



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

June 26, 2017

[REDACTED]

Re: [REDACTED] and [REDACTED] County Board of Education Private Letter
Ruling Request
Account ID: [REDACTED]
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a written determination on behalf of your client, [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request as well as any supplemental information provided.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished by you on behalf of Taxpayer. This written determination is applicable only to the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued on behalf of by the Department.

Overview and Relevant Facts

You advise that "[i]n 2006, [Taxpayer] and the [REDACTED] County Board of Education ["Agent"] entered into an interlocal agreement which contemplated the [Agent] transferring title of school sites to [Taxpayer] by deed, to facilitate the recovery of sales and use tax refunds on building materials and supplies purchased indirectly by [Taxpayer] for school construction and renovation projects. To reduce transaction and recording costs, [Taxpayer] and [Agent] are considering transferring these school sites to [Taxpayer] by lease instead of by deed. The parties would enter into a new interlocal agreement authorizing transfers by lease."

Issue

Would Taxpayer have a sufficient leasehold interest in Agent's real property sufficient to claim sales and use tax refunds on school construction or renovation projects under the provisions of N.C. Gen. Stat. § 105-164.14(c) if the parties enter into valid lease agreements?

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Applicable Statutes and References

Under Article 5 ("Article") of the North Carolina Revenue Act ("Act")¹, N.C. Gen. Stat. § 105-164.1 *et. seq.* and Subchapter VIII: Local Government Sales and Use Tax, State, applicable local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer's net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the percentage rates listed in subdivision N.C. Gen. Stat. § 105-164.4(a). N.C. Gen. Stat. §§ 105-164.3(1k), 105-164.3(9), 105-164.3(14), 105-164.3(24), 105-164.3(35), 105-164.3(46), 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.14(c) allows certain governmental entities "an annual refund of sales and use taxes paid by it under [Article 5 of the Act] on direct purchases of tangible personal property and services. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of [N.C. Gen. Stat. § 105-164.14(c)]. The refund allowed under [N.C. Gen. Stat. § 105-164.14(c)] does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year." N.C. Gen. Stat. § 105-164.14(d) provides that "[r]efunds applied for more than three years after the due date are barred." Additionally, N.C. Gen. Stat. § 105-164.14(d1) provides that the refund authorized by N.C. Gen. Stat. § 105-164.14(c) "do[es] not apply to purchases of alcoholic beverages, as defined in N.C. Gen. Stat. § 18B-101.

The provisions of N.C. Gen. Stat. § 105-164.14(c) apply to a county. N.C. Gen. Stat. § 105-164.14(c)(1).

The State refund provisions as are contained in N.C. Gen. Stat. § 105-164.14(c) applies to local sales and use tax authorized to be levied and imposed under Subchapter VIII of the Act. N.C. Gen. Stat. §§ 105-467, 105-468, 105-483, 105-498. [REDACTED]

Ruling

While we cannot advise you as to whether the agreements entered into by and between Taxpayer and Agent are valid agreements between the parties involved, the Department can advise Taxpayer regarding sales and use tax issues. N.C. Gen. Stat. § 105-164.14(c) provides for annual refunds of sales and use taxes paid by the governmental entities named therein on direct purchases of tangible personal property and services, except for purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. Sales and use tax liability indirectly incurred by a governmental entity on

¹ References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.

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building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity. If Taxpayer leases school sites and/or school buildings for the purpose of constructing and/or repairing public schools, Taxpayer would be entitled to include the tax paid by contractors on eligible building materials in its annual claim for refund.

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.

Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division