NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

Josh Stein
Governor

McKinley Wooten, Jr.
Secretary

May 1, 2025

[redacted]

Private Letter Ruling
[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.

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 has [redacted] operations [redacted], as well as [redacted] North Carolina location [redacted] conduct post-harvest produce processing operations through [redacted] facility. The [redacted] are then sold for resale [redacted].

"[redacted] are [redacted] from farms located [outside North Carolina] and are going to be shipped as [redacted] to the North Carolina facility. [redacted] must be processed in order to be used for retail sales and consumer consumption. [redacted] cannot be resold to retailers or sold to consumers if they do not undergo the [redacted] process first. The processing facility is necessary to convert [redacted] into a consumable product for sale. Upon arrival, post-harvest equipment will be utilized in conjunction with [redacted] to transform [redacted] into a product ready for consumption. This transformation involves [redacted] making them suitable for consumption."

"The process begins with [redacted].

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"[redacted]

"[redacted]

"[redacted].

"The equipment in question includes the following:

[redacted]

[redacted]

The equipment is used exclusively for the purpose of [redacted]."

In a conference call on March 4, 2025, you indicated that [redacted] which are to be [redacted] are purchased from another entity.

ISSUE:

Are purchases by Taxpayer of post-harvest [redacted] equipment subject to North Carolina 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. §§ 105-164.4, 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. North Carolina imposes a complementary use tax, in part, on items of tangible personal property purchased for storage, use, or consumption in this State.

N.C. Gen. Stat. § 105-164.13(5e) provides for an exemption for "[s]ales of mill machinery or mill machinery parts or accessories to any of the persons listed in [the] subdivision. For purposes of [the] subdivision, the term 'accessories' does not include electricity. The persons are:

a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of food prepared by it for consumption on or off its premises or (ii) a production company.
b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant."

N.C. Gen. Stat. § 105-164.13E provides for an exemption for qualifying farmers from sales and use tax. A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars ($10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars ($10,000) or more. The term "income from farming operations" means sales plus any other amounts treated as gross income under the Code from farming operations. N.C. Gen. Stat. § 105-164.13E.

In *Duke Power Co. v. Clayton*, 274 N.C. 505, 164 S.E.2d 289 (1968), the North Carolina Supreme Court cited the following: "Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor, and manipulation. But something more is

necessary. . . . There must be a transformation; a new and different article must emerge, 'having a distinctive name, character, or use.'" *Anheuser-Busch Brewers Ass'n v. United States*, 207 U.S. 556, 28 S. Ct. 204, 52 L. Ed. 336 (1908).

The court also held "[t]he word manufacture 'is not susceptible of an accurate definition that is all-embracing or all-exclusive, but is susceptible of many applications and many meanings. * * * In its generic sense, 'manufacturing' has been defined as the producing of a new article of use or ornament by the application of skill and labor to the raw materials of which it is composed.' 55 C.J.S. Manufactures § 1 at pp. 667 and 670 (1948). Accord, *Bleacheries Co. v. Johnson, Comm'r of Revenue*, supra, 266 N.C. at 695-696, 147 S.E.2d at 179; *City of Louisville v. Ewing Vol-Allmen Dairy Co.*, 268 Ky. 652, 105 S.W.2d 801 (1937). 'To make an article manufactured, the application of the labor must result in a new and different article with a distinctive name, character, or use.' *Inhabitants of Leeds v. Maine Crushed Rock & Gravel Co.*, 127 Me. 51, 56, 141 A. 73, 75 (1928). Thus, the usual connotation of manufacturing is the making of a new product from raw or partly wrought materials." *Duke Power Co. v. Clayton, Comr. Of Revenue*, 274 N.C. 505, 164 S.E.2d 289, 295.

Ruling

Taxpayer contends it is engaged in manufacturing when it [redacted] at its facility. When Taxpayer purchases [redacted], Taxpayer purchases a natural and unmanufactured product, [redacted]. Like Anheuser-Busch[1], Taxpayer uses skill and labor to apply [redacted] to a product. Also similar to Anheuser-Busch, the product, [redacted], put through Taxpayer's process does not abandon its original characteristics and remains [redacted].

Taxpayer also contends it is a qualifying or conditional farmer because it engages in post-harvest crop activities. The facts provided by Taxpayer show that it does not grow [redacted] at issue in this ruling. Instead, Taxpayer purchases [redacted] from other entities. Taxpayer does not cultivate, operate, or manage a farm for gain or profit, either as owner or tenant and does not have income from farming operations under the Code. As a result, Taxpayer does not qualify for an exemption as a qualifying farmer. Taxpayer cannot claim any of the exemptions[2] provided in N.C. Gen. Stat. § 105-164.13E.

Therefore, the Department determines Taxpayer's purchases of post-harvest [redacted] equipment do not qualify for an exemption[3] and are subject to the applicable rates of 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

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[1] In *Anheuser-Busch*, corks were heated, cooled, and exposed to chemicals to make them suitable to cork beer. *Anheuser-Busch Brewers Ass'n v. United States*, 207 U.S. at 560 n. 1. The Supreme Court held "[a] cork put through the claimant's process is still a cork." 207 U.S. 556, 28 S. Ct. 204, 52 L. Ed. 336 (1908).

[2] This ruling does not analyze whether any of the equipment would qualify for exemption under N.C. Gen. Stat. § 164.13E because the Department determines Taxpayer does not qualify for the exemption.

[3] Under N.C. Gen. Stat. § 105-164.13(5e) or N.C. Gen. Stat. § 164.13E.