North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 27, 2021

[redacted]

Re: [redacted]
Private Letter Ruling Request
Account ID: [redacted]
Taxpayer's FEIN: [redacted]

Dear [redacted]:

The Department has completed its review of your request for 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 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 Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You advise that "Taxpayer is a provider of cleaning services and products . . . [and Taxpayer's] classification for purposes of NAICS is 561740, and over fifty percent (50%) of its revenue is derived from sales of cleaning services for real property. For services provided at its customer's locations, Taxpayer utilizes mobile cleaning units. Additionally, all products and services are separately stated on Taxpayer's invoices to its customer."

You advise that Taxpayer offers the product "Application of Protector to Carpet (Customer Location)" with the description of the service as "Taxpayer applies protective chemicals to wall-to-wall carpet at the customer's location."

Issue

Are Taxpayer's sales of "Application of Protector to Carpet (Customer Location)" subject to North Carolina sales and use tax?

Applicable Statutes and References[1]

Under Chapter 105 of the North Carolina General Statutes, Article 5 ("Article") of the North Carolina Revenue Act ("Act")[2], 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. §§ 105-164.3,105-164.4, 105-467, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.4(a)(1)c. provides that the general rate of tax applies to "[t]he sales price of or gross receipts derived from repair, maintenance, and installation services to tangible personal property or certain digital property, regardless of whether the tangible personal property or certain digital property is taxed under another subdivision in this section or is subject to a maximum tax under another subdivision in this section. Repair, maintenance, and installation services generally include any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser's property. The use tax exemption in [N.C. Gen. Stat. §] 105-164.27A(a3) may apply to these services. Repair, maintenance, and installation services for real property are taxable under subdivision [N.C. Gen. Stat. § 105-164.4(a)](16). . . . "

N.C. Gen. Stat. § 105-164.3(225) provides the definition of "repair, maintenance, and installation services" "includes the activities listed . . . [below] and applies to tangible personal property, motor vehicle, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with [N.C. Gen. Stat. §]. 105-164.4H]. The included activities are:

a. To 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.
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.
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 or certain digital property. 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 repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision ([31]) d. of this section and substantiated as a capital improvement under [N.C. Gen. Stat. §] 105-164.4H(a1).

[1] Session Law 2020-6 authorizes the Revisor of Statutes to renumber the subdivisions of N.C. Gen. Stat. §. 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.

2 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.

e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle. ."

N.C. Gen. Stat. § 105-164.3(235) defines the term "sale or selling," in part, as "[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means."

N.C. Gen. Stat. § 105-164.3(261) defines the term "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."

Ruling

Based on the information furnished, Taxpayer is providing repair, maintenance, and installation services. Specifically, Taxpayer is applying tangible personal property to real property by applying protective chemicals to wall-to-wall carpet at a customer's location. As such, the sales price of or the gross receipts derived from Taxpayer's sales of the repair, maintenance and installation services are subject to the general State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.

This ruling is based solely on the facts submitted to the Department for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then Taxpayer may not rely on it. If Taxpayer relies on this letter ruling and the Department discovers, upon examination, that the fact situation of Taxpayer is different in any material aspect from the facts and circumstances given in this letter ruling, the letter ruling will not afford 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