North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 30, 2018

[redacted]

Re: [redacted]
Private Letter Ruling Request
FEIN: [redacted]

Dear [redacted]

The Department has completed its review of your request for a written determination on behalf of your client [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 written determination is issued on behalf of the Department.

Overview and Relevant Facts

You state that "[Taxpayer] is a non-transplantable human tissue bank that provides services associated with the processing, storage, preparation and transportation of tissue specimen to clients for medical research and training purposes. The [Taxpayer's] customers include [redacted]. [Taxpayer] receives donated human bodies shortly after the time of death in order to provide the medical community with either complete, intact cadavers, or portions of human tissue according to its customers' specific needs associated with their training and research requirements. [Taxpayer] makes no payments to a donor's estate or their family for the donated remains. Highly skilled experts are used to remove parts in such a way as to preserve the integrity and usefulness of those bodies and requested tissue for specific

training and research purposes. Any tissues that are not recovered for qualified use are cremated and either disposed of or returned to the next of kin upon request."

Fees are charged by Taxpayer "to its customers in order to recover the costs associated with the acquisition, storage, preservation, preparation, and distribution of the tissue. Cost-plus pricing, rather than supply-demand metrics, establish service charges invoiced to the [Taxpayer's] customers. There are no charges for human tissue. [Taxpayer] is properly following the various longstanding nationwide legal and social norms which provide that there can be no sale of a human body or vital body parts. . . .

"The fees which [Taxpayer] lists and charges are an aggregate reflection of the services it provides related to its tissue removal, processing, preservation, storage, transportation, and disposal, and are allowable under North Carolina statutes. . . ."

In response to the Department's questions dated February 20, 2017, you advised that "[n]one of the costs associated with the activities and events . . . are ever charged to donors or their families. . . . The various services that [Taxpayer] assess[es] to its clients are based on these costs and enable [Taxpayer] [redacted] in order to provide this valuable service to the medical community." Taxpayer stated that "the only charges out to [Taxpayer's] customers are charges reflective of the services [Taxpayer] provide[s] in the procurement, processing, storage and providing of the body parts to the respective medical facilities."

Taxpayer's [redacted] form provides that "[a]ny recovered organs, tissues or parts of the body may be used indefinitely into the future for medical research, scientific use or student or physician education and surgical training, but not for public exhibition, though anonymized photos or video documents may be used for scientific publication or presentation. . . . [Taxpayer] is a [redacted] company and the tissue end users may be non-profit or for-profit, and tissues may be used either domestically or internationally."

Taxpayer's [redacted] Agreement defines "Client" as the party who is "engaged in the analysis of human tissue through, in part, the procurement of certain human tissues for its own research and development or educational purposes." The [redacted] Agreement provides that "[a]ll tissue service fees on [Taxpayer's] invoices pertain to 'service related fees'. . . In no way does the human tissue have monetary value. . . . [Taxpayer's] tissue related fees are reasonable fees associated with the processing of the tissue. . . " and the Client "shall not use Tissue for therapy or transplantation."

Issue

What is the proper sales and use tax treatment of Taxpayer's charges for the services it provides related to its procurement, processing, preservation, storage, and transportation of human tissue that its clients use for research and training purposes?

In support of your contention that the services associated with the human tissue specimens provided by Taxpayer to its clients are not subject to sales and use tax, you relied upon The National Organ Transplant Act of 1984, ("NOTA") which includes Title 42 U.S. Code § 274e and provides, in part, that "[i]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce" and provides that the "term 'valuable consideration' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the

expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ."

You also relied upon Section 11-5 of the Sales and Use Tax Technical Bulletins, Blood Products and Human Tissue which provides in part, "[t]ransactions involving the procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues, such as corneas, bones or organs, for the purpose of injecting, transfusing or transplanting any of them into the human body are deemed to be the rendition of a service and any charges therefor are exempt from sales or use tax pursuant to the provisions of [the Uniform Anatomical Gift Act, now the Revised Uniform Anatomical Gift Act]."

Statutes and References

Article 5 of Chapter 105 - Sales and Use Tax

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.

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, 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(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."

N.C. Gen. Stat. § 105-164.3(37) defines the term "sales price," in part, as "[t]he retailer's cost of the property sold. . . . [t]he cost of materials used, labor or service costs, interest, losses, 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."

N.C. Gen. Stat. § 105-164.13(12)(f) provides an exemption from the sales and use tax imposed on the sales at retail and the use, storage, or consumption in this State of "[h]uman tissue, eyes, DNA, or an organ."

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.

Article 16 of Chapter 130A - Revised Uniform Anatomical Gift Act

N.C. Gen. Stat. § 130A-412.4(3) defines the term "anatomical gift" as "a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education."

N.C. Gen. Stat. § 130A-412.4(4) defines the term "body part" as "an organ, an eye, or tissue of a human being. The term does not include the whole body."

N.C. Gen. Stat. § 130A-412.4(30) defines the term "tissue" as "a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education."

N.C. Gen. Stat. § 130A-412.4(31) defines the term "tissue bank" as "a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue."

N.C. Gen. Stat. § 130A-412.18(b) provides that "[a] person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part."

N.C. Gen. Stat. § 130A-412.30 provides, in pertinent part for sales and use tax purposes, that "[t]he procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes, the rendition of a service by every participating person or institution. Whether or not any remuneration is paid, **the service is declared not to be a sale** [emphasis added] of whole blood, plasma, blood products, blood derivatives or other human tissues, **for any purpose**." [Emphasis added.]

Human Tissue Donation Program

N.C. Gen. Stat. § 130A-413(a) provides "[t]he General Assembly finds that there is an increasing need for human tissues for transplantation purposes; that there is a continuing need for human tissues for the purposes of medical education and research; and that these needs are not being sufficiently filled at the present because of a shortage of human tissue donors. The General Assembly establishes a coordinated human tissue donation program to facilitate the acquisition and distribution of human tissues to promote the public health. For the purposes of this Part, the term 'human tissue' includes cadavers.

Ruling

Based on the information provided and the statutory references above, Taxpayer provides anatomical gifts to its clients. Taxpayer's charges to its clients are for the costs of services related to the procurement, processing, preservation, storage, and transportation of human tissue. Pursuant to N.C. Gen. Stat. § 130A-412.18(b), Taxpayer may charge a reasonable amount for these services.

Sales of human tissue are exempt from North Carolina sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(12)(f). However, Taxpayer states it is charging for its services and does not charge for the human tissue provided to its clients. The term "retailer" in N.C. Gen. Stat. § 105-

164.3(35) includes "services sourced to this State," the term "sale or selling" includes "the performance for consideration of a service," and the term "sales price" includes "[t]he cost of materials used, labor or service costs . . . any other expense of the retailer . . . [c]harges by the retailer for any services necessary to complete the sale."

N.C. Gen. Stat. § 130A-412.30 provides that services provided to procure, process, distribute, or use human tissue "for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes, the rendition of a service." This statute goes on to provide that "[w]hether or not any remuneration is paid, the service is declared not to be a sale" of human tissue "for any purpose." Additionally, the intent of the General Assembly with regard to the acquisition and distribution of "human tissues for the purposes of medical education and research" is provided in N.C. Gen. Stat. § 130A-413(a) as being necessary "to promote the public health." Section 11-5, Blood Products and Human Tissue, of the Sales and Use Tax Technical Bulletins provides that charges for services related to providing human tissue are exempt from sales and use tax. Therefore, Taxpayer's charges for the services it provides associated with its procurement, processing, preservation, storage, and transportation of human tissue do not constitute taxable services and are not subject to North Carolina,, local, and transit sales and use taxes.

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