NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

Josh Stein
Governor

McKinley Wooten, Jr.
Secretary

February 19, 2025

[redacted]

Re: [redacted]

Dear [redacted]:

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

Overview and Relevant Facts

You advised that "[Taxpayer] is [redacted] . . .."

"The subject of this ruling is their sporting clays operation. Sporting clays are discs that are thrown into the air, usually by a machine, so an individual can attempt to shoot down the disc with a shotgun." Taxpayer describes [redacted]"

Taxpayer describes the sale of access to the sporting clays activity as follows. Customers pay for the activity [redacted] .

Once purchased, the customer can [redacted]." "Members may only have 2 shells loaded in their gun maximum. They can shoot at the same clay twice before it hits the ground but once it hits the ground, it's done. Clays are not reloaded."

[1] Taxpayer states that [redacted] may be used to conduct sales from [redacted] in the future.

A person purchasing the clay throws "receives access to a shooting stand, the necessary course area to safely shoot the clays, and the clay throwing service. The customer does not physically receive the clays. Instead, the machine throws the clays and the customer's only physical interaction with the clay is attempting to shoot it."

While the purchaser purchases access to the course [redacted], "the individual never possesses or touches the clays. Their purchase only entitles them [redacted] and attempt to shoot the clays."

"Further, customers cannot bring their own clays and utilize the course and throwing machines. The clays, courses, and throwing are inseparable."

Issue

Are Taxpayer's receipts from sales of access to its sporting clays activity based on the number of clay throws subject to North Carolina sales and use tax?

Applicable Statutes and References

The North Carolina Sales and Use Tax Act ("Sales and Use Act") imposes State sales and use taxes. N.C. Gen. Stat §§ 105-164.1 – 105-164.44M. In addition, North Carolina law provides for various local sales and use taxes. See N.C. Gen. Stat. §§ 105-463 – 105-538. The sales and use taxes apply to a retailer's net taxable sales or gross receipts derived from taxable items. N.C. Gen. Stat §§ 105-164.4, 105-164.6, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-510.1, 105-511.3, 105-537 and Session Law 1967-1096. The sales subject to the taxes include sales of tangible personal property and admission charges to an entertainment activity. N.C. Gen. Stat §§ 105-164.4

N.C. Gen. Stat. § 105-164.4G(e)(1) provides the tax imposed on the gross receipts from 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."

The Department publishes Sales and Use Tax Bulletins ("SUTBs") for the purpose of presenting the administrative interpretation and application of sales and use tax. The Department's SUTBs are prima facie correct. N.C. Gen. Stat. § 105-264(a).

Ruling

Based on the information furnished, Taxpayer sells access to a sporting clays activity. As described by Taxpayer, the activity involves a course where machines throw clays into the air that customers attempt to shoot. Taxpayer has elected to sell access to the course [redacted]

North Carolina imposes tax on the gross receipts derived from admission charges to entertainment activities. N.C. Gen. Stat. § 105-164.4G. However, the tax does not apply to "[a]n amount paid solely for the right to participate, other than to be a spectator, in sporting activities."

Here, customers shoot at clays along a course. The objective is to strike the clay before it hits the ground. The activity is a sporting activity that occurs along a course, similar to golf. As a result, if the customers are paying "solely for the right to participate, other than to be a spectator"

[redacted]

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the receipts are not subject to sales and use tax.

Taxpayer has elected to sell access to the activity [redacted] While the clay is tangible personal property, Taxpayer provides that "the individual never possesses or touches the clays. Their purchase only entitles them to [redacted] and attempt to shoot the clays."

In addition, the sales of clay throws are not elective. Customers cannot access the course if they do not [redacted] "[C]ustomers cannot bring their own clays and utilize the course and throwing machines." Instead, [redacted] is necessary to access the course and participate in the sporting clays activity.

The Department's bulletins address similar situations. SUTB 54-17 provides "[a] charge by a golf driving range for the use of a range is not subject to sales and use tax. In such case, the person who pays the charge is generally entitled to the use of a golf club, basket of balls, and the driving range; thus, there is no sale or rental of tangible personal property. Sales or rentals of tangible personal property by such businesses are subject to the general State, applicable local, and applicable transit rates of sales and use tax."

This activity is similar to a golf driving range selling access based on the buckets of balls purchased by the customer. In both cases, a person participates in a sporting activity. Further, in both cases a person's payment for the sporting activity [redacted] However, in both cases the person is paying solely to participate in the sporting activity.

Based on the facts provided by Taxpayer, the Department determines that Taxpayer's sales of access to its sporting clays course, [redacted] not subject to sales and use tax.

However, if Taxpayer rents or sells equipment to its customers, such as shotguns, ear protection, eye protection, or ammunition, such sales are subject to the applicable rates of sales and use tax. In addition, Taxpayer's purchase of clays used in the sporting clays activity are subject to sales and use tax at the 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 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