North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

May 24, 2018

[redacted]

Attention: [redacted]

Re: Private Letter Ruling
FEIN: [redacted]

Dear [redacted]

The Department has completed its review of [redacted] ("Taxpayer") request for a written determination. In making this written determination, the Department has considered the facts presented in Taxpayer's initial request as well as any supplement information provided.

This private letter ruling is a written determination issued under N.C. Gen Stat. § 105-264.2 and applies the law to a specific set of existing facts furnished by 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. Therefore, this response is based on the facts presented in your request and is not responsive to the two additional scenarios about which you inquired in the event the activities of the Taxpayer were different or altered.

Overview and Relevant Facts

Taxpayer "is a [redacted] chapter S corporation" that "purchases used electronic parts and resales them. [Taxpayer] does not pay sales tax on the parts it purchases. . . . [Taxpayer] does not directly maintain, occupy, or use any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business for selling or delivering property in North Carolina. [Taxpayer] does not have a sales force in North Carolina."

Taxpayer ". . . wholly owns [redacted] LLC, ('the LLC') a [redacted] limited liability company. The LLC leases a facility in North Carolina where LLC employees evaluate and test the parts to determine their resale worthiness. The Corporation pays the LLC for this service, but the LLC does not derive any income directly from the sale of the parts. The "LLC employees do not solicit sales of the parts. The LLC takes direct delivery of the used parts from suppliers." The "sold parts are shipped directly from the LLC's North Carolina facility to customers."

Issue

Are either Taxpayer or the LLC required to collect and remit North Carolina sales tax on sales to end-user customers located in North Carolina for which they do not have a Certificate of Exemption?

Applicable Statutes and References

Under Article 5 ("Article") of the North Carolina Revenue Act ("Act") N.C. Gen. Stat. § 105-164.1 et. seq. and Subchapter VIII: Local Government Sales and Use Tax, 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). 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(9) for sales and use tax purposes, defines "engaged in business," in part, as ". . .[m]aintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room, warehouse or storage place, or other place of business for selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, sales representative, or solicitor operating in this State in the selling or delivering. The fact that any corporate retailer, agent, or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial . . . [or] [m]aking a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met. . . ."

N.C. Gen. Stat § 105-164.3(35) defines "retailer" for sales and use tax purposes, 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. . . [or] [a] person engaged in business of making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met. . . ."

Ruling

Taxpayer's inventory, used parts purchased for resale, stored at the LLC's location is a temporary storage place in this State and the LLC's delivery of products sold to Taxpayer's customers from the LLC location is a place of distribution for Taxpayer in North Carolina. Therefore, Taxpayer is "engaged in business" as a "retailer" in the State pursuant to N.C. Gen. Stat §§ 105-164.3(9) and (35). Taxpayer's retail sales of tangible personal property sourced to the State in accordance with the general sourcing provisions in N.C. Gen. Stat. § 105-164.4B(a), are subject to North Carolina general 4.75% State, applicable local, and applicable transit rates of sales and use tax unless an exemption in N.C. Gen. Stat. §§ 105-164.13 or 105-164.13E apply. For purpose of this response, the Department understands that the parts received by the LLC in the State are inventory of Taxpayer while stored at the LLC's facility.

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