North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

August 11, 2017

[redacted]

Re: 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 [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 to the Department.

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 the Department.

Overview/Relevant Facts

Taxpayer "operates [redacted] hotels in North Carolina. [Taxpayer] offers guests who stay at least 30 consecutive days a promotional discount. This discount can only be used once per stay. In an attempt to take advantage of this discount multiple times, a guest staying 120 days will check out – and immediately check back in – after 30, 60, and 90 days. This entitles the guest to use the discount four times. When checking out/checking in, the guest will not vacate his room."

Issue

For purposes of the exemption from sales or use tax for the rental of an accommodation for 90 days or longer in N.C. Gen. Stat. § 105-164.4F(e)(2), is the transaction illustrated above treated as 1) four separate stays of 30 days each or 2) one stay of 120 days?

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., Subchapter VIII: Local Government Sales and Use Tax, and Chapter 1096 of the 1967 Session Laws ("collectively Local"), 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. § 105-164.4(a)(3) provides the "general rate applies to the gross receipts derived from the rental of an accommodation. The rentals are taxed in accordance with [N.C. Gen. Stat. §] 105-164.4F." As provided by Subchapter VIII and Chapter 1096 of the 1967 Session Laws, rental of accommodations subject to the general State rate of sales and use tax are subject to the applicable Local and transit rates of sales and use tax.

N.C. Gen. Stat. § 105-164.4F(b) states, in part, that "[t]he gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4." N.C. Gen. Stat. § 105-164.4F(a)(1) defines "accommodation" as "[a] hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual." N.C. Gen. Stat. § 105-164.4F(e)(2) exempts from sales and use tax "[a]n accommodation supplied to the same person for a period of 90 or more continuous days."

N.C. Gen. Stat. § 105-164.228.90(b)(5) defines "person," in part, as "[a]n individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit."

Ruling

The gross receipts derived from Taxpayer's rental of an accommodation to the same person for a period of 120 continuous days are not subject to sales and use tax, no matter that said person may check out and then immediately check back in on the same day every 30 days in order to take advantage of promotional discounts offered by Taxpayer to guests who stay at least 30 consecutive days. Unless there is a lease or other document that requires the person to rent the accommodation for 90 or more continuous days, generally a retailer of an accommodation rental will collect sales tax on the gross receipts derived from the rental until the accommodation has been rented to the person for 90 continuous days. Where sales tax is collected from a person who stays for 90 continuous days, the sales tax collected may be refunded or credited to the person and the provisions of N.C. Gen. Stat. § 105-164.11(a) apply.

In accordance with N.C. Gen. Stat. §105-164.11(a), tax collected for any period that is in excess of the total amount that should have been collected must be remitted to the Secretary of Revenue. To the extent Taxpayer refunds or credits the overcollected tax to its customer, Taxpayer may request a refund from the Secretary of Revenue or take a credit against the sales and use tax liability for the filing period in which the refund or credit to the person occurs. Taxpayer must maintain complete records to substantiate any eligibility for the 90 continuous days' occupancy exclusion for the rental of an accommodation to a person from sales and use tax.

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.

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