



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 21, 2018

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

Re: Private Letter Ruling

Taxpayer: [REDACTED]

Taxpayer's 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.

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 to by the Department.

Overview and Relevant Facts

Taxpayer "performs automobile detailing services as an independent contractor on new and used automobiles held by unrelated automobile dealerships for sale to their customers." Taxpayer "contracts with the automobile dealerships to provide the detailing services and is paid an amount for each vehicle upon which the detailing services are performed. The automobile dealership does not list the detailing services separately as an item on the window sticker of the vehicle; however, the price of the detailing service is marked up by the dealership and included in the sales price of the vehicle. The dealership provides [Taxpayer] a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, to support the resale exemption."

In response to the Department's request for additional information, you provided a document via electronic mail on June 25, 2017 identified as "[REDACTED] Used Car Full Detail.docx." The document lists the following as representative of Taxpayer's automobile detail services ("Initial Detailing Services") for used automobiles held for sale in Taxpayer's customers' inventories:

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1. Degrease and clean motor.
2. Degrease and pressure wash door jams, gas cap and trunk jams.
3. Clean rims, fender wells and tail pipe.
4. Scrub bugs from bumper, windshield and mirrors.
5. Wash and dry entire vehicle.
6. Apply any Dealer decals and tags.
7. Wax vehicle (leave wax on).
8. Spray paint fender wells.
9. Wipe rims and shine tires.
10. Open all doors and pull floor mats out – pull front seats all the way forward.
11. Clean floor mats.
12. Spot vacuum if needed.
13. Pull spare tire out and clean trunk compartment.
14. Clean and shampoo back seats, carpets and door panels. Blow all trash from under the seats. Clean panel under back window.
15. Clean and shampoo all front seats, carpets and door panels.
16. Blow out and clean between seats.
17. Blow out and clean dash, steering wheel and glove box.
18. Clean headliner.
19. Vacuum entire vehicle.
20. Make sure carpets and floor mats are dry and put floor mats back in vehicle.
21. Clean all windows, visor mirrors and sunroof – apply Certified sticker.
22. Take wax off.
23. Showroom shine door jams and any wood grain or chrome.
24. Pull vehicle outside and inspect.

You provided another document via electronic mail on January 22, 2018 identified as “[REDACTED] New Car Full Detail.pdf.” with respect to detail services performed on new automobiles. The document lists the following as representative of Taxpayer’s automobile detail services (“Initial Detailing Services”) for new automobiles held for sale in Taxpayer’s customers’ inventories:

Exterior

1. Remove protective coatings.
2. Check for damages.
3. Wash exterior.
4. Remove writing from tires.
5. Clean engine compartment.
6. Clean trunk compartment.
7. Apply [REDACTED] Exterior Protection.
8. Dry rims.
9. Dress tires.

Interior

10. Wipe door jams.
11. Remove plastic.
12. Vacuum interior.
13. Clean windows.
14. Wipe dash and console.

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15. Apply [REDACTED] Interior Protection.
16. Install hangtags.
17. Install decal.
18. Inspect vehicle.

Issue

The ruling request before the Department is do the Initial Detailing Services provided by Taxpayer for new and used automobiles held in inventory for resale by unrelated automobile dealerships in North Carolina qualify as sales for resale if the automobile dealerships provide a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, to Taxpayer?

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), 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. § 105-164.3(5) defines the term “consumer” as “[a] person who stores, uses, or otherwise consumes in this State tangible personal property, digital property, or a service purchased or received from a retailer or supplier either within or without this State.”

N.C. Gen. Stat. § 105-164.3(33/) defines the term “Repair, maintenance, and installation services,” in part, to include “the *activities* [emphasis added] listed in this subdivision and applies to tangible personal property, motor vehicle, digital property, and real property.” The listed activities included in the definition of “repair, maintenance, and installation services” include, “[t]o keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to *clean, wash, or polish property.*” [Emphasis added.]

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 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.”

N.C. Gen. Stat. § 105-164.3(49) defines the term “use” as, [t]he exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the

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 unless otherwise noted herein.

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purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser. The term does not include the following:

- a. A sale of property or a service in the regular course of business.
- b. A purchaser's use of tangible personal property or digital property in any of the circumstances that would exclude the storage of the property from the definition of 'storage' in subdivision (44) of this section."

N.C. Gen. Stat. § 105-164.3(52) defines "wholesale sale" as "[a] sale of tangible personal property, digital property, or a service for the purpose of resale. The term includes a sale of digital property for reproduction into digital or tangible personal property offered for sale. The term does not include a sale to a user or consumer not for resale or, in the case of digital property, not for reproduction and sale of the reproduced property."

N.C. Gen. Stat. § 105-164.4(a)(16) provides, "[t]he general rate [of sales and use tax] applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services and generally includes any tangible personal property or digital property that becomes a part of or is applied to a purchaser's property."

N.C. Gen. Stat. § 105-164.13(61a) provides an exemption from sales and use tax, in part, for "[t]he sales price of or the gross receipts derived from the repair, maintenance, and installation services . . . listed in this subdivision." The list of activities in the subdivision includes "[a]n item exempt from tax under . . . Article [5 of Chapter 105 of the North Carolina General Statutes]" but the exemption "does not apply . . . to a motor vehicle, except as provided under subdivision (62a)" of N.C. Gen. Stat. § 105-164.13.

N.C. Gen. Stat. § 105-164.13(61b) provides an exemption from sales and use tax for "[t]angible personal property, digital property, and services purchased for resale under an exemption certificate in accordance with G.S. 105-164.28 or under a direct pay certificate in accordance with G.S. 105-164.27A."

N.C. Gen. Stat. § 105-164.28(a) provides, in part, generally "a seller is not liable for the tax otherwise applicable if the Secretary determines that a purchaser improperly claimed an exemption, or if the seller within 90 days of the sale meets the following . . .

For a sale made in person, the seller obtains a certificate of exemption or a blanket certificate of exemption from a purchaser with which the seller has a recurring business relationship. If the purchaser provides a paper certificate, the certificate must be signed by the purchaser and state the purchaser's name, address, certificate of registration number, reason for exemption, and type of business. For purposes of this subdivision, a certificate received by fax is a paper certificate. If the purchaser does not provide a paper certificate, the seller must obtain and maintain the same information required had a certificate been provided by the purchaser."

N.C. Gen. Stat. § 105-164.28(b) provides, in part, "[i]f the Secretary determines that a certificate of exemption or the required data elements obtained by the seller are incomplete, the Secretary may request substantiation from the seller. A seller is not required to verify that a certificate of registration number provided by a purchaser is correct. If a seller does one of the following within

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120 days after a request for substantiation by the Secretary, the seller is not liable for the tax otherwise applicable:

- (1) Obtains a fully completed certificate of exemption from the purchaser provided in good faith. The certificate is provided in good faith if it claims an exemption that meets all of the following conditions:
 - a. It was statutorily available in this State on the date of the transaction.
 - b. It could be applicable to the item being purchased.
 - c. It is reasonable for the purchaser's type of business."

N.C. Gen. Stat. § 105-164.28(c) provides, "[t]he relief from liability under this section does not apply to a seller who does any of the following:

- (1) Fraudulently fails to collect tax.
- (2) Solicits purchasers to participate in the unlawful claim of an exemption.
- (3) Accepts an exemption certificate when the purchaser claims an entity-based exemption when the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller, and the claimed exemption is not available in this State.
- (4) Had knowledge or had reason to know at the time information was provided relating to the exemption claimed that the information was materially false.
- (5) Knowingly participated in activity intended to purposefully evade tax properly due on the transaction."

N.C. Gen. Stat. § 105-164.28(d) provides, "[a] purchaser who does not resell an item purchased under a certificate of exemption is liable for any tax subsequently determined to be due on the sale."

Ruling

The Initial Detailing Services provided by Taxpayer are "repair, maintenance, and installation services" as defined by N.C. Gen. Stat. § 105-164.3(33/). The sales price of or the gross receipts derived from Initial Detailing Services provided by Taxpayer for new and used automobiles held in inventory for resale by Taxpayer's unrelated automobile dealerships in North Carolina may be purchased using Form E-595E, Streamlined Sales and Use Tax Certificate of Exemption. An automobile dealer who does not resell the repair, maintenance, and installation services purchased under a certificate is liable for any tax determined to be due on the sale. For purposes of this ruling, the term "Initial Detailing Services" does not include routine car washes and cleaning services on motor vehicles held for sale by a third party where such car washes and cleaning services are to maintain the cleanliness of motor vehicles but do not otherwise increase the retail sales price on which the highway use tax is due at the time of application for a title.

Purchases of supplies that are used or consumed in providing the Initial Detailing Services described in your request, such as soaps, sprays, liquids, wipes or other similar tangible personal used to clean, shine, or protect the interior and exterior surfaces are subject to sales and use tax as such are for use by the Taxpayer or otherwise applied but are not considered a part of a motor vehicle held for sale.

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

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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