



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 29, 2021

[REDACTED]
[REDACTED]
[REDACTED]
[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 any supplemental information provided to the Department for consideration.

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 Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You state that Taxpayer "is an indoor go-kart racing venue where guests can race go-karts (electric powered 'karts') on a rubberized track. [REDACTED]"

[REDACTED] There is no charge to guests to enter the facility. Two fees are charged to race a kart: (1) a yearly license fee; and (2) the race fee.

"All guests who race a go-kart are required to purchase a yearly license fee [REDACTED] which includes the use of a head sock and helmet if the guest does not have their own. The license fee also allows guest[s] to access their race stats on-line. There are a variety of race fees available for guests. [REDACTED]"

[REDACTED] With each race, each racer receives a Race Results Sheet ('RRS') that allows racers to compare times and rank against other racers in each

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race, as well as overall [Taxpayer] racers at every location, and the best racers of the week. After each race, the RRS is printed for each racer and made available at the front counter where racers typically pick up the RRS immediately after the race.

“All [redacted] races, as well as those purchased under a special discount, can be used any time and at any location. That is, racers are not required to use all races at one venue on the same day.

“In addition, [Taxpayer] also offers ‘race packages’ where groups [redacted] race against each other. Race packages includ[e]:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

“For the [redacted], each participant also receives a T-shirt.

“Each race, [redacted] or a race within a race package, [redacted], after which each racer is required to exit the kart, thus giving control of the kart back to [Taxpayer]. The racers must then return to the front desk and sign up for their next race. Time between each race is usually [redacted] with other races taking place before a racer can race again. In the event of both [redacted] packages, karts are randomly assigned to racers and racers have no choice in which kart they race in. Only by chance would a racer be assigned to the same kart he raced in previously.”

In your letter responding to the Department’s questions, you stated “[c]ustomers are not allowed to provide their own go-kart.” “No invoices are provided to the customers. Purchased races are ‘loaded’ onto the [customer’s] . . . [redacted]” and customers are required to sign a waiver of liability which provides that the customer will not hold [Taxpayer] responsible for any injury or accident. The [redacted] race includes a [redacted] coupon for the [customer’s] next visit.”

Issue

Are the “race fees” and “license fees” charges for the lease or rental of tangible personal property subject to North Carolina sales and use tax under N. C. Gen. Stat. § 105-164.4?

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

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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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(121) defines the terms "lease or rental," in part, as "[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration."

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."

N.C. Gen. Stat. § 105-164.3(7) defines the term "admission charge" as "[g]ross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission."

N.C. Gen. Stat. § 105-164.3(85) defines the term "entertainment activity" as "[a]n activity listed in this subdivision:

- a. A live performance or other live event of any kind, the purpose of which is for entertainment.
- b. A movie, motion picture, or film.
- c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
- d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision."

N.C. Gen. Stat. § 105-164.4G(e)(1) provides, in part, "[t]he tax imposed [concerning an admission charge to an entertainment activity] does not apply to . . . [a]n amount paid solely for the right to participate, other than to be a spectator, in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships."

N.C. Gen. Stat. § 105-164.28(a)(1) provides in part, the information that the seller should obtain from the purchaser for a sale to be exempt from sales and use tax should include "the purchaser's name, address, certificate of registration number, reason for exemption, and type of business."

Ruling

Based on the information furnished, the license fee and race fee charged to each participant would not meet the definition of the term "lease or rental" as defined in N.C. Gen. Stat. § 105-164.3(121). Taxpayer owns the go-karts, can program them for pre-set racing speeds, can program them for automatic speed reduction, and can remotely turn them off in case of an emergency. Therefore, Taxpayer neither loses dominion nor relinquishes control of the property.

The license fee and the race fee are admission charges customers pay to participate in the sporting activity of go-kart racing. Pursuant to N.C. Gen. Stat. § 105-164.4G(e)(1), an amount paid solely for the right to participate in a sporting activity is not subject to North Carolina sales

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and use tax provided the amount paid is not for the person to be a spectator. Therefore, the license fees and the race fees are not subject to general 4.75% 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 of Revenue 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 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 ruling, then the ruling will not afford 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