NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

Josh Stein
Governor

McKinley Wooten, Jr.
Secretary

January 13, 2026

[redacted]

Re: [redacted]
Account ID: [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] … is engaged in business in the payment processing industry. [Taxpayer] is primarily engaged in providing card payment processing services and fraud prevention services to [redacted] merchants ("Merchants") who sell their merchandise and/or services to end-customers ("Customers") [redacted]. As part of its services, [Taxpayer] provides [redacted] services that allow Merchants to list products for sale and execute such sales to their Customers [redacted]."

"[Taxpayer] provided its card payment processing services under [redacted] that represent the [redacted] which we will refer to individually herein as 'Legacy Model A' and 'Legacy Model B.'"

Taxpayer states that "[t]he main differentiator between the two Legacy Models for purposes of this request is that Legacy Model A provided [Taxpayer], for a very brief time, title to the goods sold by Merchants to Customers (hereinafter described as 'flash title"). Whereas, in Legacy Model B, [Taxpayer] did not hold title to any goods being sold at any time and merely acted as a payment collection agent. Under both Legacy Models, the actual services provided by [Taxpayer] were identical despite the changes in the contractual language.

Taxpayer provided the following summary of what it deemed "the key relevant characteristics" of its relationship with the Merchants that are applicable to both Legacy Models:

1) "All of [Taxpayer's] MSAs included a paragraph stating that the Merchants were responsible for collecting, remitting, and otherwise administering any and all sales or use taxes.

2) [Taxpayer] does not have a website where Customers can browse, select, and purchase a Merchant's goods or services. [Taxpayer] is not in the business of making sales itself other than sales of its payment processing service. [Taxpayer] does not engage in any solicitation of the items owned by the Merchants via any communication medium for the purpose of effecting the sale of such items.
3) [Taxpayer] had no control over Merchants' e-commerce platforms for purposes of being able to apply sates [sic] tax correctly based on situsing rules, collecting or maintaining exemption documentation, and/or otherwise administer sales taxes in any way. [Taxpayer] was provided some transaction level data, but not 100% of the time and not enough to make an informed tax assessment of the products or services sold.
4) [Taxpayer] had no responsibility for the Merchant's website displaying the goods available for sale, integrating systems for the catalog of products, pricing, establishing and maintaining customer accounts, applying discounts and promotions, receiving and processing orders (aside from payment processing services provided by [Taxpayer]), liability for defective products, or any other aspects of the retail relationship with the end customer. The Merchant was solely responsible for the accuracy of all product information displayed on Merchants' websites.
5) [Taxpayer's] name is not on any invoice or bill of lading for the items sold by the Merchants, and [Taxpayer] is not listed as an exporter or importer of record for such transactions. The only documentation related to the payments processed where [Taxpayer's] name is mentioned is in regard to the payment card networks and is generally listed along with the Merchant's name.
6) [Taxpayer] never had any actual or constructive possession of the goods or inventory that were the subject of the sales by the Merchants. The Merchants handled all shipping and fulfillment of the goods and were responsible for all fees associated with inaccurate orders or replacements.
7) [Taxpayer] had the risk of fraud for the transactions but had no other responsibility to the Customer or Merchant's banks for refunds, shipping, replacing the products, or risk for delays or cancelled orders.
8) [Taxpayer] does not control, participate in, assist with, facilitate, or otherwise have any involvement in any of the activities that are typical of a retail vendor making retail sales to customers that would traditionally require the collection and remittance of sales tax."

Taxpayer also described a typical transaction under both Legacy Models as follows:

A. "A Customer selects the products they wish to purchase from the Merchant and puts them in a digital shopping cart on the Merchant's website. In the Merchant's digital shopping cart, applicable taxes and delivery fees would be added to the total purchase price. However, determination of tax collection obligations is made by each Merchant independently as they are responsible for collecting, remitting, and otherwise administering any and all sales or use taxes.
B. [redacted]
C. [redacted]
D. [redacted]
E. [redacted]

You provided two contracts for review by the Department. The contract for Legacy Model A[1] provides, in part, that Taxpayer, [redacted]."

[redacted]

[redacted]

[redacted]

The contract for Legacy Model B requires, in part, that Taxpayer [redacted]

Finally, you also advise that Taxpayer "did not maintain or occupy an office, place of distribution, or other place of business in the state."

Issue

Was Taxpayer making sales as a retailer under Legacy Model A or Legacy Model B for purposes of 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.

N.C. Gen. Stat. § 105-164.3(83) provides, in part, that "engaged in business," is "[m]aking a remote sale, if one of the conditions listed in [N.C. Gen. Stat. §] 105-164.8(b) is met."
N.C. Gen. Stat. § 105-164.3(133) provides a "marketplace" is "[a] physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State."

[1] You have stated that taxpayer is the successor and assignee to those contracts. As a result, for purposes of this determination, the Department will treat taxpayer as the merchant of record for this contract.

N.C. Gen. Stat. § 105-164.3(133) provides a “marketplace facilitator” is “[a] person that, directly or indirectly and whether through one or more affiliates, does both of the following:

a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
b. Does one or more of the following:
    1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
    2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.”

N.C. Gen. Stat. § 105-164.3(221) provides that a “remote sale” is “[a] sale of an item ordered by mail, telephone, Internet, mobile phone application, or another method by a retailer who receives the order in another state and delivers the item or makes it accessible to a person in this State or causes the item to be delivered or made accessible to a person in this State or performs a service sourced to this State. It is presumed that a resident of this State who makes an order was in this State at the time the order was made.”

N.C. Gen. Stat. § 105-164.3(229) provides, in part, that a “retailer” is “[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State. When the Secretary finds it necessary for the efficient administration of [the Sales and Use Tax Act] to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of [the Sales and Use Tax Act].… A person engaged in business of making a remote sale, if one of the conditions listed in [N.C. Gen. Stat. §] 105-164.8(b) is met."

N.C. Gen. Stat. § 105-164.3(235) provides that “sale or selling” is “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain 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. § 105-164.8(b)[2] provides, in part, that a person is engaged in business in this State if at least one of the following conditions is met:

> “(9) The retailer makes gross sales in excess of one hundred thousand dollars ($100,000) from remote sales sourced to this State, including sales as a marketplace seller, for the previous or the current calendar year.
> (10) The retailer is a marketplace facilitator that makes gross sales in excess of one hundred thousand dollars ($100,000), including all marketplace-facilitated sales for all marketplace sellers, from sales sourced to this State for the previous or the current calendar year.”

Ruling

Based on the information provided, Taxpayer provided payment processing services and acted as merchant of record for Merchants under both Legacy Model A and Legacy Model B. The main distinction identified by Taxpayer between Legacy Model A and Legacy Model B is that Taxpayer took

[2] Effective July 1, 2024, North Carolina repealed a transaction threshold of 200 or more separate transactions. Session Law 2024-28. For additional information about the repeal review Directive SD-24-1.

title to the goods being sold under Legacy Model A. Under Legacy Model B, Taxpayer states that it did not take title to the goods being sold.

For sales and use tax purposes, North Carolina law defines a sale as "[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain 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. § 105-164.3(235). Under Legacy Model A, Taxpayer and the provided contract make clear that Taxpayer takes title to the goods being sold. Taxpayer then transfer title to the goods to the purchasing Customer for consideration. As a result, the Department determines that Taxpayer is making a sale because it transfers title to the goods for consideration. If these sales are sourced to North Carolina, Taxpayer is a retailer because it is engaged in business in making these sales at retail.

As noted above, Taxpayer distinguishes Legacy Model B from Legacy Model A by the lack of title transfer to Taxpayer. In Legacy Model B, Taxpayer claims to never take title to the item being sold, possession of the item, or license to use the item. In addition, Taxpayer never purchases or obtains title or license to use the item from Merchant. As a result, Taxpayer's facilitation of payment does not meet the definition of a sale because Taxpayer "never transfers title, license to use or consume, or possession of the item." Instead, Taxpayer facilitates payment but the Merchant transfers title, possession, or license to use or consume the items being sold directly to the Customer. As a result, the Department determines that the Merchants make the sale to their Customers despite Taxpayer acting as an intermediary to facilitate payment.

Finally, the transactions described by Taxpayer do not make Taxpayer a marketplace facilitator. As noted above, the definition of marketplace facilitator includes a person who, in part, "lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator." N.C. Gen. Stat. § 105-164.3(133). In this case, the goods at issue are listed and sold on websites. While Taxpayer facilitates payments, Taxpayer states that it does not own, operate, or control the Merchants' websites directly or indirectly. As a result, the Department determines that Taxpayer is not a marketplace facilitator because it does not list or make the items available for sale on a marketplace that it owns or operates.

In summary, the Department determines that Taxpayer is a retailer when it makes sales under Legacy Model A because it transfers title to the items for consideration. Further, the Department determines that Taxpayer is not a retailer under Legacy Model B because it does not transfer title, license to use or consume, or possession of the items being sold and does not act as a marketplace facilitator.

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