NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 24, 2023

[redacted]

Re: Private Letter Ruling Request
[redacted]

Dear [redacted]

The Department has completed its review of your request for a written determination on behalf of your firm, [redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your 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 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 that [redacted] assets and obligations were assumed by [Taxpayer] in a sale with [redacted] continuing as the [redacted], through the present day. The [redacted] tenant, [redacted] is still the [redacted] occupant [redacted], [redacted]" [redacted] received a Written Determination of Eligibility as a Qualifying Datacenter ("the Certification") from the North Carolina Department of Commerce ("Commerce") on [redacted], certifying that the [redacted] Datacenter meets the definition of a "qualifying datacenter." The [redacted] of the applicant taxpayer on the Certification was [redacted]

Taxpayer provided a copy of the Certification with its request for a written determination.

Taxpayer requested a written determination from the Department as to whether the exemption from sales and use tax on electricity and datacenter support equipment located and used at a qualifying datacenter would be valid subsequent to Taxpayer's purchase of [redacted].

Phone (919) 814-1082 Fax (919) 715-0295
501 N Wilmington St., Raleigh, NC 27604
PO Box 871, Raleigh, NC 27602-0871
Website: www.ncdor.gov
An Equal Opportunity Employer

Issue

Would Taxpayer's purchase of [redacted] affect the datacenter's eligibility for the sales and use tax exemption as provided by N.C. Gen. Stat. § 105-164.13(55a)?

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.

If an item is subject to tax under N.C. Gen. Stat. § 105-164.4, it is also subject to the excise tax imposed under N.C. Gen. Stat. § 105-164.6 which imposes tax, at the applicable rate and maximum tax, if any, set in N.C. Gen. Stat. § 105-164.4. "The tax imposed . . . is payable by the person who purchases, leases, or rents the item. . . ." N.C. Gen. Stat. § 105-164.6(b).

N.C. Gen. Stat. § 105-164.3(201) defines the term "qualifying datacenter" as "[a] datacenter that satisfies each of the following conditions:

a. The datacenter certifies that it satisfies or will satisfy the wage standard for the development tier area or zone in which the datacenter is located. There is no wage standard for a development tier one area. If an urban progress zone or an agrarian growth zone is not in a development tier one area, then the wage standard for that zone is an average weekly wage that is at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county in which the datacenter is located. The wage standard for a development tier two area or a development tier three area is an average weekly wage that is at least equal to one hundred ten percent (110%) of the lesser of the average wage for all insured private employers in the State and ninety percent (90%) of the average wage for all insured private employers in the county in which the datacenter is located.
b. The Secretary of Commerce has made a written determination that at least seventy-five million dollars ($75,000,000) in private funds has been or will be invested by one or more owners, users, or tenants of the datacenter within five years of the date the owner, user, or tenant of the datacenter makes its first real or tangible property investment in the datacenter on or after January 1, 2012. Investments in real or tangible property in the datacenter made prior to January 1, 2012, may not be included in the investment required by this subdivision.
c. The datacenter certifies that it provides or will provide health insurance for all of its full-time employees as long as the datacenter operates. The datacenter provides health insurance if it pays or will pay at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan

of coverage recommended by the Small Employer Carrier Committee pursuant to [N.C. Gen. Stat. §] 58-50-125.

N.C. Gen. Stat. §105-164.13(55a) provides an exemption from the sales and use tax for "[s]ales of electricity for use at a qualifying datacenter and datacenter support equipment to be located and used at the qualifying datacenter. As used in this subdivision, 'datacenter support equipment' is property that is capitalized for tax purposes under the Code and is used for one of the following purposes:

a. The provision of a service or function included in the business of an owner, user, or tenant of the datacenter.
b. The generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment used for these purposes.
c. HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.
d. Hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.
e. To provide related computer engineering or computer science research.

If the level of investment required by [N.C. Gen. Stat. §] 105-164.3(201) is not timely made, the exemption provided under this [N.C. Gen. Stat. § 105-164.13(55a)] is forfeited. If the level of investment required by [N.C. Gen. Stat. §] 105-164.3(201) is timely made but any specific datacenter support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter support equipment under this [N.C. Gen. Stat. § 105-164.13(55a)] is forfeited. If the level of investment required by [N.C. Gen. Stat. §] 105-164.3(201) is timely made but any portion of electricity is not used at the qualifying datacenter, the exemption provided for such electricity under this [N.C. Gen. Stat. § 105-164.13(55a)] is forfeited. A taxpayer that forfeits an exemption under [N.C. Gen. Stat. § 105-164.13(55a)] is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under[N.C. Gen. Stat. §]105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by [N.C. Gen. Stat. §] 105-164.3(201), interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the datacenter support equipment or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of [N.C. Gen. Stat. §] 105-236."

Ruling

The exemption from sales and use tax provided by N.C. Gen. Stat. § 105-164.13(55a) is a use based exemption. In order for a purchase to qualify for the exemption from North Carolina sales and use tax, the use of the product must comply with the specified uses provided in N.C.

Gen. Stat. § 105-164.13(55a). In addition, the facility must comply with the statutory requirements of N.C. Gen. Stat. § 105-164.3(201) and N.C. Gen. Stat. § 105-164.13(55a). A change in ownership of the datacenter, all else being equal, would not change the nature or character of the use of the products by Taxpayer or the facility's qualification for the exemption. Thus, Taxpayer's purchase of the datacenter, all else being equal, does not affect the facility's qualification for the exemption provided by N.C. Gen. Stat. § 105-164.13(55a). However, the facility must have met and continue to meet the requirements of N.C. Gen. Stat. § 105-164.3(201) and N.C. Gen. Stat. § 105-164.13(55a), including the initial investment amount, wage standard, and health insurance requirements, to qualify for the exemption.

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