



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

October 20, 2017

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Private Letter Ruling

Taxpayer: [REDACTED]

Taxpayer's FEIN: [REDACTED]

Dear [REDACTED]

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

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 Taxpayer and Taxpayer's representative 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 and Relevant Facts

Taxpayer advises it "is a [REDACTED] of apartments and/or hotel rooms. Similar to traditional travel agents, [Taxpayer] contracts with companies to select and negotiate the rental terms of apartments and/or hotel rooms on their behalf . . . [Taxpayer] contracts with its clients as accommodations seekers." The [REDACTED] between Taxpayer and a client states the client "[a]grees that [Taxpayer] is Client's agent only. Client, not [Taxpayer] is responsible for any hotel charges, taxes, fees and other charges for lodging. . . . [Client will] pay the quoted room cost, including the [REDACTED] per room, per night billing fee."

Taxpayer advises, "[Taxpayer] is not a rental agent as defined by the statute" In describing its business practices, Taxpayer advises its "business model operates as follows: [Taxpayer]

[REDACTED]
[REDACTED]
[REDACTED] books accommodations on the client's behalf."

"[Taxpayer's] clients use one of two methods to pay their charges to accommodation providers:

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Taxpayer categorizes accommodation providers into two categories, "[REDACTED]" and "[REDACTED]". "A [REDACTED] is a hotel that has entered into an agreement with [Taxpayer] for a [REDACTED] room rate and to provide for direct billing." The [REDACTED] ("Agreement") between Taxpayer and the accommodations provider states [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In the rare case of non payment [sic] by a client, [Taxpayer] will use every effort to assist hotel in collecting funds. However, if clients do not pay [Taxpayer] for hotel's invoices, hotel will seek collection directly from the company who occupied the room" and Taxpayer is not liable for payment of the hotel billings.

Additionally, Taxpayer advises "[a] [REDACTED] who has agreed to direct bill sends the bill directly to [Taxpayer] under the customer's name. If the [REDACTED] does not include the customer's name on the envelope as requested, [Taxpayer] first matches the customer based on the guest name, then processes the bill which includes auditing the bill for accuracy based on the room type reserved and rate reserved, and ensures no incorrect miscellaneous charges have been included on the folios) [sic]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Ultimately, [Taxpayer] audits and consolidates invoices and acts as a clearing house for payment."

Taxpayer advises "[t]here is no agreement for non-[REDACTED] hotels as those providers do not agree to terms for [REDACTED] " The process used with a non-[REDACTED] hotel is described as follows: "[Taxpayer] negotiates with several hotels for discounted room rates on behalf of its clients which [Taxpayer] presents to the client for selection. Once the client has selected the hotel it wishes to use, [Taxpayer] reserves the room on behalf of the client as the client's agent. Non [REDACTED] hotels may require upfront payment for the accommodations. In that instance, [Taxpayer] provides its credit card to front the money on behalf of the client. At the end of the client's stay at the hotel, the hotel issues a final invoice to the client via [Taxpayer]. [Taxpayer] audits the invoice for accuracy and forwards it to the client. The client reimburses [Taxpayer] for the upfront payment made by [Taxpayer] as well as [Taxpayer's] service charge of [REDACTED] per night. The client must also pay any additional charges incurred in excess of the room charge."

Taxpayer provides form letters for its clients to send to hotels on client's letterhead. One such letter states, in part, "[Client] is financially responsible to Hotel(s), through [Taxpayer], for all hotel guest rooms, tax and all damage charges incurred by our guests. We agree to pay such charges promptly through [Taxpayer]. [Taxpayer] will provide Hotel selection, rate negotiation,

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and process our direct billing. [Taxpayer] will make reservations for our guests, audit, approve Hotel charges and will process our payment to the Hotel(s)."

Issue

Is Taxpayer a "facilitator" pursuant to N.C. Gen. Stat. § 105-164.4F?

Applicable Statutes and References

N.C. Gen. Stat. § 105-164.1 *et. seq.*, and Subchapter VIII: Local Government Sales and Use Tax ("Local Tax"), impose the State, applicable local, and applicable transit sales and use taxes on a retailer's gross receipts derived from the rental of an accommodation sold at retail. N.C. Gen. Stat. §§ 105-164.3(34), 105-164.3(35), 105-164.3(36), 105-164.3(37), 105-164.4(a)(3), 105-467, 105-483, 105-498, 105-507.2, 105-509.1, 105-537. An accommodation is "[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(a)(1). A retailer is defined, in part, as "[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property for storage, use, or consumption in this State, or services sourced to this State." N.C. Gen. Stat. §§ 105-164.3(35). Additionally, a "retailer" includes "[a] person, other than a facilitator, required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.

Under N.C. Gen. Stat. § 105-164.4(a)(3), the general rate of sales tax applies to the "gross receipts derived from the rental of an accommodation. These rentals are taxed in accordance with N.C. Gen. Stat. § 105-164.4F." Under N.C. Gen. Stat. § 105-164.4F(b), "[t]he gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental." A facilitator is "[a] person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation." N.C. Gen. Stat. § 105-164.4F(a)(2). "The term [rental agent] includes a real estate broker, as defined in G.S. 93A-2." N.C. Gen. Stat. § 105-164.4F(a)(2). Additionally, N.C. Gen. Stat. § 105-164.4F(d) provides under the term "rental agent" that "[a] person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this Section."

The word "**agent**" is defined, in part, in the Merriam-Webster Dictionary as "one who is authorized to act for or in the place of another."

The word "**principal**" is defined, in part, in the Merriam-Webster Dictionary as "the person from whom an agent's authority derives."

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Ruling

From the information set forth in the Overview and Relevant Facts section above, a client enters into a written agreement for accommodation management services in which Taxpayer is an agent for its client ("the Principal") in the procurement of accommodations. A retailer of an accommodation invoices the Principal via Taxpayer, and Taxpayer audits the invoices, adds a \$ [REDACTED] consolidates invoices from accommodation retailers to the Principal, and sends a consolidated billing to the Principal. After the Principal funds the amount of the consolidated billing, Taxpayer pays accommodation retailers for accommodations rented by the Principal.

In certain instances, the retailer of an accommodation may require prepayment for the rental of the accommodation. In such instances, Taxpayer as the Principal's agent provides its credit card for payment of the rental of the accommodation, and Taxpayer is reimbursed by the Principal for such charges.

Taxpayer is not a facilitator as contemplated by N.C. Gen. Stat. 105-164.4F(a)(2) when acting as the Principal's agent in procuring accommodations, as discussed herein, on behalf of the Principal and processing the Principal's payment for accommodations.

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