



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 30, 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.

You have inquired as to the sales and use tax liability imposed on Taxpayer's sales and rentals of scaffolding, and [REDACTED] and [REDACTED] services, due to the legislative changes in the sales and use tax laws effective March 1, 2016. Pursuant to the Department's Written Determination and Letters of General Applicability Policy, a taxpayer must inquire about a single issue in each request for a private letter ruling. Taxpayer's issues regarding its [REDACTED] and [REDACTED] services are separate issues which require additional information and documentation, therefore, the Department is only addressing Taxpayer's scaffolding transactions in this written determination.

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 scaffolding company that sells and rents scaffolding equipment. [Taxpayer] also provides optional services of delivery, erection, and dismantling relating to the sales and rentals of [its] scaffolding equipment." In North Carolina, Taxpayer's "rental activity is roughly [REDACTED] of [its] total revenue. [Taxpayer's] labor associated with rental, erecting and dismantling, constitutes [REDACTED] of revenue." Taxpayer has approximately [REDACTED] branches throughout the United States, "including one in [REDACTED] and one in [REDACTED]."

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You further advise that Taxpayer “itemize[s] charges on [its] invoices to [its] customers for the following items:

Scaffolding:

- Rental – rental charges for the equipment the customer is renting.
- Sales – charges for sales of equipment to customers . . .
- Freight – charges for delivery of equipment to and from the customer.
- Labor – charges for erect[ing] and dismantling of the equipment . . .
- Consumables – charges for consumables such as masks, gloves, shrink wrap, plywood, etc.”

Issue

What is the proper application of sales and use tax to Taxpayer’s itemized charges when it sells or rents scaffolding equipment to its customers?

Your initial letter states that “[Taxpayer does] not feel [its] business operations meet the definition of “retailer” and that Taxpayer believes it is “a retailer-contractor.”

Applicable Statutes and References

Under Chapter 105 of the North Carolina General Statutes, 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, N.C. Gen. Stat. § 105-463 *et. seq.*; 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 applicable State, 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.

Pursuant to N.C. Gen. Stat. § 105-164.4(a)(2) “[t]he applicable percentage rate [of tax] applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by [N.C. Gen. Stat. § 105-164.4(a)(1)] on the separate retail sale of the property.”

N.C. Gen. Stat. § 105-164.3(35) provides the term “retailer,” includes “[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” as well as “[a] person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property . . . for use in this State.”

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

N.C. Gen. Stat. § 105-164.3(36) defines the term “sale or selling,” in part, as “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term includes . . . [a] lease or rental.”

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 term “lease or rental” is defined, in part, in N.C. Gen. Stat. § 105-164.3(17) as “[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.”

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.” Pursuant to N.C. Gen. Stat. § 105-164.3(37)(a), the term “sales price” includes “[t]he retailer’s cost of the property sold . . . [t]he cost of materials used, labor or service costs, . . . all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer . . . [c]harges by the retailer for any services necessary to complete the sale . . . [d]elivery charges . . . [i]nstallation charges”

N.C. Gen. Stat. § 105-164.3(35a) defines the term “retailer-contractor” as “[a] person that acts as a retailer when it makes a sale at retail and as a real property contractor when it performs a real property contract.”

Ruling

Due to the scope of this ruling, the Department is not providing a determination as to whether the Taxpayer is considered to be only a “retailer” or is a “retailer-contractor.” However, pursuant to N.C. Gen. Stat. § 105-164.3(35a), Taxpayer “acts as a retailer when it makes a sale at retail.” In accordance with N.C. Gen. Stat. § 105-164.3(34), the term “retail sale or sale at retail” is defined as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” Therefore, pursuant to N.C. Gen. Stat. §§ 105-164.4(a)(1) and 105-164.4(a)(2) and Subchapter VIII: Local Government Sales and Use Tax, Taxpayer is liable for the general 4.75% State, applicable local (2% or 2.25%), and applicable transit (0.50%) rates of sales and use tax on the sales price of scaffolding and other tangible personal property sold at retail and on the gross receipts derived from the lease or rental of scaffolding and other tangible personal property in North Carolina. Additionally, the Taxpayer’s itemized charges listed on its invoices to its customers as set out above under Overview and Relevant Facts are part of the sales price of or gross receipts on which the Taxpayer is liable for sales and use tax no matter that such charges may be separately stated on an invoice or other document provided to a customer.

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