



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 22, 2018

[REDACTED]
[REDACTED]
[REDACTED]
[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 for consideration.

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 and Relevant Facts

You advise Taxpayer "is a [REDACTED] retailer of [REDACTED] products. . . . [that] is introducing a new product ('Product') to help organize [REDACTED] of [its] customers ('Customer'). Product is a [REDACTED] [REDACTED] on the floor but not connected or attached in any manner to the floor that can be placed against walls or freestanding in the center of a closet. Product can be enhanced to include [REDACTED] amenities the Customer desires."

You state "Product is designed to Customer's specifications using actual [REDACTED] measurements from Customer. Depending on Customer's preference, Product can be placed freestanding in the center of a room, against a single wall or configured against multiple walls to give the appearance of wall-to-wall built in cabinetry."

You also state "[w]hen Product is placed against walls, it utilizes anti-tip brackets (resembling an L-bracket) to prevent damage and injury from tipping. The anti-tip bracket connects Product to the wall with two screws and generally consists of one anti-tip bracket per wall. Freestanding Product requires no anti-tip brackets connected to walls or additional safety features."

Taxpayer's "Product placed against a wall can be augmented with rear paneling of the same color and material as Product to give the appearance of an enclosed cabinet. If rear paneling is not chosen by Customer, the wall against which Product is placed is visible between shelves."

January 22, 2018

Page 2

You further state “[r]ear paneling is placed similar to Product in that it rests on the floor against the wall. Rather than an anti-tip bracket, it is secured using either two or four finishing nails, either one in each top corner or one in each of the four corners, to prevent shifting and tipping. After the paneling is placed against the wall, Product is placed on the floor adjacent to the paneling to give the appearance of a complete cabinet. Product’s anti-tip bracket is secured after placement against the rear panel.”

Taxpayer’s “Product is assembled onsite at Customer’s location by subcontractor’s [sic] working on behalf of Taxpayer. After assembly, Product is placed free-standing in the center of a room or against a wall according to design specifications. Wall-to-wall appearance is achieved by placing Product components adjacent to each other against each wall of the room. Decorative trim may be added across Product components to further give the appearance of built-in cabinetry.”

You advise that once “Product has been designed to Customer’s specifications, Customer is billed for 50% of the total cost of Product and related installation charges. After receipt of the initial payment, Taxpayer orders Product from the supplier (‘Supplier’). Supplier custom builds the components of Product to the design specifications as laid out by Taxpayer. Product components are shipped on a pallet from Supplier to Customer’s location. Given the size and weight of Product, Product is shipped in component pieces to be assembled onsite by [subcontractor on behalf of] Taxpayer. Product is not pre-assembled and taken apart for shipment by Supplier.” Additionally, you state that “the Customer does not get a receipt with the initial payment, they get something called a quote which is just like a receipt . . . [that] breaks out the installation portion of the charge.”

You state that “[u]pon completion of Product installation, the remaining balance is collected from Customer. Taxpayer presents Customer with a final receipt that separately states charges for Taxpayer’s assembly and placement costs (*i.e.*, ‘Installation’) and Taxpayer’s material costs for Product purchased from Supplier. Both installation and product costs include a profit markup.”

You further advise in your letter that “[d]isassembly and removal of Product is performed by reversing the steps used in the original installation. Should Customer desire to remove Product from its placement in the future, damage to the realty would be limited to two screw holes for each anti-tipping bracket installed and any small holes from finishing nails used to secure rear paneling.”

Issue

Are Taxpayer’s Product transactions with Customers in the State retail sales and subject to sales tax on the sales price or are such transactions subject to sales and use taxes as real property contracts?

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, 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) and the applicable local and applicable transit rates of sales and use tax. 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) provides, in pertinent part, the “general rate of tax applies to the sales price of each item or article of tangible

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.

January 22, 2018

Page 3

personal property that is sold at retail.” The general rate of tax is four and three-quarters percent (4.75%).

N.C. Gen. Stat. §105-164.3(35) defines the term “retailer,” in part, as “[a] person engaged in business of making sales at retail . . . of tangible personal property.”

N.C. Gen. Stat. §105-164.3(34) defines the term “retail sale or sale at retail” as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

N.C. Gen. Stat. §105-164.3(46) defines the term “tangible personal property,” in part, as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.”

N.C. Gen. Stat. §105-164.3(37) defines the term “sales price,” in part, as “[t]he total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented.” The term “sales price” includes the retailer’s cost of the property sold; the cost of materials used; labor or service costs; interest; losses; all costs of transportation to the retailer; all taxes imposed on the retailer; any other expense of the retailer; charges by the retailer for any services necessary to complete the sale; delivery charges; installation charges [emphasis added]; credit for trade-in; and certain discounts that are reimbursable by a third party and can be determined at the time of sale in the manner required by the statute.

Effective March 1, 2016, the exemption in former N.C. Gen. Stat. § 105-164.13(49) was repealed and “installation charges” are subject to sales and use tax, even if they are separately stated on the invoice or other document given to the purchaser at the time of sale, except as provided by N.C. Gen. Stat. § 105-164.13(61c) for certain installation charges on or after January 1, 2017.

N.C. Gen. Stat. §105-164.3(33e) defines the term “real property contract” as “[a] contract between a real property contractor and another person to perform a capital improvement to real property.”

N.C. Gen. Stat. § 105-164.3(33f) defines the term “real property contractor,” in part, as “[a] person that contracts to perform a real property contract in accordance with N.C. Gen. Stat. §105-164.4H.”

N.C. Gen. Stat. § 105-164.4H provides that “[a] real property contractor is the consumer of the tangible personal property . . . that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of the tangible personal property . . . or service sold at retail to a real property contractor unless a statutory exemption in [N.C. Gen. Stat. §] 105-164.13 or [N.C. Gen. Stat. §] 105-164.13E applies.”

Effective January 1, 2017, N.C. Gen. Stat. § 105-164.13(61c) provides an exemption from sales and use tax for “[i]nallation charges that are a part of the sales price of tangible personal property purchased by a real property contractor to fulfill a real property contract for an item that is installed or applied to real property, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the real property contractor at the time of the sale.”

Ruling

Taxpayer’s transactions with its Customers, regardless of whether or not a Customer is a real property contractor, are retail sales of tangible personal property. The sales price of Taxpayer’s Product sold at retail, including “installation charges,” is generally subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax on or after March 1, 2016.

January 22, 2018

Page 4

Effective January 1, 2017, the sales price of Taxpayer's installed Product sold at retail to a real property contractor to fulfill a real property contract is subject to sales or use tax; however, any installation charges separately stated and identified as such on the final receipt given to the real property contractor upon completion of the installation charges are exempt from sales and use tax. Generally, in order for the retailer to know that the sale of the installed Product is for a real property contract, a real property contractor should issue to Taxpayer a properly completed Form E-595E, Streamlined Sales and Use Tax Certificate of Exemption, and under number 5, Reason for exemption, check letter "L" and enter "N.C. Gen. Stat. § 105-164.13(61c)" or "installation charges for real property contract" as the basis of the exemption.

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