore included in the sales factor denominator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted].

Department's Response: We disagree. In North Carolina, receipts from the sale of tangible personal property are sourced to the numerator of the sales factor if the ultimate destination of the property is in this State. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Assuming that [redacted] knows the destination of the tangible property when [redacted] pick up the property at its consolidated warehouse, then the receipts from the sale of the property should be sourced to the destined location. If [redacted] does not know the destination of the property after [redacted] pick up the property, then the receipts should be sourced to the numerator of the sales factor.

With regard to the computation of the denominator, the receipts derived from the sale of tangible property to [redacted] affiliates should be included in the denominator of the sales factor since they were earned in the regular course of [redacted] business. See the response to (a) above for an explanation of the denominator.

(e) With respect to products originally purchased from [redacted] and shipped to [redacted] consolidation warehouse located in North Carolina, [redacted] receipts arising from sales of these products to the [redacted] (for subsequent sale from the [redacted] to unaffiliated wholesalers or retailers outside of North Carolina) that [redacted] delivers to [redacted] outside of North Carolina (i) DO NOT constitute total sales in North Carolina during the income year and are therefore not included in the sales factor numerator under N.C. Gen. Stat. § 105- 130.4(*l*) for [redacted]; but (ii) do constitute total sales everywhere during the income year and are therefore included in the sales factor denominator under N.C. Gen. Stat. § 105-130.4(*l*) for [redacted].

Department's Response: We agree for reasons provided in the response to (b) above.

This ruling answers the questions presented in the ruling request and does not address any other issues unrelated to the questions. It is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. Your statement of facts and our findings are subject to audit verification. If the facts and circumstances given are inaccurate or if there are other facts that were not disclosed that might cause the Department to reach a different conclusion, the taxpayer requesting this ruling may not rely on it. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. 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.

Should you have any questions, please contact me.

Very truly yours,

[redacted]

Bobby L. Weaver, Jr., Administrative Officer
Corporate Tax Division
Telephone: (919) 814-1163
Fax: (919) 733-1821