



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

July 30, 2018

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Private Letter Ruling

Taxpayer: [REDACTED]

Taxpayer's Account: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of the request for a written determination made on behalf of your client, [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in the initial request as well as supplemental information provided to the Department subsequent to the original request.

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 Taxpayer and Taxpayer's representative 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 written determination is issued.

Overview and Relevant Facts

You advise "[Taxpayer] is primarily in the business of renting and selling traffic control equipment and supplies to [its] customers and [sic] well as performing traffic control services. The products [Taxpayer] sell[s] and rent[s] include a variety of road construction related items such as traffic cones, safety vests, temporary construction signs, arrow boards and barricades. [Taxpayer] also provide[s] traffic control services such as lane closures, flagging operations and stationary work zone sign installations to customers that are building or repairing roads. Some additional details on their products and services can be found on their website. . .

"Lane closures include the temporary installation, maintenance and removal of equipment needed to close a road lane, such as barricades, drums, signs, stands, arrow boards, changeable message signs and trucks with impact attenuators. Often these closures involve the movement of the equipment down the road as the road is being built or repaired. [Taxpayer's] employees are on the job site the entire time that the equipment is set up to do the lane closures. If the employees are not on site, the equipment is moved either to a storage area or a field office."

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You advise that “[t]he contract price for the service contracts is a lump sum price, without any separately stated charges. . . . [Taxpayer] is currently charging sales tax on its service contracts based on the entire lump sum price. For financial statement reporting, [Taxpayer is] currently reporting all service contracts as service revenue.”

Documents provided to the Department state the scope of work for contract number [REDACTED] is that “[Taxpayer] will supply lane closures for the [REDACTED] segment for the below rates. Price includes a 2 man crew, signs, cones, arrow boards, and 1 message board for each closure needed. Price is good for up to a 10 hr. work shift. If multiple closures or additional time is needed pricing will increase accordingly.”

The billing document given to Taxpayer’s customer includes the statement, “If applicable, the contract price above includes equipment rental and installation services provided as part of the contract.”

Issue

Is Taxpayer’s lump-sum charge for lane closure services provided without a crash truck (“Product”) subject to sales tax?

Applicable Statutes and References

Under Chapter 105 of the North Carolina General Statutes, 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, N.C. Gen. Stat. § 105-463 *et. seq.*; 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 applicable State, applicable local, and applicable transit rates of sales and use tax. 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)(2) imposes a privilege tax (“sales tax”) on a retailer’s lease or rental of tangible personal property in the State. Sales tax “applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in 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. A person who leases or rents property shall also collect the tax imposed . . . on the separate retail sale of the property.”

The term “retailer” is defined, 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 for storage, use, or consumption in this State, or services sourced to this State.” N.C. Gen. Stat. § 105-164.3(35).

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.

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The term “sale or selling” is defined, in part, as “[a] lease or rental.” N.C. Gen. Stat. § 105-164.3(36).

The term “retail sale or sale at retail” is defined as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” N.C. Gen. Stat. § 105-164.3(34).

The term “lease or rental” is defined by N.C. Gen. Stat. § 105-164.3(17) as “[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:

- a. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.
- b. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments.
- c. The providing of tangible personal property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this sub-subdivision, an operator must do more than maintain, inspect, or set up the tangible personal property.”

The term “operator” is defined as “[a] person provided with the lease or rental of tangible personal property or a motor vehicle to operate, drive, or maneuver the tangible personal property or motor vehicle and whose presence, skill, knowledge, and expertise are necessary to bring about a desired or appropriate effect. The person must do more than calibrate, test, analyze, research, probe, or monitor the tangible personal property or motor vehicle.” N.C. Gen. Stat. § 105-164.3(25a).

The term “tangible personal property” is defined as “[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.” N.C. Gen. Stat. § 105-164.3(46).

N.C. Gen. Stat. §105-262 authorizes the Secretary of Revenue (“Secretary”) to adopt rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. “It is the duty of the Secretary to interpret all laws administered by the Secretary. . . . An interpretation by the Secretary is prima facie correct.” N.C. Gen. Stat. § 105-264. Published for the purpose of presenting the administrative interpretation and application of the Act, the Department’s administrative rules are considered “prima facie correct.” *Id.* The following administrative rule is applicable to gross receipts derived from the lease or rental of tangible personal property:

17 North Carolina Administrative Code (“NCAC”) 07B .4401

The gross receipts or gross proceeds derived from or the total amount agreed to be paid for the lease or rental, within North Carolina, of all kinds and types of tangible personal property not specifically exempt by statute are subject to the sales or use tax at the same rate which is

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applicable to the retail sale of such property. The tax shall be computed and paid on such gross receipts, gross proceeds, or rental payable without any deduction whatsoever for any expense incident to the conduct of business. The tax is due and payable at the time the lessor bills the lessee for the rent whether such billing is for the lump sum rental or on a monthly or other periodic basis.

Ruling

Taxpayer's lump-sum charge for its Product consists of the temporary installation, maintenance, and removal of equipment needed to close a road lane. The documentation provided to the Department for a specific lane closure contract states lane closure lump-sum charges include a two-man crew, signs, cones, arrow boards, and one message board for each closure needed. Additionally, the billing document given to Taxpayer's customer includes the statement, "If applicable, the contract price above includes equipment rental and installation services provided as part of the contract."

Under the terms of the contract and billing documents provided to the Department, charges for the equipment rented and the labor or service costs for installing, maintaining, and removing the equipment used to close lanes of a road comprise the gross receipts derived from the lease or rental of tangible personal property. Taxpayer's lease or rental of signs, cones, arrow boards, and message boards ("Property") does not require an operator for the Property to perform as designed. Taxpayer's employees used to temporarily install, maintain, and remove the tangible personal property do not meet the definition of the term "operator."

Additionally, administrative rule 17 NCAC 07B .4401 provides that the gross receipts or gross proceeds derived from the total amount to be paid for a lease or rental are subject to sales or use tax at the same rate that is applicable to the retail sale of such property. The tax is computed without any deduction for any expense incident to the conduct of business.

The gross receipts of Taxpayer's Product where Taxpayer's contract price includes equipment rental and installation services provided as part of the contract are subject to the general State, applicable local, and applicable transit rates of 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 the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling 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