North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

April 14, 2022

[redacted]

Re: Expedited Private Letter Ruling Request
[redacted]
EIN: [redacted]

Dear [redacted]:

The Department has completed its review of your request for a private letter ruling on behalf of the [redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your January 26, 2022 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

Taxpayer is a federally recognized Indian tribe[1], with Taxpayer's tribal territory primarily located in [redacted]. The Taxpayer [redacted] acres of land [redacted] in [redacted] North Carolina. Taxpayer seeks to construct [redacted] on the [redacted] parcel.

Taxpayer "requested the Bureau of Indian Affairs (BIA) within the U.S. Department of the Interior to [redacted]. [redacted] the land was taken into trust on behalf of the [Taxpayer]." The Indian Reorganization Act "authorizes the federal government to acquire land 'for the purpose of providing land for Indians' with title to be held 'in the name of the United States in trust for the Indian tribe or individual Indian for which it is acquired, and such lands or rights shall be exempt from State and local taxation.'"

[1] Use of terms such as "Indian, Indian tribe, Indian reservation, Indian land, and Indian country" are used throughout this ruling to align with terminology typically found in federal laws, regulations, and court decisions.

"[Taxpayer] is eligible to conduct operations on the site under the :

Taxpayer has established a "as an unincorporated governmental instrumentality of the executive branch of the [Taxpayer]. As an unincorporated governmental instrumentality, is part of the [Taxpayer's] executive branch, reporting to and under the ultimate authority of the [Taxpayer], and is not a tribal enterprise or corporation."

"The [Taxpayer's] construction of will require the purchase of numerous items of tangible personal property, including modular units to house pending the completion of a , construction materials for incorporation into the , furniture and other miscellaneous items."

"The [Taxpayer] expects to purchase some of these items directly or through the while others will be purchased by the [Taxpayer's] construction contractors. In addition, the [Taxpayer] expects to lease, rather than purchase, some of the ."

"To the extent possible, all items purchased by the [Taxpayer] or its contractors or leased by the [Taxpayer] will be delivered to the purchaser or lessee on the [Taxpayer's] trust land in ."

Issue

Are purchases or leases of otherwise taxable items by Taxpayer or its , and purchases of tangible personal property by its construction contractors for incorporation into real property improvements on trust land in North Carolina exempt from North Carolina sales and use tax to the extent sourced to the Taxpayer's trust land?

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. §105-164.7 requires retailers or facilitators to collect sales tax from the purchaser as a trustee for the State.

N.C. Gen. Stat. §105-164.8 obligates retailers to collect and remit sales tax imposed by the North Carolina Sales and Use Tax Act.

Generally, sales or purchases of items, as the term item is defined in N.C. Gen. Stat. §105-164.3, are presumed to be subject to sales or use taxes unless otherwise exempt by statute. Specifically, N.C. Gen. Stat. §105-164.26 states "…to prevent evasion of the retail sales tax, the following presumptions apply:

(1) That all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records.…
(2) That tangible personal property sold by a person for delivery in this State is sold for storage, use, or other consumption in this State.
(3) That tangible personal property delivered outside this State and brought to this State by the purchaser is for storage, use, or consumption in this State.
(4) That certain digital property sold for delivery or access in this State is sold for storage, use, or consumption in this State.
(5) That a service purchased for receipt in this State is purchased for storage, use, or consumption in this State."

Further, in the case of *Piedmont Canteen Service, Inc. v. William Johnson, Commissioner of Revenue for North Carolina*, 256 N.C. 155, 163 (1962) the Court stated, "[o]ne who claims an exemption or exception from tax coverage has the burden of bringing himself within the exemption or exception. *Sabine v. Gill, 229 N.C. 599, 51 S.E. 2d 1; Henderson v. Gill, supra; Motor Co. v. Maxwell, 210 N.C. 725, 188 S.E. 389; Smoky Mountain Canteen Co. v. Kizer, 247 S.W. 2d 69 (Tenn. 1952)."*

N.C. Gen. Stat. §105-164.13(17) provides an exemption for "[s]ales which a state would be without power to tax under the limitations of the Constitution or law of the United States or under the Constitution of this State."

"The [U.S.] Constitution vests the Federal Government with exclusive authority over relations with Indian tribes..., and in recognition of the sovereignty retained by Indian tribes even after formation of the United States, Indian tribes and individuals generally are exempt from state taxation within their own territory." *Montana v. Blackfeet Tribe,* 471 U.S. 759, 764, 105 S.Ct. 2399, 2402, 85 L.Ed.2d 753 (1985); see also, *e.g., Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 148, 93 S.Ct. 1267, 1270, 36 L.Ed.2d 114 (1973).

In *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995), Oklahoma attempted to collect motor fuel and retail sales tax[2] from Chickasaw owned gas stations. The Court found "…when a State attempts to levy a tax directly on an Indian tribe or its members inside Indian country, rather than on non-Indians, we have employed, instead of a balancing inquiry, a more

[2] "In addition to the motor fuels and income taxes before us, the Tribe's complaint challenged motor vehicle excise taxes on Tribe-owned vehicles, *retail sales taxes on certain purchases by the Tribe for its own use, and sales taxes on 3.2% beer sold at the Tribe's two convenience stores*, as well as tax warrants issued against officers of the Tribe. In the course of litigation, Oklahoma apparently decided not to contest the Tribe's claims regarding the vehicle and retail sales taxes, and withdrew the warrants; the United States Court of Appeals for the Tenth Circuit affirmed the District Court's grant of summary judgment for the State on the 3.2% beer tax, and the Tribe has not sought our review of that issue." (*emphasis added*). *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995), footnote 3.

categorical approach: '[A]bsent cession of jurisdiction or other federal statutes permitting it,' we have held, a State is without power to tax reservation lands and reservation Indians." *County of Yakima v. Confederated Tribes and Bands of Yakima Nation,* 502 U.S. 251, 258, 112 S.Ct. 683, 688, 116 L.Ed.2d 687 (1992)." *Oklahoma Tax Commission v. Chickasaw Nation* at 458. The Court further held, "[t]he initial and frequently dispositive question in Indian tax cases, therefore, is who bears the legal incidence of a tax." *Id.* at 458-459. A state may not impose sales tax on a tribe or its members for sales made within Indian country[3], absent congressional authorization, conversely, if the legal incidence of a state tax falls on a non-Indian, even in Indian country, the state can generally impose its tax. *Id* at 459.

With few exceptions, even where a business owned and operated by a tribe in its own Indian country will be exempt from state business taxes, courts have consistently ruled that the tribe must collect state sales tax from its non-Indian customers in the absence of a statutory exemption or intergovernmental agreement. See, e.g., *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991); *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463 (1976).

Additionally, in *Central Machinery Company v. Arizona State Tax Commission*, the court found that sales tax levied on sales made to an Indian tribe on the reservation, whether or not the seller is a federally licensed Indian trader are outside of the authority of states. 448 U.S. 160, 163-164 (1980). *Central Machinery* established that a state tax on sales made on an Indian reservation are preempted simply because the Indian Trader Statutes existed. *Id* at 164. The ruling established that sales tax (and use tax, by extension) does not apply to sales of items delivered to the tribe, tribal governing organizations, or individual tribal members on a federally recognized reservation (or land trust). The Supreme Court has not gone further than *Central Machinery's* interpretation of the Indian Trader Statutes, declining to extend the preemptive power to taxes on sales to non-Indians.

Ruling

Based on the information furnished, Taxpayer is a federally recognized Indian tribe and the land located in [redacted] North Carolina was placed in trust for Taxpayer and is deemed part of Taxpayer's reservation through [redacted]. The federal government has exclusive authority over relations with Native American tribes. Based on rulings by the U.S. Supreme Court, sales of items by in-state vendors or out-of-state vendors to Taxpayer or its [redacted] are excluded from sales and use taxes when delivery of the item occurs on the reservation or land trust. Sales of items to contractors on behalf of Taxpayer or its [redacted] are also excluded from sales and use taxes when delivery of the property occurs on the reservation or land trust and the items are purchased as part of a real property contract to be incorporated into improvements on the reservation or land trust. However, sales of items by in-state or out-of-state vendors to Taxpayer, its [redacted], or contractors are subject to North Carolina sales or use taxes when delivery occurs outside the reservation or land trust even though such property may be incorporated into improvements on the reservation or land trust.

[3] 18 U.S.C. §1151 defines the term "Indian country" as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

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