North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

July 30, 2021

[redacted]

Re: [redacted]
Private Letter Ruling
FEIN: [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 advise Taxpayer "is in the business of implementing energy efficiency improvements to real estate at [redacted]. The [Taxpayer] is hired by a general construction contractor to act as a subcontractor with respect to such implementations. The general contractor that hires the [Taxpayer] to perform the contracts is hired by [redacted].

"Examples of energy efficiency measures implemented include building envelopes, water conservation, HVAC equipment, water meters, and lighting. On some jobs, the [Taxpayer] . . . provides the energy efficiency materials and is responsible for their incorporation/installation into the realty. On other jobs, materials are provided by the customer (*i.e.*, [redacted]) and the [Taxpayer] only performs services."

You describe each energy efficiency measure performed by Taxpayer as follows:

Building Envelopes

"Building envelopes involve the [Taxpayer] installing door sleeves, weather stripping and re-caulking doors and interiors of homes. The [Taxpayer] provides the materials for the building envelope jobs and also performs the installation labor."

Water Conservation

"Water conservation projects consist of replacing older, less efficient water heaters, toilets, shower heads, and faucets in buildings with more efficient versions. As part of the installation process, the [Taxpayer] also installs associated shut-off valves, hoses, and other accessories necessary to the installations. On these projects, the [Taxpayer] provides the materials along with the installation labor."

HVAC Upgrades

"On HVAC upgrade projects, the [Taxpayer] replaces existing HVAC units, thermostats, and related components to improve the energy efficiency of buildings. As part of this process, the [Taxpayer] removes the current HVAC unit and related equipment and installs a new, more energy efficient HVAC unit and required component parts. Typically, the new HVAC unit will be installed on the existing condenser pad outside the building. On occasion the condenser pad outside is replaced depending on its condition. Finally, when a new HVAC unit is installed, the [Taxpayer] installs a new thermostat to control the unit.

On these projects, the customer provides all of the HVAC equipment, including the furnace, air conditioner, and thermostat. The [Taxpayer] performs only installation labor, but may on occasion provide its own component parts, such as caulk, miscellaneous wires, and similar accessories required to complete installations."

Water Meters

"In addition, the [Taxpayer] installs new water meters on buildings that do not currently have water meters installed. The water meter is attached to copper piping that runs from the meter into the building. The meter is also fitted with a transponder that tracks water usage so that the water system can check the water from their technician's vehicle while driving by instead of physically checking the meter for water usage. On these projects, the customer provides the water meters and the [Taxpayer] performs only the installation of the meter."

Lighting Upgrades

"The [Taxpayer] replaces old lighting with more efficient LED lighting. This typically involves simply changing bulbs from older incandescent bulbs to new LED bulbs. However, on occasion the [Taxpayer] will install new light fixtures along with new LED bulbs. The customers supply all of the new light bulbs and fixtures and the [Taxpayer] provides only installation labor and the recycling of the old bulbs and miscellaneous wiring."

You further advise Taxpayer's "contracts require the widespread replacement and upgrade of *multiple systems* within a building. . . . These *collective* services [described above] are intended to improve the overall energy efficiency of the building."

Issue

Are the multiple energy efficiency improvements performed on a building by Taxpayer a capital improvement?

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, 105-467, 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(31) defines the term "capital improvement," in part, as "[o]ne or more of the following:

a. New construction, reconstruction, or remodeling."

N.C. Gen. Stat. § 105-164.3(219) defines the term "remodeling" as "[a] transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding."

N.C. Gen. Stat. § 105-164.3(205) defines the term "real property," in part, as "[a]ny one or more of the following:

. . .

b. Building or structure on land."

Ruling

The term "capital improvement," as defined in N.C. Gen. Stat. § 105-164.3(31), includes remodeling. N.C. Gen. Stat. § 105-164.3(219) provides, in part, that remodeling is "[a] transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed." Based on the information furnished, Taxpayer's contracts require Taxpayer to perform the multiple energy efficiency improvements described above within a building. The multiple services collectively performed by Taxpayer to update a building meets the definition of remodeling which is a capital improvement.

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