

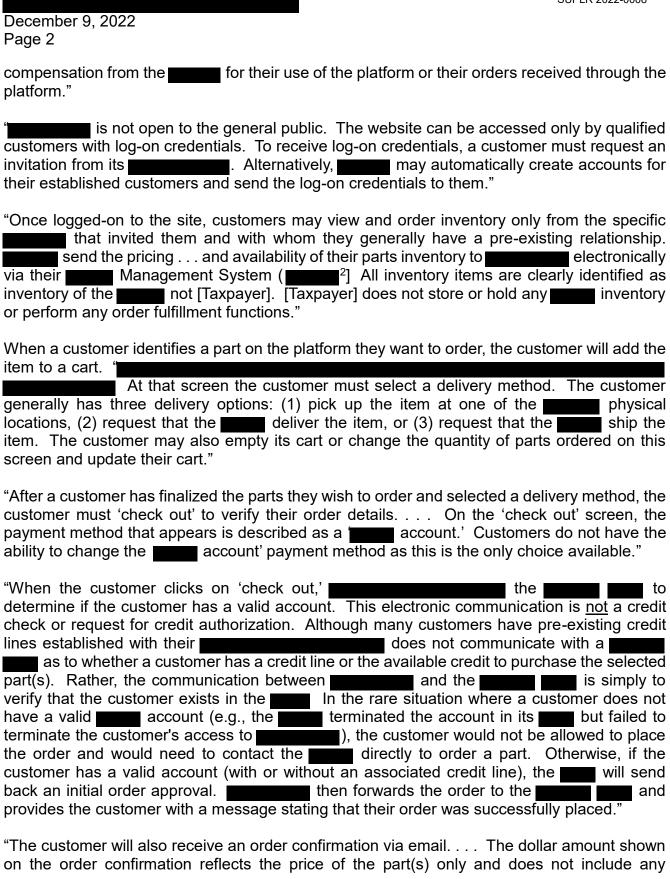
Roy Cooper Ronald G. Penny Governor Secretary

December 0 2022

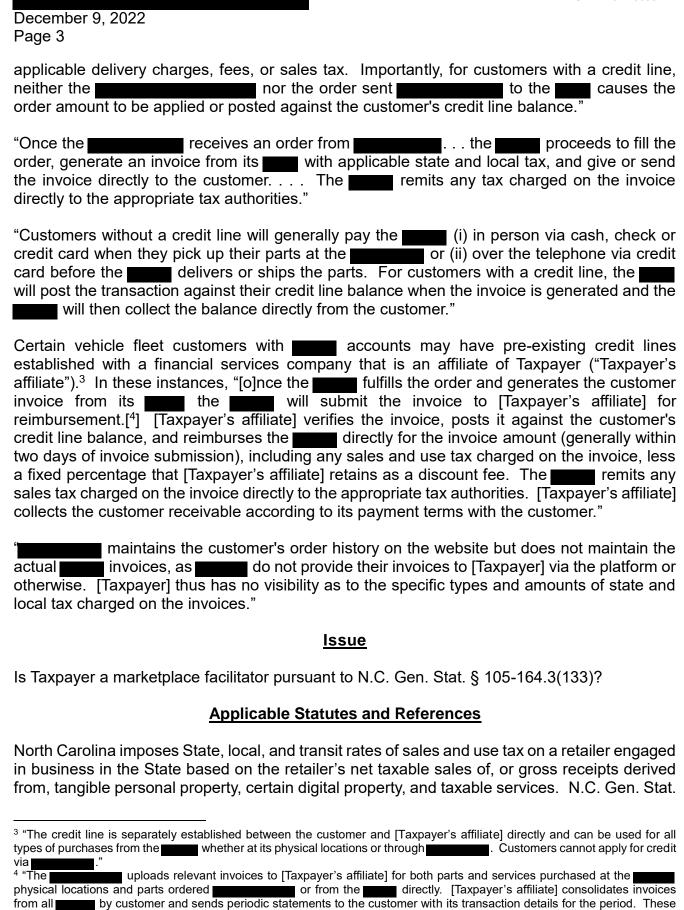
December 9, 2022
Re: Private Letter Ruling
Dear :
The Department has completed its review of your request for a private letter ruling on behalf of ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your request provided to the Department.
This private 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 North Carolina and is "an affiliate of certain companies that manufacture and distribute parts (known as original equipment manufacturers or 'OEMs'). The OEMs sell the and parts to their network of located across the United States, and the inturn resell these and other products to their customers
.¹ [Taxpayer] owns and
administers the electronic infrastructure of the platform and provides the necessary support to the to enable them to connect to the platform [Taxpayer] does not receive any

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



functions occur entirely outside of the 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."

December 9, 2022 Page 5

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 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