North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

August 19, 2015

Account ID: [redacted]
FEIN: [redacted]

[redacted]

Re: [redacted]
Private Letter Ruling Request

Dear Mr. [redacted]:

The Department has received the Form NC-PLR, Request for Private Letter Ruling, remittance of $500.00, and your letter dated August 8, 2014 with memorandum and supporting documentation. You have inquired as to the taxability of services provided by your client, [redacted] ("[redacted]"), for its root control services and cost of materials that make up its herbicide.

"[redacted] provides root-control services to a number of municipalities throughout North Carolina. . . . Specifically it applies a patented herbicide, which is mixed with a [redacted] at the job site according to specifications and label instructions, to the sewer pipes to prevent them from being clogged with tree roots. . . . Due to the nature of this business, nearly all of [redacted] customers are local governments such as cities.

"All of [redacted] North Carolina contracts expressly provide that the work is warranted. . . . In other words, [redacted] routinely agrees to perform any needed work at no additional cost if there is a root-related problem within two or three years of service. . . . Indeed, [redacted] routinely performs additional remedial warranted services at no additional cost within the contract period when required. . . . Accordingly, [redacted] North Carolina contracts are warranty agreements.

"Additionally, [redacted] does not charge separately for the materials used to maintain the North Carolina sewers. . . . Instead, it charges by the foot-proportionate to the length of the sewer pipes being serviced. . . . Because of this pricing model, there is no separate, itemized charge for any materials. Accordingly, [redacted] has no way to measure any receipts or income with respect to the amount of herbicide being used on its North Carolina jobs."

It is our understanding that [redacted] ("[redacted]"), is a [redacted] corporation and "its North Carolina customers, which are local government entities, have asked whether they must remit sales tax on the price of [redacted] services under N.C. Gen. Stat. § 105-164.4(a)(11)." You have inquired whether [redacted] North Carolina municipal contracts are "service contracts" and whether the materials in its herbicide are taxable. You also advised, "[redacted] buys the materials for its herbicide outside the state of North Carolina. . . . [redacted] does not pay sales tax on these materials."

N.C. Gen. Stat. § 105-164.4(a)(11) provides "[t]he general rate of tax applies to the sales price of or the gross receipts derived from a service contract. A service contract is taxed in accordance with G.S. 105-164.4I." N.C. Gen. Stat. § 105-164.4I provides, in part, [t]he sales price of or the gross receipts derived from a service contact or the renewal of a service contract sold at retail is subject to the general" 4.75% rate of

sales and use tax and to the applicable county and transit rates of sales and use tax pursuant to Subchapter VIII of Chapter 105 of the N.C. General Statutes.

N.C. Gen. Stat. § 105-164.3(38b) defines a "service contract" as "[a] contract where the obligor under the contract agrees to *maintain or repair tangible personal property or a motor vehicle* [emphasis added]. Examples of a service contract include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract." N.C. Gen. Stat. § 105-164.3(46) provides that the term "tangible personal property" means "[p]ersonal 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."

Based on the information provided, a contract between [redacted] and its North Carolina customer that provides that [redacted] will apply a patented herbicide mixed with a [redacted] at the job site to prevent sewer pipes from being clogged with tree roots, is not a "service contract" as contemplated by N.C. Gen. Stat. § 105-164.3(38b). Therefore, the sales price of or any gross receipts derived from such contract with a local government entity in North Carolina, is not subject to sales and use tax. A sewer system is considered real property.

[redacted] purchases of herbicides or other products for use in North Carolina to provide root-control services to its North Carolina customers or for other use, storage, or consumption in the State are subject to use tax at the general 4.75% State and applicable county and transit rates of taxes pursuant to N.C. Gen. Stat. § 105-164.6 and Subchapter VIII of Chapter 105 of the N.C. General Statutes. N.C. Gen. Stat. § 105-164.6(a) provides that tangible personal property or digital property purchased inside or outside North Carolina for storage, use, or consumption in this State is subject to a use tax. Additionally, services sourced to this State are subject to the tax. A product is subject to the use tax only if it is subject to sales tax under N.C. Gen. Stat. § 105-164.4. Additionally, Sales and Use Tax Technical Bulletin Section 10-3 B. provides that "[h]erbicides are exempt only when used as weed killers for the commercial production of plants." As such, the Department takes exception to your request for a ruling that [redacted] does not owe use tax on its purchases of herbicides and other items used to perform contracts discussed herein with North Carolina customers.

N.C. Gen. Stat. § 105-164.3(49) provides that the term "use" means "[t]he exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser."

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.

Please contact me if you have any questions.

Very truly yours,

[redacted]

Administration Officer
Sales and Use Tax Division

[redacted]

cc: [redacted], Director of Sales and Use Tax Division
[redacted], Assistant Director of Sales and Use Tax Division