NCDOR NORTH CAROLINA DEPARTMENT OF REVENUE

Roy Cooper
Governor

Ronald G. Penny
Secretary

December 9, 2022

[redacted]

Re: [redacted]
Private Letter Ruling
[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 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 located in [redacted] North Carolina and is "an affiliate of certain companies that manufacture and distribute [redacted] parts (known as original equipment manufacturers or 'OEMs'). The OEMs sell the [redacted] and parts to their network of [redacted] located across the United States, and the [redacted] in turn resell these and other products to their customers. . . . [redacted]

[redacted].[1] [Taxpayer] owns and administers the electronic infrastructure of the platform and provides the necessary support to the [redacted] to enable them to connect to the platform. . . . [Taxpayer] does not receive any

[1] [redacted]

compensation from the [redacted] for their use of the platform or their orders received through the platform."

"[redacted] is not open to the general public. The website can be accessed only by qualified customers with log-on credentials. To receive log-on credentials, a customer must request an invitation from its [redacted]. Alternatively, [redacted] may automatically create accounts for their established customers and send the log-on credentials to them."

"Once logged-on to the site, customers may view and order inventory only from the specific [redacted] that invited them and with whom they generally have a pre-existing relationship. [redacted] send the pricing . . . and availability of their parts inventory to [redacted] electronically via their [redacted] Management System ([redacted][2]] All inventory items are clearly identified as inventory of the [redacted] not [Taxpayer]. [Taxpayer] does not store or hold any [redacted] inventory or perform any order fulfillment functions."

When a customer identifies a part on the platform they want to order, the customer will add the item to a cart. "[redacted] At that screen the customer must select a delivery method. The customer generally has three delivery options: (1) pick up the item at one of the [redacted] physical locations, (2) request that the [redacted] deliver the item, or (3) request that the [redacted] ship the item. The customer may also empty its cart or change the quantity of parts ordered on this screen and update their cart."

"After a customer has finalized the parts they wish to order and selected a delivery method, the customer must 'check out' to verify their order details. . . . On the 'check out' screen, the payment method that appears is described as a '[redacted] account.' Customers do not have the ability to change the [redacted] account' payment method as this is the only choice available."

"When the customer clicks on 'check out,' [redacted] the [redacted] to determine if the customer has a valid account. This electronic communication is <u>not</u> a credit check or request for credit authorization. Although many customers have pre-existing credit lines established with their [redacted] does not communicate with a [redacted] as to whether a customer has a credit line or the available credit to purchase the selected part(s). Rather, the communication between [redacted] and the [redacted] is simply to verify that the customer exists in the [redacted] In the rare situation where a customer does not have a valid [redacted] account (e.g., the [redacted] terminated the account in its [redacted] but failed to terminate the customer's access to [redacted]), the customer would not be allowed to place the order and would need to contact the [redacted] directly to order a part. Otherwise, if the customer has a valid account (with or without an associated credit line), the [redacted] will send back an initial order approval. [redacted] then forwards the order to the [redacted] and provides the customer with a message stating that their order was successfully placed."

"The customer will also receive an order confirmation via email. . . . The dollar amount shown on the order confirmation reflects the price of the part(s) only and does not include any

[2] "A [redacted] management system is a commercially available software suite used [redacted] to manage and administer their sales, service, and financing operations."

applicable delivery charges, fees, or sales tax. Importantly, for customers with a credit line, neither the [redacted] nor the order sent [redacted] to the [redacted] causes the order amount to be applied or posted against the customer's credit line balance."

"Once the [redacted] receives an order from [redacted]. . . the [redacted] proceeds to fill the order, generate an invoice from its [redacted] with applicable state and local tax, and give or send the invoice directly to the customer. . . . The [redacted] remits any tax charged on the invoice directly to the appropriate tax authorities."

"Customers without a credit line will generally pay the [redacted] (i) in person via cash, check or credit card when they pick up their parts at the [redacted] or (ii) over the telephone via credit card before the [redacted] delivers or ships the parts. For customers with a credit line, the [redacted] will post the transaction against their credit line balance when the invoice is generated and the [redacted] will then collect the balance directly from the customer."

Certain vehicle fleet customers with [redacted] accounts may have pre-existing credit lines established with a financial services company that is an affiliate of Taxpayer ("Taxpayer's affiliate").[3] In these instances, "[o]nce the [redacted] fulfills the order and generates the customer invoice from its [redacted] the [redacted] will submit the invoice to [Taxpayer's affiliate] for reimbursement.[[4]] [Taxpayer's affiliate] verifies the invoice, posts it against the customer's credit line balance, and reimburses the [redacted] directly for the invoice amount (generally within two days of invoice submission), including any sales and use tax charged on the invoice, less a fixed percentage that [Taxpayer's affiliate] retains as a discount fee. The [redacted] remits any sales tax charged on the invoice directly to the appropriate tax authorities. [Taxpayer's affiliate] collects the customer receivable according to its payment terms with the customer."

"[redacted] maintains the customer's order history on the website but does not maintain the actual [redacted] invoices, as [redacted] do not provide their invoices to [Taxpayer] via the platform or otherwise. [Taxpayer] thus has no visibility as to the specific types and amounts of state and local tax charged on the invoices."

Issue

Is Taxpayer a marketplace facilitator pursuant to N.C. Gen. Stat. § 105-164.3(133)?

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.

[3] "The credit line is separately established between the customer and [Taxpayer's affiliate] directly and can be used for all types of purchases from the [redacted] whether at its physical locations or through [redacted]. Customers cannot apply for credit via [redacted]."

[4] "The [redacted] uploads relevant invoices to [Taxpayer's affiliate] for both parts and services purchased at the [redacted] physical locations and parts ordered [redacted] or from the [redacted] directly. [Taxpayer's affiliate] consolidates invoices from all [redacted] by customer and sends periodic statements to the customer with its transaction details for the period. These functions occur entirely outside of the [redacted] platform."

§§ 105-164.4, 105-164.4J, 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. § 105-164.4(a) imposes a privilege tax on a retailer engaged in business in this State on the sales price of each article of tangible personal property.

N.C. Gen. Stat. § 105-164.3(229) defines "retailer," in part, as "[a] marketplace facilitator that is subject to the requirements of [N.C. Gen. Stat. §] 105-164.4J."

N.C. Gen. Stat. § 105-164.4J(b) states, in part, "[a] marketplace facilitator . . . is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State."

N.C. Gen. Stat. § 105-164.3(131) defines a "marketplace-facilitated sale" as "[t]he sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace."

N.C. Gen. Stat. § 105-164.3(133) defines "marketplace facilitator" as "[a] person that, directly or indirectly and whether through one or more affiliates,[5] does both of the following:

a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.
b. Does one or more of the following:
    1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.
    2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items."

N.C. Gen. Stat. § 105-164.3(135) defines "marketplace seller" as "[a] person that sells or offers to sell items through a marketplace regardless of any of the following:

a. Whether the person has a physical presence in this State.
b. Whether the person is registered as a retailer in this State.
c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace."

N.C. Gen. Stat. § 105-164.3(129) defines "marketplace" as "[a] physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State."

[5] N.C. Gen. Stat. § 105-130.2 defines "affiliate" as "[a] corporation is an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations."

N.C. Gen. Stat. § 105-164.3(261) defines the term "tangible personal property," in part, as "[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses."

Ruling

Based on the information furnished, Taxpayer is not a marketplace facilitator as defined in N.C. Gen. Stat. § 105-164.3(133) because Taxpayer does not meet both parts of the definition. While Taxpayer owns and administers a marketplace in North Carolina that lists a marketplace seller's items for sale, Taxpayer nor Taxpayer's affiliate, directly or indirectly, collect the sales price or purchase price of the marketplace seller's items, process the payments for such items, or make payment processing services available. In this case, independent [redacted] that are not affiliates of Taxpayer, process the qualified customer's payment and make payment processing services available.

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