



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

May 19, 2021

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

Re: Expedited Private Letter Ruling Request
Taxpayer: [REDACTED]
Account ID: [REDACTED]
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a private letter ruling 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 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

The Taxpayer is a general contractor who constructs, upgrades, or upfits new or existing water purification plants [REDACTED]. The water purification plants are operated by public or private owners for the purpose of purifying and selling tap water to end users.

Taxpayer enters into real property contracts with the water purification plant owners to construct or upfit the water purification plant located upon real property owned by the public or private owner. In the performance of a contract with the water purification plants, the Taxpayer installs equipment it purchases from manufacturers into the water purification plants, and the equipment is then used directly in the purification process. Specifically, Taxpayer purchases and installs a water purification device called [REDACTED] into the water purification plants.

Water purification plants use clarifiers, which are settling tanks built with the mechanical means of continuously removing solids deposited by sedimentation. Sedimentation is a water treatment process using gravity to remove suspended solids from water. The [REDACTED] is a [REDACTED] used to remove turbidity and color from municipal and industrial water supplies.

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Taxpayer states that the public or private water purification plants are considered manufacturing plants when they purify and sell water. Taxpayer further states that the [REDACTED] is used by water purification plants "directly in the purification processes."

Issue

Is Taxpayer's purchase of [REDACTED] a water purification device, that is installed by Taxpayer into new construction of a public or private water purification plant, that is considered to be a manufacturing industry or plant, as part of a real property contract exempt from the North Carolina sales and use tax, pursuant to N.C. Gen. Stat. § 105-164.13(5e)?

Applicable Statutes and References

North Carolina imposes State, local, and transit rates of sales and use tax on a retailer engaged in business in the State based on the retailer's net taxable sales of, or gross receipts derived from, tangible personal property, certain digital property, and taxable services. N.C. Gen. Stat. §§ 105-164.4, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-537 and Chapter 1096 of the 1967 Session Laws.

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.

N.C. Gen. Stat. § 105-164.6(a) imposes a complementary use tax on items subject to the tax imposed by N.C. Gen. Stat. § 105-164.4. The complementary use tax is payable by, in part, the person who purchases the item. N.C. Gen. Stat. § 105-164.6(b).

N.C. Gen. Stat. § 105-164.3(205) defines the term "real property," in part, as "[a]ny one or more of the following:

- a. Land.
- b. Building or structure on land.
- c. Permanent fixture on land. . . ."

N.C. Gen. Stat. § 105-164.3(207) defines the term "real property contract" as "[a] contract between a real property contractor and another person to perform a capital improvement to real property."

N.C. Gen. Stat. § 105-164.3(209) defines the term "real property contractor," in part, as "[a] person that contracts to perform a real property contract in accordance with [N.C. Gen. Stat. §] 105-164.4H. The term includes a general contractor, a subcontractor, or a builder...."

N.C. Gen. Stat. § 105-164.3(31) defines the term "capital improvement," in part, as "[o]ne or more of the following:

- a. New construction, reconstruction, or remodeling. . . .
- d. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:
 - 1. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
 - 2. Is depreciated under the Code.
 - 3. Is expensed under Section 179 of the Code. . . .
- k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in subdivision (225) of this section as repair, maintenance, and installation services. . . ."

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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)b provides an exemption from sales and use tax for "[s]ales of mill machinery or mill machinery parts or accessories to . . . [a] contractor or subcontractor if the purchase is for use in the performance of a contract with 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 (SUTB) 57-22 provides, in part, "[p]ublic or private water purification plants are considered to be manufacturing plants for purposes of this SUTB when they purify and sell water. Their purchases of mill machinery or mill machinery parts or accessories for use directly in the purification processes are exempt from sales and use tax."

Ruling

Based on the information provided, Taxpayer constructs water purification plants for private or public entities that purify and sell tap water to end users. Taxpayer enters into a real property contract, as that term is defined in N.C. Gen. Stat. § 105-164.3(207), with the water purification plant owner to complete the construction. As part of the real property contract with the water purification plant, Taxpayer purchases and installs the [REDACTED]. The [REDACTED] is a water purification device that once installed, becomes part of and is used directly in the water purification process. The [REDACTED] is tangible personal property as defined in N.C. Gen. Stat. § 105-164.3(261).

According to the Department's Sales and Use Tax Bulletin 57-22, public or private water purification plants are manufacturing plants when the water purification plant purifies and sells water. Pursuant to N.C. Gen. Stat. § 105-164.13(5e)b, sales of mill machinery or mill machinery parts or accessories are exempt from sales and use tax when made to a contractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant. The [REDACTED] is mill machinery or a mill machinery part or accessory because it "is a necessary component of the water purification processes and is used directly in the water purification process." Thus, Taxpayer is a contractor whose purchase of the [REDACTED] is for use in performance of a contract with a manufacturing plant, and is therefore exempt from sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(5e)b.

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