



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

August 15, 2017

[REDACTED]

Re: Private Letter Ruling

Taxpayer: [REDACTED]

Taxpayer's FEIN: [REDACTED]

Account #: [REDACTED]

Dear [REDACTED]:

The Department received the request for a private letter ruling on Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, your letter on behalf of [REDACTED] ("Taxpayer") dated November 7, 2016, a sample invoice between Taxpayer and a customer as well as the corresponding sample statement issued by Taxpayer to the customer.

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.

Overview and Relevant Facts

In your letter you advise "[w]e have had a few customers who complained that we are not calculating our sales tax correctly." Basically, you indicate that the customers' complaints relate to your company taxing prompt pay discounts that are not trade discounts. You advise that "[d]iscounts are setup under customer maintenance as a terms discount. At the end of the month the customer receives a statement where the discount is calculated on the gross sales of the customer. This discount is printed at the top of our statement. This discount is only given if the payment is received by the 15th of the month. If payment is not received there is a finance charge applied at the end of the month."

In regards to "Terms Discount", according to the attachment from your software company you submitted to the Department along with your request, "[t]he system automatically calculates a discount on the entire sale as an incentive for prompt payment. If the customer pays the invoice

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promptly, the discount is applied.” Customers have expressed to you that their software requires the tax to be taken off prior to calculating the prompt payment discount extended to them.

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, State, 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)(1) states 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. § 105-164.3(37) defines the term “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 definition of “sales price” further provides that the term does not include “[d]iscounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.”

Pursuant to NC AC 07B .0108, “[a] cash discount is a reduction in the sales price, and the tax must be computed and paid on the sales price after allowance for the cash discount. Generally, a cash discount is a deduction from the sales price allowed for prompt payment of the bill. Likewise, cash discounts are not a part of the purchase price on which tax is due. A person who purchases tangible personal property for use or consumption in this State is liable for remitting the tax due on the purchase price after allowance for the cash discount.” Likewise, Sales and Use Tax Technical Bulletin Section 34-1 B. last revised March 1, 2007, provides “[a] ‘cash discount’ means a deduction from the sales price the seller allows the customer due to prompt payment of an invoice. The definition of ‘sales price’ excludes cash discounts; therefore, the tax is computed on the amount of the sale less the cash discount allowed.”

N.C. Gen. Stat. § 105-164.11 provides, in part, that “[w]hen tax is collected for any period on a taxable sale in excess of the total amount that should have been collected or is collected on an exempt or nontaxable sale, the total amount collected must be remitted to the Secretary.”

Ruling

The sample sales invoice provided to the Department issued by Taxpayer to the customer reflects the taxable sales price of items sold by Taxpayer to the customer in the amount of \$7,771.16 with sales tax at the rate of 6.75% in the amount of \$524.55 charged by Taxpayer on the taxable amount and reflected on the sales invoice. The statement issued by Taxpayer to the customer reflects a “NEW BAL” of \$8,295.71 and a “DISC” amount of \$248.87. The notation 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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the statement regarding the discount is "248.87 DISCOUNT ALLOWED PER TERMS: 3.00%/15TH DUE 15TH." Since Taxpayer does not know at the time of the sale if the customer will take advantage of the cash discount offered for early payment, the tax charged at the time of the sale and reflected on the invoice is correct. However, where a customer does take advantage of a cash discount (term discount) offered by Taxpayer for prompt or early payment of a balance due on an invoice, sales and use tax is due on the gross sales price less the discount allowed by Taxpayer.

The information titled "Discounts" provided by you and identified as a document from your software provider indicates for "Terms Discounts" "[t]he system automatically calculates a discount on the entire sale as an incentive for prompt payment. If the customer pays the invoice promptly, the discount is applied. If a charge customer pays cash at the time of the sale the terms discount may be automatically applied immediately at the end of the sale (if set up in Options Configuration). Terms discounts are for selected customers only and are set up in Customer Maintenance." Taxpayer is encouraged to discuss the operation of the system with the software provider to ensure that a cash discount (term discount) taken by a customer is properly applied in the system in order to adjust the amount of tax liability due for a period in which a customer exercises the option and takes a cash discount.

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 letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling 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