North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

September 29, 2021

[redacted]

Re: [redacted]
Private Letter Ruling
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.

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

[redacted]

[redacted]

Once in the ground, the Taxpayer's cables stay in the ground forever. Removing a cable through the conduit would require the use of pulleys and winches, which likely would destroy its glass fibers and which would cost more than the cable is worth. Removing the entire conduit would destroy the conduit and the enclosed cable and also would not be cost-effective. If a cable is

damaged, it is simply abandoned, and new cable is laid." You further advise that "the Taxpayer has never, in fact removed any fiber optic cable from the ground once buried."

[redacted]

[redacted]

[redacted]

Issue

Are Taxpayer's leases of buried dark fiber optic cable subject to sales and use tax?

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. §§ 105-164.3, 105-164.4, 105-164.6, 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. § 105-164.3(205) defines the term "real property", in part, as "land" and "permanent fixture on land."

N.C. Gen. Stat. § 105-164.3(261) defines the term "tangible personal property as "personal 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(121) defines the terms "lease" or "rental" as "[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration."

[1] "Dark" fiber, as the term is used in the telecommunications industry, refers to optical fiber strands without electronics or optronics such that the fiber is not "lit" or activated

Ruling

Based on the information furnished, Taxpayer owns and maintains a fiber optic cable network. According to Taxpayer, the dark fiber optic cable at issue in this ruling is buried [redacted]. Taxpayer states that the buried fiber optic cable at issue, once in the ground, stays in the ground forever and attempts to remove the cable would likely destroy the glass fibers in the cable. Further, Taxpayer states that if a buried fiber optic cable is damaged or needs to be moved the cable is abandoned in place.

Based on the facts provided, the Department determines that the buried dark fiber optic cable becomes a permanent fixture on land and thus real property under N.C. Gen. Stat. § 105-164.3(205). Accordingly, Taxpayer's leases of buried dark fiber optic cable, are leases of real property and are not subject to North Carolina 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 the 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