



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

Corrected: November 12, 2019
~~October 12, 2019~~

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

Re: [REDACTED]
Private Letter Ruling
Account ID: [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 subsequent the original request.

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.

Overview and Relevant Facts

"[Taxpayer] is [REDACTED] at the [REDACTED]. As a [REDACTED] [Taxpayer] is responsible for the operation of the [REDACTED] within the [REDACTED] . . . [Taxpayer] and its [REDACTED] each collect and remit sales tax to the North Carolina Department of Revenue on taxable retail sales made at their [REDACTED]."

The [REDACTED] plans to "construct a new [REDACTED] building (the [REDACTED]) at the [REDACTED] through which all [REDACTED]. Costs associated with the [REDACTED] will be borne in part by [Taxpayer]." Taxpayer plans to charge a fee to "customers who make purchases [REDACTED]. The proposed fee would be a percentage" of the charge for an item purchased and would be "added at the time of purchase. The fee would be disclosed to the purchaser in advance of each purchase, . . . collected at the same time as ringing up any items purchased, and . . . shown on a separate line" of the purchaser's receipt "as an additional charge with an appropriate identifier (such as [REDACTED])"

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Issue

Is the proposed [REDACTED] Fee a part of the sales price of the items being sold as the term sales price is defined in N.C. Gen. Stat. § 105-164.3(37)?

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(2f)², 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(37) defines the term “sales price” as:

The total amount or consideration for which an item is 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.

a. The term includes all of the following:

1. The retailer's cost of the item sold.
2. The 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.
3. Charges by the retailer for any services necessary to complete the sale.
4. Delivery charges.
5. Installation charges.
6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.
7. Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.
8. The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
 - I. Presentation by the consumer of a coupon or other documentation.
 - II. Identification of the consumer as a member of a group eligible for a discount.
 - III. The invoice the retailer gives the consumer.

b. The term does not include any of the following:

1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.

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.

² Session Law 2019-169 provides that the Revisor of Statutes is authorized to renumber the subdivisions of G.S. 105-164.3 to ensure that the subdivisions are listed in alphabetical order and in a manner that reduces the current use of alphanumeric designations, to make conforming changes, and to reserve sufficient space to accommodate future additions to the statutory section.

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3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

Ruling

The proposed [REDACTED] Fee is an expense of the retailer and is a part of the sales price for which the items are sold. The sales price or gross receipts of the items sold, including the [REDACTED], are subject to the applicable State, applicable local, and applicable transit rates of sales and use tax.

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 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