



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

April 19, 2021

[Redacted]

Re: [Redacted]
Private Letter Ruling Request
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's "primary business [is] the development, ownership, and operation of independent power production facilities fueled by [Redacted]. Taxpayer is currently developing a [Redacted] plant in [Redacted] County known as the [Redacted] (the 'Project'). When fully operational, it is expected that the Project will deliver approximately [Redacted] megawatts ('MW') of electric power per hour, with approximately [Redacted] used for parasitic loads and the remainder sold to the [Redacted]. Excess heat generated will be put to other uses at a [Redacted].

[Redacted] Once operational the Project will convert [Redacted] to: 1) electric power that will be both used on-site and sold to [Redacted] and 2) [Redacted] used in the [Redacted]."

[Redacted]

[REDACTED]

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[REDACTED]

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 - [REDACTED]

[REDACTED]

Issue

Are the machinery and equipment purchased by Taxpayer in the above list exempt from sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(5e)?

Applicable Statutes and References

Under 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, 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. § 105-164.4(a) imposes a privilege tax on a retailer engaged in business in this State on the sales price of each article of tangible personal property.

¹ Referenceto the Act and North Carolina General Statutesare based on the lawsin effect asof the date of issuance of this private letter ruling except asotherwise noted herein.

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N.C. Gen. Stat. § 105-164.3(261) defines the term “tangible personal property,” in part, as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.”

N.C. Gen. Stat. § 105-164.13(5e) provides an exemption from sales and use tax for “[s]ales of mill machinery or mill machinery parts or accessories to . . . [a] manufacturing industry or plant.”

Published for the purpose of presenting the administrative interpretation and application of sales and use tax, the Department’s Sales and Use Tax Bulletins are considered “prima facie correct”

Sales and Use Tax Bulletin 57-1 provides “[p]roduction as a phase of industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. . . . Purchases by a manufacturing industry or plant of machinery or parts or accessories for the machinery for use in ‘production . . . are classified as mill machinery or mill machinery parts or accessories.”

Sales and Use Tax Bulletin 57-8 A. Electric Power Companies, Mill Machinery or Mill Machinery Parts or Accessories provides, in part, that “[p]urchases. . . by persons engaged in generating, producing, or processing electric power to be distributed to consumers are exempt from sales and use tax. . . .”

Ruling

Based on the information furnished, Taxpayer produces electricity and steam from [REDACTED]. Taxpayer’s process involves taking raw materials [REDACTED] and transforming them into a new product. The product that exists has new characteristics for use by Taxpayer’s customers. The electricity and steam are “finished products of manufacture” resulting from the production phase of Taxpayer’s operations at the [REDACTED] as provided in Sales and Use Tax Bulletin 57-1, Classification of Activities.

The following machinery and equipment purchased by Taxpayer for use at the [REDACTED] are exempt from sales and use tax as provided in N.C. Gen. Stat. § 105-164.13(5e).

1. Material Handling and Metering System:

[REDACTED]
 [REDACTED]

2. [REDACTED] Burner and [REDACTED] Boiler System:

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

3. Ash conveyors for Fly Ash Sub-System.

4. Turbine:

[REDACTED]
 [REDACTED]

5. Electrical Generator.

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In your email response to the Department's questions as to the function of the [REDACTED] System, you stated, "[REDACTED] Because the [REDACTED] System is needed to control the steam turbine generator, this item is classified as machinery and equipment and is exempt from sales and use tax under N.C. Gen. Stat. § 105-164.13(5e).

Taxpayer will need to issue a properly completed Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption to the retailer when purchasing machinery and equipment for the [REDACTED].

Purchases by Taxpayer of machinery, parts and accessories to such machinery, or other items not primarily used in the production phase and used in "the movement of raw materials or ingredients into inventory" is not included in the production phase as provided in Sales and Use Tax Bulletin 57-1, Classification of Activities. Therefore, the [REDACTED] is not classified as machinery and equipment that are exempt under N.C. Gen. Stat. § 105-164.13(5e)(a) and is subject to the general 4.75% State, applicable local (2.00% or 2.25%) and applicable transit (0.50%) rate of sales and use tax.

In addition, your request and supporting documentation describes [REDACTED]. Based on the description, the Department determines that this process is a service provided to [REDACTED] not manufacturing. Accordingly, the [REDACTED] is not classified as machinery and equipment that are exempt under N.C. Gen. Stat. § 105-164.13(5e)(a) and is subject to the general 4.75% State, applicable local (2.00% or 2.25%) and applicable transit (0.50%) rate of sales and use tax.

Based on the description furnished the following items may have multiple uses throughout the Taxpayer's facility and individual purchases of similar items may be used differently from one another:

Miscellaneous:

- a. Air compressor;
- b. Interconnecting steam, condensate, water, and air piping;
- c. [REDACTED] electrical control panels, including interconnecting wiring;
- d. Instrumentation and measurement equipment for use throughout the Project.

In accordance with the Department's Written Determination and Letters of General Applicability Policy, the Department is not providing a ruling on these items.

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

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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. 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