North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 19, 2018

[redacted]

Re: [redacted]
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 your client, [redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request as well as the 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 on behalf of the Department.

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. The written request received by the Department broadly stated, in part, "[w]e are requesting a ruling on whether some, none, or all of Taxpayer's operations and resulting revenue will be considered taxable if performed on or after January 1, 2017. More specifically, your request relates to the application of sales and use tax laws to the following type of transactions: (1) four available categories of car wash where the customer is directed into the automated mechanical wash by an attendant, and then drives out once the wash is complete and no services are provided by any car wash employee upon the vehicle's entrance or exit from the mechanical wash and (2) car washes by alternative structures where employees perform certain pre-wash duties in addition to the activities described in (1).

In addition the request for written determination references a monthly fee program and transactions for "fleet services, whereby a third party entity enters into a contract with [Taxpayer] for the provision of car wash services for its fleet vehicles. Each time a third party entity's vehicle uses the car wash service, an entry is made, and monthly billings are based on the number of car washes provided in any particular month." It is noted that a copy of such representative contract was not provided to the Department and if provided would be a request for a written determination about a separate transaction.

In an email dated November 22, 2017, [redacted] clarified that the single issue to be addressed is "what is the extent of the self-service car wash exemption from sales tax in North Carolina?"

Overview and Relevant Facts

You advise that "[Taxpayer] is engaged in the business of operating car washes throughout North Carolina (the 'State'). Revenue from providing car wash services has always been the primary source of revenue." You also state that "[c]ustomers typically purchase car wash services at the time the service is performed. However, [Taxpayer] does offer its *[sic]* customers the opportunity to purchase car washes in advance through a monthly fee program [unlimited wash passes] or gift cards. The revenue associated with these unlimited wash passes is considered prepaid car wash revenue. In addition, [Taxpayer] offers fleet services, whereby a third party enters into a contract with [Taxpayer] for the provision of car wash services for its fleet vehicles. Each time a third party entity's vehicle uses the car wash service, an entry is made, and monthly billings are based on the number of car washes provided in any particular month."

You further advise that "[a]t the car wash, the customer purchases one of four available categories of car wash. Once purchased, the customer . . . is directed into the automated mechanical wash by an attendant, and then drives out once the wash is complete. No services are provided by any car wash employee upon the vehicle's entrance into or exit from the mechanical wash. The customer may opt to vacuum the car himself with an available on-site vacuum. The customer has access to a coin operated floor mat cleaner. The customers also have access to cleaning cloths upon payment of a one-time fee."

You further advise, "[t]he employees' *[sic]* only task is to direct the customers into the wash to ensure the wash functions properly and no damage is caused to the car wash itself or the customer's vehicle.

Your request elaborates further to include "the addition of the following alternative structures under which [Taxpayer] continues to provide . . . washes but also employs a staff member to perform certain pre-wash duties:

(1) The employee directs the customer into the mechanical wash to ensure the vehicle enters properly. The employee does not touch the vehicle.
(2) Once the vehicle is lined up to enter the mechanical wash, the employee, for a time period of less than fifteen seconds before the car enters the wash, places a cover over the rear windshield wiper, if needed.
(3) Once the vehicle is lined up to enter the mechanical wash, the employee, for a time period of less than fifteen seconds before the car enters the wash, uses a brush to apply soap to the customer's bumper to improve the functionality of the automated car wash.

(4) Once the vehicle is lined up to enter the mechanical wash, the employee, for a time period of less than fifteen seconds before the car enters the wash, sprays the body and tires of the vehicle with a pressure washer to improve the functionality of the automated car wash.
(5) [Taxpayer] maintains business records in the ordinary course of business separately allocating the revenue attributable to the employee's actions.
(6) [Taxpayer] allows customers to select from different service options that would include one price for basic wash (which does not include any employee interactions from (1)-(4) above) and a second service option which includes the basic wash plus additional add-ons (including some or all of (1)-(4) above).
(7) Any combination of (1), (2), (3), (4), (5), and/or (6)."

Issue

To what extent is the sales price of or gross receipts derived from car washes subject to or exempt from sales and use tax in North Carolina?

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.

N.C. Gen. Stat. § 105-164.4(a)(16) provides the "general rate 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. § 105-467 provides, in part, "[t]he sales tax that may be imposed under [Article 39 of Chapter 105] is limited to a tax at the rate of one percent (1%) of . . . [a] retailer's net taxable sales and gross receipts that are subject to the general rate of sales tax imposed by the State under G.S. 105-164.4," with certain exceptions. The applicable local and transit sales and use taxes imposed under Articles 40, 42, 43, 46, and Chapter 1096 of the 1967 Session Laws are administered in the same manner as the taxes imposed under Article 5 with a few exceptions.

N.C. Gen. Stat. § 105-164.3(33*l*) defines the term "repair, maintenance, and installation services" as the following activities:

a. To keep or attempt to keep tangible personal property or a motor vehicle in working order to avoid breakdown and prevent repairs. Examples include to clean, wash, or polish property.
b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.

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.

c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
d. To install, apply, connect, adjust, or set into position tangible personal property, digital property, or a motor vehicle. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is a single repair, maintenance, and installation service. The term does not include an installation defined as a capital improvement pursuant to N.C. Gen. Stat. § 105-164.3(2c)d.
e. To inspect or monitor property or a motor vehicle, but does not include security or similar monitoring services for real property.

N.C. Gen. Stat. § 105-164.3(1i) defines the term "bundled transaction" in part as "[a] retail sale of *two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price*." [*Emphasis added.*]

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(61a)(k) provides that the sales of or gross receipts derived from self-service car washes and vacuums are exempt from sales and use taxes.

The term "self-service" is defined in the Merriam-Webster Dictionary as "the serving of oneself (as in a restaurant or gas station) with goods or services to be paid for at a cashier's desk or by using a coin-operated mechanism or a credit or debit card."

Ruling

The sales price of or the gross receipts derived from car washes sold at retail by a retailer engaged in business are repair, maintenance and installation services as the term "repair, maintenance, and installation services" is defined in N.C. Gen. Stat. § 105-164.3(33*l*). Therefore, the sales price of or the gross receipts derived from car washes are subject to the State, applicable local, and applicable transit rates of sales and use tax, unless an exemption from tax applies to a transaction.

N.C. Gen. Stat. § 105-164.13(61a) k. provides an exemption from sales and use taxes for the sales price of or the gross receipts derived from "[s]elf-service car washes and vacuums." The term "self-service car washes" **does not include** car washes where any activity is performed by an employee to refinish, restore, clean, wash, or polish property or to install, apply, connect, adjust, or set into position tangible personal property including, but not limited to, where an employee places a cover over the rear windshield wiper, uses a brush to apply soap to the customer's bumper, or sprays the body and tires of the vehicle with a pressure washer, regardless of the amount of time these activities may take to be performed by an employee. Thus, the sales price of or the gross receipts derived from car washes by alternative structures where employees perform certain pre-wash duties are subject to the 4.75% general State, applicable local (2.25% or 2%), and applicable transit (0.50%) rates of sales and use tax

The fact that car washes are billed monthly or obtained through a prepaid monthly fee or gift card does not change the taxability of the transaction. However, the manner in which the taxpayer recognizes revenue from car washes will determine the filing period that gross receipts from car washes (whether taxable or exempt) and applicable sales taxes should be reported on sales and use tax returns filed by Taxpayer.

You opine that for car washes performed by alternative structures that "even if the employee's actions are considered a service, they are not subject to sales tax because of the 10% bundled transaction exception." N.C. Gen. Stat. § 105-164.3(1i) defines the term "bundled transaction," in part, as "[a] retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price." Taxpayer's employee's activities performed as part of the car wash of setting into position, applying and/or washing tangible personal property are directly related in nature to those performed by the automated mechanical wash and cannot be considered distinct and identifiable products as is required to meet the definition of the term "bundled transaction." A car wash is not a bundled transaction as defined in N.C. Gen. Stat. § 105-164.3(1i).

The term "sales price" includes labor costs. Therefore, any revenue allocated in the Taxpayer's books and records for the cost of an employee is part of the sales price of or the gross receipts derived from a car wash. In fact, you indicate that the application of the windshield wiper cover is "to prevent any damage to the car wash facility or the customer's car" and that "[t]he debris soaping and tire spraying are both pre-wash services designed to help the car wash's mechanical parts clean as efficiently and quickly as possible."

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