North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

October 29, 2021

[redacted]

Re: [redacted]
Request for Written Determination
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 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 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] collects [redacted] paper, plastic, metal and other materials each year. [Taxpayer] converts the collected materials into products with distinctive names, characters, and use." Further you explain that "[Taxpayer] acquires the materials from third-party waste haulers and local governments. [Taxpayer] converts the materials through a series of machines and processes into finished goods that conform to industry and customer standards of size, shape, and density.

"The materials [redacted] arrive together in one pile or truck. This is commonly referred [*sic*] as [redacted].' Most materials that arrive for processing is [*sic*] from curbside household pick-up but can also include materials from commercial and industrial sites. The machinery and equipment at the facilities separates this '[redacted] material into temporary storage bins which is then produced into a 'Bale' for sale to customers. The customer and/or industry standards, stipulate the specifics of the bale which could include the size and weight of the bale, type of materials, type of metals, and moisture content."

When the raw materials arrive at the facility, the recycling process begins. The recycling process takes "the form of [redacted] material, consisting of residential and commercial recyclables containing cardboard, containers, cans and bottles, paper, plastics, glass and aluminum. After clearing a security checkpoint, all materials are dumped inside of the facility onto the plant's tipping floor. Delivery of the materials arrive by various municipal vehicles and vehicles operated by waste sellers and haulers.

"The materials are then picked up by a front-end loader and dropped several times to begin the process of separating the recyclables into separate elements. The materials are then processed through a drum feeder. The drum feeder contains a large rotating drum with cleats that further separates the materials. Through this process the heavier materials will go to the bottom and the lighter to the top of the drum. The materials are then sent to an incline conveyor with a uniform density to ensure a consistent and proper depth of raw material across the conveyor belts.

"The materials are then sent to a pre-sort stage where cardboard is manually pulled out and sent to a bailing [*sic*] machine that compresses the materials into a uniform shape and weight bound together and ready for sale." During this stage of the process, individuals remove "large pieces of metal, concrete, large plastic items and other materials that are not recyclable and could also damage machinery used in subsequent stages of production."

After materials have been removed, they are "conveyed to a three-deck old corrugated cardboard ('OCC') screen. This machine contains decks of rotating axles on which multiple elevated discs are mounted that breaks and sorts the material into two separate streams of heavier material while lighter materials, primarily OCC, floats on top.

"The first stream of material separated by the OCC screen consists primarily of glass. The glass is sent by conveyor to a glass breaking screen. The glass breaking screen contains metal rotating discs which breaks the glass to smaller sizes which fall through the screen. The glass breaking machine will also assist in removing bottle caps and shredded paper. After fallen [*sic*] through the screen, the glass is cleaned to remove paper shreds or other contaminants. Once this is completed the glass is conveyed to a storage bunker.

"The second stream of heavier materials separated by the OCC screen are sent by conveyor to an Air Drum Separator. The Air Drum Separator contains a series of screens, scalping and polishing screens, which separates the various materials consisting of small pieces of paper, fiber, plastics and metals.

"Lighter items that were not processed by the glass breaking screen or the Air Drum Separator are then sent to an optical sorter. The optical sorter automatically separates old mixed paper from the rest of the materials. The old mixed paper is ejected from the other materials by use of optical scanning and compressed air. This paper is then sent to a quality control sort station to remove any existing contaminants and then to a storage bunker.

"Any remaining materials are sent to an electromagnet where ferrous items are picked out and sent to a storage bunker. Non-ferrous materials are sent to a PET optical sorter. This machine separates items made of a type of plastic, polyethylene terephthalate ('PET'), and sends it to a quality control sort station where contaminants are removed. This manual sort

will also separate materials referred to as HDPE colored and HDPE natural. The uncontaminated PET and HDPE is then sent to a storage bunker.

"Any material that is not separated by the PET optical sorter is sent to an eddy-current separator. This machine uses electromagnetic induction to separate nonferrous materials (aluminum cans and containers)."

Issue

Is Taxpayer a manufacturer for North Carolina sales and use tax purposes and as such does the machinery and equipment used in the production process qualify for exemption as mill machinery and mill machinery parts or accessories for purposes of the sales tax exemption set forth in N. C. Gen. Stat. § 105-164.13(5e)?

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. § 105-164.13(5e) provides an exemption from sales and use tax for "[s]ales of mill machinery or mill machinery parts or accessories to any of the persons listed in this subdivision. For purposes of this subdivision, the term 'accessories' does not include electricity. The persons are:

a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of food prepared by it for consumption on or off its premises or (ii) a production company.
b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant."

Sales and Use Tax Bulletin 57-1 provides, "[t]he following classifications are based on the three principal activities of a manufacturing industry or plant and shall be followed by manufacturers purchasing tangible personal property that is used or consumed during the different phases of the operation of an industrial plant:

1. Production as a phase of industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. It also includes:

a. The movement of raw materials or ingredients from an inventory or a stockpile located on the premises of the manufacturing facility to the assembly or processing line.
b. The movement of goods in process along the assembly or processing line.
c. The movement of manufactured products from the assembly or processing line into shipping or storage areas and yards located on the premises of the manufacturing facility.
d. The work of experimentation and research performed on the manufactured products.

Purchases by a manufacturing industry or plant of machinery or parts or accessories for the machinery for use in 'production,' as defined above, are classified as mill machinery or mill machinery parts or accessories. Purchases by a manufacturing industry or plant of research and development equipment and supplies for quality control or the improvement of its manufactured products or for development of products which it will manufacture are classified as mill machinery or mill machinery parts or accessories. Items that are not classified as mill machinery or mill machinery parts or accessories when purchased by manufacturing industries and plants for use in their research and development areas include such items as desks, calculators, computers used for administrative purposes, and chairs which are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Production does not include any activity connected with the movement of raw materials or ingredients into inventory nor does it include 'distribution' or 'administration' as defined in the subsections below. Sales to manufacturing industries and plants of machinery, parts, or accessories for such machinery, and other tangible personal property used in the movement of raw materials or ingredients into inventory or in 'distribution' activities, as defined in the subsection below, or which are used for similar purposes are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Distribution with reference to manufacturing industries and plants shall mean any activity connected with the movement of manufactured products within storage warehouses, shipping rooms, and other such finished product storage areas and the removal of such products therefrom for sale or shipment. Sales of distribution equipment to manufacturing industries and plants are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

3. Administration with reference to manufacturing industries and plants shall mean and include the administrative work of offices, promotion of sales, and collection of accounts. Sales of administrative equipment and supplies, such as office equipment, paper, pens, pencils, stamps, paper cutters, printer form, file cabinets, scissors, staplers, desk trays, and other miscellaneous tangible personal property generally sold for office use, furniture, and fixtures are subject to the general State, applicable local, and applicable transit rates of sales and use tax."

Ruling

Based on the information furnished, Taxpayer applies skill and labor to the "[redacted]" of materials that arrive at its [redacted] facility for recycling. The recycling process uses several types of equipment to produce a variety of new, different, and distinctive products with a ready

market and having a commercial value in excess of the original raw materials. Taxpayer's purchases of mill machinery used in the "production" phase, as defined in Sales and Use Tax Bulletin 57-1, qualify for purposes of the sales and use tax exemption set forth in N.C. Gen. Stat. § 105-164.13(5e). Any machinery not used in the production phase, including machinery used prior to or subsequent to the "production" phase, is subject to the applicable 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 Taxpayer may not rely on it. If Taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of 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