



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 28, 2020

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

Re: Private Letter Ruling Request
Federal ID: [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.

Overview and Relevant Facts

You state that "[Taxpayer] is in the business of selling both new and used tangible personal property through unreserved public auctions . . . at a location within the [S]tate." You further state that the owner of the tangible personal property ("Consignor") "consigns the tangible personal property to [Taxpayer] for the auction process while retaining the title to the tangible personal property" and that "[Taxpayer] acts as a selling agent for the Consignor. . . . [Taxpayer] also purchases tangible personal property in its own name to auction[.]"

"[Taxpayer] charges all buyers sales tax on the selling price of the auctioned tangible personal property and remits the sales tax to the State unless the buyer produces the applicable resale certificate, exemption certificate, or other acceptable documentation."

"The [Taxpayer] is considering a new fee structure where all buyers will be charged an administrative fee equal to [REDACTED]% of the selling price for items selling for \$[REDACTED] or less; and [REDACTED]% of the selling price for items selling for greater than \$[REDACTED], up to a maximum of \$[REDACTED] per item purchased." Taxpayer will charge the fee as compensation "for the many value added services" it offers to its buyers and will separately state the administrative fee on the buyers' invoices.

Issues

Is Taxpayer required to collect and remit sales tax on administrative fees charged to buyers?

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; a retail sales tax is imposed on a retailer’s net taxable sales or gross receipts, as applicable, from sales of tangible personal property, certain digital property, and certain services at the applicable State, applicable local, and applicable transit rates of tax. N.C. Gen. Stat. §§ 105-164.4, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.4 imposes a sales tax on the retail sale of tangible personal property, certain digital property, and other specified transactions. N.C. Gen. Stat. § 105-164.6 imposes a complementary use tax on items in N.C. Gen. Stat. § 105-164.4 that are purchased inside or outside this State for storage, use, or consumption in this State and sourced to this State.

N.C. Gen. Stat. § 105-164.4(a) provides, in part, “[a] privilege tax is imposed on a retailer engaged in business in the State at the percentage rates of the retailer’s net taxable sales or gross receipts, listed in this subsection. The general rate of tax is four and three-quarters percent (4.75%). The percentage rates are as follows:

- (1) The general rate of tax applies to the following items sold at retail:
 - a. The sales price of each article of tangible personal property that is not subject to tax under another subdivision in this section. . . .”

N.C. Gen. Stat. § 105-164.3(203) defines the term “sales price,” in part, as “[t]he 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.”

N.C. Gen. Stat. § 105-164.3(223) defines “tangible personal property” as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.”

N.C. Gen. Stat. § 105-164.22 provides, in part, that “[f]ailure of a retailer to keep records that establish that a sale is exempt under . . . Article [5 of Chapter 105 of the North Carolina General Statutes] subjects the retailer to liability for tax on the sale.”

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.

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N.C. Gen. Stat. § 105-164.26(1) provides, in part, "[t]hat all gross receipts of . . . retailers are subject to the retail sales tax until the contrary is established by proper records as required in . . . Article [5 of Chapter 105 of the North Carolina General Statutes]."

Ruling

Based on the definition of "sales price" in N.C. Gen. Stat. § 105-164.3(203), the administrative fees charged by Taxpayer are part of the sales price of the tangible personal property sold at retail, regardless if the administrative fees are separately stated on an invoice or billing document issued to the buyer at the time of sale. The administrative fees are subject to the applicable State, applicable local, and applicable transit rates of sales and use tax when the sales are sourced to this State, unless specifically exempted by statute.

Taxpayer is required to collect and remit sales and use tax on its net taxable sales or gross receipts, which includes any administrative fees charged to the buyer, unless Taxpayer is provided a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or the same information or data elements required had a certificate been provided by the buyer.

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