North Carolina Department of Revenue

Pat McCrory
Governor

Jeffrey M. Epstein
Secretary

August 23, 2016

[redacted]

Re: [redacted] Inc.
Expedited Private Letter Ruling Request
Account ID: [redacted]
FEIN: [redacted]

Dear Mr. [redacted]

The Department received the request for an expedited private letter ruling on Form NC-PLR, Request for Private Letter Ruling, remittance of $5,000.00, your letter on behalf of [redacted] Inc. ("Taxpayer") dated March 2, 2016, Taxpayer's responses to the Department's questions as provided in your letter dated May 24, 2016, and a copy of a contract between Taxpayer and a municipality for vehicle cleaning and decontamination services. You have inquired as to the taxability of the services offered by Taxpayer's car wash business due to legislative changes in the sales and use tax laws effective March 1, 2016.

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 the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued on behalf of the Department.

Overview and Relevant Facts

You advise that "[Taxpayer] is engaged in the business of operating car washes throughout North Carolina (the 'State'). Revenue from providing car wash services has always been the primary source of revenue; additional revenues are derived from the rental of real property and various management fees. . . .. Historically, [Taxpayer] sold calendars during the Christmas holidays; these items were sold as a means to distribute promotional coupons. [Taxpayer] collected and remitted de minimis amounts of sales tax on these items. [Taxpayer] has discontinued this process as of the end of 2015. As of today and in the future, [Taxpayer's] primary source of revenue will

be from car wash services, the revenue associated with the real property rent and management fees will continue at the less than 1% rate."

You also state that "[c]ustomers typically purchase car wash services at the time the service is performed. However, [Taxpayer] does offer their *[sic]* customers the opportunity to purchase car washes in advance through gift cards, specific wash tickets, and an unlimited wash monthly or annual pass. The revenue associated with these unlimited wash passes are considered by [Taxpayer] as prepaid car wash revenue. In addition, [Taxpayer] enters into long-term agreements with municipalities for the washing of their vehicles."

You further advise that "[Taxpayer] provides car wash services only. No tangible personal property is currently sold, nor will any be sold in the future, at any of their *[sic]* North Carolina locations. Additionally, [Taxpayer] does not own and operate vending machines where tangible personal property is sold. The majority of [Taxpayer's] car wash sales involve the purchase of a single car wash ticket. [Taxpayer] does provide customers with the option of purchasing multi-wash and unlimited wash services; however, these options are still purchases that provide services only. Again, no tangible personal property is sold with these purchases; the different options merely make it more convenient for [Taxpayer's] customers to purchase multiple car wash services during a single transaction.

"[Taxpayer's] only other offering is their *[sic]* long-term agreements entered into with certain municipalities for the washing of their vehicles. These agreements merely provide a reduced-rate car wash service for the municipality and monthly billings are based on the number of car washes delivered in any given month. Again, no tangible personal property is sold with these agreements, which only provide for the car wash service."

As provided in your letter dated May 24, 2016, Taxpayer asserts that "[a]bsolutely no tangible personal property is sold separately for customers to take home for use" and there is no inventory that Taxpayer previously sold still remaining in inventory for possible sale at retail to customers. Taxpayer also asserts that the sales of "gift cards, specific wash tickets, and an unlimited wash monthly or annual pass" at the North Carolina locations include "pre-sold carwashes that can only be redeemed for a car wash service or, prepaid cards that can only be redeemed for car wash services."

You advise that Taxpayer derives income from activities other than car washes which include revenue from "rental income from 3rd parties produced by real estate owned by [Taxpayer]," which "makes up 0.23%" of total revenue and "various management fees" which are "Consulting and Management Fees related to a joint venture that holds 2 car wash locations. These management fees represent 0.1% of total revenues."

Issue

You presented four scenarios on behalf of Taxpayer for consideration and response by the Department. Specifically, you inquired as to whether gross receipts derived from the scenarios are subject to North Carolina sales and use tax if performed on or after March 1, 2016. You state in your letter of March 2, 2016 that "[o]ur interpretation of the relevant Statutes leads us to conclude the activities described in each of the four Scenarios . . . would be considered non-taxable 'repair, maintenance, and installation services' . . . [a]lthough, [Taxpayer's] services might arguably fit the definition of 'repair, maintenance, and installation services' . . . they *[sic]* definitely qualify . . . as

being excluded from the definition of 'retailer' since their *[sic]* activities do not otherwise meet the definition of a retail trade. The majority of [Taxpayer's] revenue does not come from retailing tangible personal property, buying goods for resale or rendering services incidental to the sale of merchandise. In fact the only sources of revenue are derived from services or non-taxable real estate rental and management. These business activities do not meet the definition of retail trade as defined in . . . the Statute."

Applicable Statutes and References

Under Article 5 ("Article") of the North Carolina Revenue Act ("Act")[1], N.C. Gen. Stat. § 105-164.1 *et. seq.*, Subchapter VIII: Local Government Sales and Use Tax, and Chapter 1096 of the 1967 Session Laws, State, local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer's net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the percentage rates listed in subdivision N.C. Gen. Stat. § 105-164.4(a). N.C. Gen. Stat. §§ 105-164.3(1k), 105-164.3(9), 105-164.3(14), 105-164.3(24), 105-164.3(35), 105-164.3(46), 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537. N.C. Gen. Stat. § 105-164.4(a)(16) provides the "general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services."

N.C. Gen. Stat. § 105-164.3(1k) defines "business" as an "activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business."

N.C. Gen. Stat. § 105-164.3(34) defines "retail sale or sale at retail" as the "sale, lease, or rental for any purpose other than for resale, sublease, or subrent."

N.C. Gen. Stat. § 105-164.3(35)a. defines "retailer," in part, as a "person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property, or services for storage, use, or consumption in this State." N.C. Gen. Stat. § 105-164.3(35)b. provides a "person engaged in business of delivering, erecting, installing, or applying tangible personal property for use in this State that does not become part of real property pursuant to the tax imposed under G.S. 105-164.4(a)(13) unless the person is [a] person whose *only business activity* [emphasis added] is providing repair, maintenance, and installation services."

N.C. Gen. Stat. § 105-164.3(33g) defines "repair, maintenance, and installation services" as the following:

a. To keep or attempt to keep tangible personal property or a motor vehicle in working order to avoid breakdown and prevent repairs.
b. To calibrate, restore, or attempt to calibrate or restore tangible personal property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore tangible personal property or a motor vehicle to proper working order or good condition.

1 References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.

d. To install or apply tangible personal property except tangible personal property installed or applied by a real property contractor pursuant to a real property contract.

As advised in SD-16-2 issued February 5, 2016 by the Department, "[t]he term 'restore' is defined in the Merriam-Webster Dictionary as 'to give back (someone or something that was lost or taken); to return (someone or something); to put or bring (something) back into existence or use; to return (something) to an earlier or original condition by repairing it, *cleaning* [emphasis added] it, etc.'" Additionally, as provided in SD-16-2, "[t]he term 'condition' is defined, in part, in the Merriam-Webster Dictionary as 'the state in which something exists: the physical state of something.'"

N.C. Gen. Stat. § 105-164.3(36) defines "sale or selling," in part, as the "transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means."

N.C. Gen. Stat. § 105-228.90(5) defines, in part, "person" as "[a]n individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation. . .or another group acting as a unit. "

Ruling

Scenario 1
"A carwash is purchased by a customer and an employee drives the car into the mechanical wash, pulls it out, employees wipe the car down, vacuum the vehicle, etc. No additional tangible property is sold with the service."

Response 1
The sales price of or the gross receipts derived from a carwash purchased by a customer as described in Scenario 1 are subject to the tax imposed on repair, maintenance, and installation services and are subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax. Taxpayer meets the definition of "retailer" as provided in N.C. Gen. Stat. § 105-164.3(35)a. as Taxpayer is engaged in the business of making sales at retail of car wash services.

The exception from the definition of "retailer" as provided in N.C. Gen. Stat. § 105-164.3(35)b. for "[a] person whose only business activity is providing repair, maintenance, and installation services where the person's activities do not otherwise meet the definition of retail trade" does not apply to Taxpayer. Taxpayer derives income from business activities that include rental income from real estate properties and consultant and management fees. Taxpayer is not a person whose *only business activity* is to provide repair, maintenance, and installation services; therefore, there is no need to analyze the reference to "retail trade" as Taxpayer fails the first part of the exception. Clearly, income derived from rental income from the real estate properties and consulting and management fees that are part of Taxpayer's "additional revenue" are engaged in with "the object of gain, profit, benefit, or advantage, either direct or indirect" as the term "business" is defined, in part, in N.C. Gen. Stat. § 105-164.3(1k). While it is acknowledged that the majority of Taxpayer's income is derived from carwash services, there is no threshold for the exception from "retailer" discussed herein that would exclude other business activity. Rather, a person whose *only business activity* is providing repair, maintenance, and installation services is not a retailer no

matter that such person may meet the definition of "retail trade" as the term is defined by statute. Taxpayer fails to meet this exception and is a retailer.

Scenario 2
"A carwash is purchased by a customer. An employee brushes and sprays salt and sand from front and rear. The customer enters the wash, follows directions, and has no other contact in the cleaning service. No other services or sales are offered at the location."

Response 2
The response to Scenario 1 is applicable to Scenario 2.

Scenario 3
"Customer purchases one of several [redacted] which provide for unlimited monthly car washes for a single vehicle. A sticker is placed on the inside of the driver's side front door jamb and a plastic [redacted] card is issued to the purchaser for the purpose of identifying the matching sticker and card each time a car wash is desired. A separate charge is not made for The [redacted] card or sticker and if lost both the card and sticker will be replaced at no charge."

Response 3
The response to Scenario 1 is applicable to Scenario 3.

Scenario 4
"Customer may purchase gift cards or car wash certificates online. Orders are placed via the web and cards or certificates are mailed to the address provided online by the customer. No other products are sold online and certificates and cards are provided for the sole purpose of identifying the services purchased by the customer when redeemed at the car wash. Additionally, no tangible personal property is sold online."

Response 4
Sales and Use Tax Technical Bulletin, Section 44-2, "Gift Certificates" provides that "[c]harges by vendors for gift certificates which can be exchanged for merchandise [or service], are not subject to sales tax. When the holder of such gift certificates exchanges the certificate for merchandise [or service], the transaction is subject to the general rate of State and any applicable local sales and use tax unless specifically exempt by statute. The basis for the tax is the sales price of the property [or service]."

The sales price of or the gross receipts derived from a car wash is subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax at the time of redemption of a gift card or carwash certificate. See response to Scenario 1 for an explanation as to the application of sales and use tax to the sales transaction for the car wash services.

Legislative Changes

Session Laws 2016-94 signed into law July 14, 2016 by the Governor, includes a number of legislative changes. Below are a few of the changes that apply effective January 1, 2017, for sales on or after that date:

- The definition of "repair, maintenance, and installation services" is recodified in N.C. Gen. Stat. § 105-164.3(33i)a. and as amended is defined, in part, as "[t]o

keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property."

- N. C. Gen. Stat. § 105-164.13(61a)l. is added and provides an exemption from sales and use tax for the "[s]ales of or the gross receipts derived from the repair, maintenance, and installation services of *self-service carwashes* [emphasis added]".
- The exception from retailer currently in N.C. Gen. Stat. § 105-164.3(35) for "[a] person whose only business activity is providing repair, maintenance, and installation services where the person's activities do not otherwise meet the definition of retail trade" is removed.

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.

Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division