NCDOR NORTH CAROLINA DEPARTMENT OF REVENUE

Roy Cooper
Governor

Ronald G. Penny
Secretary

November 2, 2022

[redacted]

Re: Private Letter Ruling
FEIN: [redacted]

Dear [redacted]:

The Department has completed its review of the request for a private letter ruling on behalf of [redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in the 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 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 "operates [redacted] facilities in North Carolina with blast freezing operations. . . . Before perishable foods such as [redacted] reach [Taxpayer's] locations in North Carolina, the [Taxpayer's] customers ('Producers') prepare the perishable foods at their manufacturing facilities and transport the products to [Taxpayer's] locations. . . . [Taxpayer] engages in receiving, blast freezing, continuation freezing, final packaging, and shipping processes."

You further advise "[b]last freezing is a quick freezing technique used in processing plants to take food products quickly to 0 °F or below . . . [which] dramatically slows molecular and microbial activity in perishable food, prevents spoilage and contamination, and extends the useful and marketable life of the food." The "sub-zero Fahrenheit temperature system with fast moving air directed at the food . . . ensures the food is frozen to the center quickly and that virtually no deterioration takes place."

The blast freezing process, as described in the request for a private letter ruling, states [redacted].

[redacted] The pallet remains [redacted] until [Taxpayer] verifies the food has been frozen to zero (0) degrees Fahrenheit at the core. This verification process requires a temperature probe.

"Product may be in the blast freezer for [redacted], depending on the product, the load in the freezer, and customer specifications."

Issue

Is the equipment purchased by Taxpayer for use in its blast freezing process considered mill machinery for purposes of the sales and use 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, 105-467, 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 57-9, Food Processors, provides "[p]urchases of . . . [mill machinery or mill machinery parts or accessories] by a food processor are exempt from sales and use tax provided such purchases are used in the production process, as the term 'production' is defined in [Sales and Use Tax Bulletin] 57-1."

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 is acting as a contract manufacturer for sales and use tax purposes when it performs the blast freezing process on perishable goods for manufacturers of those goods. Taxpayer performs a blast freezing process on raw foods such as [redacted] for manufacturing industries. Although the process of blast freezing food alone is not manufacturing, when the process is performed by a contract manufacturer it can be a part of the

production phase of manufacturing. Thus, Taxpayer's purchase of equipment for its blast freezing process that is primarily used in the "production" phase of manufacturing operations, as defined in Sales and Use Tax Bulletin 57-1, qualifies as mill machinery for purposes of the sales and use tax exemption set forth in N.C. Gen. Stat. § 105-164.13(5e). Any equipment used prior to or subsequent to the "production" phase of manufacturing operations is subject to the applicable rates of sales and use tax.

This ruling is based solely on the facts submitted to the Department 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