



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

December 17, 2014

Account ID: [REDACTED]
FEIN: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Re: [REDACTED]
Private Letter Ruling Request

Dear [REDACTED]:

We have the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, your letter dated May 9, 2013, and additional information that you provided at the request of the Department over the past months. You have inquired as to your above-referenced client's North Carolina sales and use tax liability on certain transactions in this State.

Your client, [REDACTED] ("[REDACTED]"), is engaged in the "business of leasing pallets to manufacturers who use the pallets to package and ship their products to customers (or 'distributors'). A pallet issued by [REDACTED] may either be wooden or plastic. Both wooden and plastic pallets . . . consist of a frame with open boards, with spaces in-between them, attached to the top of the frame whereby products are placed. Manufactured items are placed onto the pallets and secured with the use of load formers, corner posts, and stretch or shrink wrap. The combination of these packaging materials encompasses the products and pallet jointly and restrains the products from moving downward or side-to-side." The product, the pallet, and the pallet packaging materials are sold by manufacturers as one unit load.

After a leased pallet is sent from the manufacturer to a distributor, "the manufacturer relinquishes all responsibility for and possession of the pallet. Arrangements are then made between an authorized collection and repair manager (or 'pooling manager') and the distributor to recover the used pallet." "When the distributor receives the loaded pallets from the manufacturer, the manufacturer has no further duty under the transaction. The distributors then store the loaded pallets at their respective facilities pending unloading of the products. The distributor (and not the manufacturer of the product loaded on the pallet) is required to return the empty pallets to an authorized pooling manager." [REDACTED] retains title of the pallets it leases "at all times, as the manufacturer never has title to these pallets. The manufacturers use the pallets one time only prior to relinquishing possession of the pallets."

has a billing system where it charges the following fees, depending on the exact nature of the agreement between and each customer:

1. An initial issue fee charged one time on a per pallet basis
2. A fuel surcharge
3. A daily rental fee “based upon the number of days that a particular pallet remains in the manufacturer’s possession preceding shipment of its product to customers or distributors. This rental fee ceases when the manufacturer sends its product (packaged on the pallet) to the distributor.”
4. A one-time transfer fee when a manufacturer delivers its product to the distributor
5. A lost equipment fee if a pallet is lost while in a manufacturer’s or distributor’s possession
6. A collection fee may be charged to a distributor to recoup “a portion of cost for transporting the pallets to the pooling site for inspection, potential repair, and redistribution into the pool.”

You have inquired whether the fees associated with leases of pallets to manufacturers for the purpose discussed above are subject to North Carolina sales and use tax.

N.C. Gen. Stat. § 105-164.4(a)(2) provides that a privilege (sales) tax is imposed on “the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. . . .” N.C. Gen. Stat. § 105-164.3(17) defines “lease or rental” in part as “[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.” N.C. Gen. Stat. §§ 105-466, 105-483, 105-498, and 105-537 levy the applicable local (county) sales and use tax upon the gross receipts subject to the 4.75% general State sales tax. N. C. Gen. Stat. §§ 105-507.2, 105-509.1, and 105-510.1 levy the applicable transit tax upon the gross receipts subject to the general State sales tax.

N.C. Gen. Stat. §105-164.13(23) provides for the exemption from sales and use tax on the sale at retail and the use, storage, and consumption in this State of the following packaging items:

- a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws, and like articles sold to manufacturers, producers, and retailers, when such materials are used for packaging, shipment, or delivery of tangible personal property which is sold either at wholesale or retail and *when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.* [Emphasis added.]
- b. A container that is used as packaging by the owner of the container or another person to enclose tangible personal property and is required to be returned to the owner for reuse.

Your client’s leases or rentals of pallets to manufacturers for use in delivering the products the manufacturers sell to their manufacturers’ customers do not constitute part of the sales of the products to such manufacturer’s customers. It is the Department’s understanding that there is a transfer of responsibility for the pallets and/or an obligation for the customer (often a distributor) to return a pallet to a pooling manager and not the manufacturers. Therefore, your client’s leases or rentals of pallets under the scenarios described in your letter are not exempt from sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.13(23)a, as such do not constitute a part of the sale of tangible personal property by your client’s manufacturer customers.

The exemption from sales and use tax provided in N.C. Gen. Stat. § 105-164.13(23)b is for returnable containers, provided: (1) the container is used by the owner or other person to enclose tangible personal property for delivery to a purchaser, and (2) the container is required to be returned to its owner for reuse. The Second College Edition of the American Heritage Dictionary defines the word “enclose” as “[t]o surround on all sides; close in.” A flat pallet does not “enclose” the tangible personal property placed upon it for shipment and delivery to a customer since it does not surround the property on all sides. Therefore, a pallet does not constitute a “returnable container” as the term is used in N.C. Gen. Stat. § 105-164.13(23)b. Therefore, your client’s leases and rentals of pallets are not exempt from sales tax under this authority.

You have suggested that some of your client’s customers are “farmers” within the meaning of N.C. Gen. Stat. § 105-164.13E and that your client’s lease or rental of a pallet to a farmer is exempt from sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.13E(a)(4) as a “container used in [planting, cultivating, harvesting or curing farm crops] or used in packaging and transporting the farmer’s product for sale.” The Second College Edition of the American Heritage Dictionary defines the word “container” as “[s]omething, as a box or barrel, in which material is held or carried; receptacle.” A flat pallet cannot, by itself, hold or carry farm crops within it; therefore, it is not a “container.” Your client’s lease or rental of a pallet to a farmer is not exempt from sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.13E(a)(4).

The gross receipts your client derives from its leases or rentals of pallets to its customers are subject to sales and use tax under the provisions of N.C. Gen. Stat. § 105-164.4(a)(2). The gross receipts your client derives from its leases and rentals include the initial issue fee, fuel surcharge, daily rental fee, transfer fee, and lost equipment fee. A collection fee charged to a party other than the original lessee of the pallet is not part of the gross receipts derived from a lease or rental of a pallet to the lessee (often a manufacturer or a farmer), and is, therefore, not subject to sales or 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 the taxpayer requesting this ruling may not rely on it. If a 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 the 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.

If you have any questions, you may reach me at the number listed at the bottom of the first page of this letter.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: , Director of Sales and Use Tax Division