

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 2, 2024

Re:

Private Letter Ruling

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 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 Taxpayer "is a [REDACTED] registered to do business in North Carolina and [REDACTED]." You further advise Taxpayer sells, from [REDACTED] outside of North Carolina, "(i) regulated pharmaceutical (prescription) drugs, [REDACTED] (ii) non-prescription drugs, [REDACTED] (iii) medical supplies, [REDACTED] and (iv) medical equipment, [REDACTED] (collectively the 'Products'), solely to [REDACTED] vessels and [REDACTED] ships engaged in interstate and international commerce." You stated that Taxpayer's Products are delivered "to [REDACTED] on vessels that are temporarily docked at harbor within the State of North Carolina."

You provide Taxpayer had approximately [REDACTED] gross sales and approximately [REDACTED] transactions in North Carolina in 2023.



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Issue

Are Taxpayer's sales of its Products exempt from sales tax?

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, 105-164.8, 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. § 105-164.3(83) defines "engaged in business," in part, as "[a]ny of the following:

- c. Making a remote sale, if one of the conditions listed in . . . [N.C. Gen. Stat. §] 105-164.8(b) is met."

N.C. Gen. Stat. § 105-164.3(221), defines "remote sale," in part, as "[a] sale of an item ordered by mail, telephone, Internet, mobile phone application, or another method by a retailer who receives the order in another state and delivers the item or makes it accessible to a person in this State or causes the item to be delivered or made accessible to a person in this State."

N.C. Gen. Stat. § 105-164.8(b) states, in part, "[a] retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under . . . Article [5 of Chapter 105] if . . . [t]he retailer makes remote sales sourced to this State . . . for the previous or the current calendar year that meet either of the following:

- a. Gross sales in excess of one hundred thousand dollars (\$100,000).
- b. Two hundred or more separate transactions."

N.C. Gen. Stat. § 105-164.3(229) defines "retailer" as "[a]ny of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of . . . [the North Carolina Sales and Use Tax Act].
- b. A person, other than a real property contractor, engaged in business of delivering, erecting, installing, or applying tangible personal property or certain digital property for use in this State.
- c. A person engaged in business of making a remote sale, if one of the conditions listed in . . . [N.C. Gen. Stat. §] 105-164.8(b) is met.

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- d. A person required to collect the State tax levied under . . . [the North Carolina Sales and Use Tax Act] or the local taxes levied under Subchapter VIII of . . . Chapter [105] and under Chapter 1096 of the 1967 Session Laws.
- e. A marketplace facilitator that is subject to the requirements of . . . [N.C. Gen. Stat. § 105-164.4J or a facilitator that is required to collect and remit the tax under . . . [the North Carolina Sales and Use Tax Act].”

N.C. Gen. Stat. § 105-164.3(227) defines “retail sale or sale at retail” as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

N.C. Gen. Stat. § 105-164.13(13) provides an exemption from sales and use tax for drugs required by federal law to be dispensed only on prescription.

N.C. Gen. Stat. § 105-164.13(24) exempts from sales and use tax “[s]ales of fuel and other tangible personal property for use or consumption by or on a watergoing vessel when delivered to an officer or agent of the vessel for the use of the vessel engaged in either of the activities listed in this subdivision. Sales of fuel and other tangible personal property made to officers, agents, members of the crew, or passengers of these vessels for their personal use are not exempt from payment of the sales tax. The activities are:

- a. The transport of freight in intrastate, interstate, or foreign commerce, whether on the high seas, intracoastal waterways, sounds, or rivers.
- b. The transport of passengers for hire exclusively on the high seas.”

N.C. Gen. Stat. § 105-164.28 sets forth the requirements a seller must meet in order to establish that certain sales, such as the sales described in N.C. Gen. Stat. § 105-164.13(24), are exempt from sales and use tax. N.C. Gen. Stat. § 105-164.28 states, in part, “[a] seller is not liable for the tax otherwise applicable if the Secretary determines that a purchaser improperly claimed an exemption, or if the seller within 90 days of the sale meets the following requirements:

(1) For a sale made in person, the seller obtains a certificate of exemption or a blanket certificate of exemption from a purchaser with which the seller has a recurring business relationship. If the purchaser provides a paper certificate, the certificate must be signed by the purchaser and state the purchaser's name, address, certificate of registration number, reason for exemption, and type of business. For purposes of this subdivision, a certificate received by fax is a paper certificate. If the purchaser does not provide a paper certificate, the seller must obtain and maintain the same information required had a certificate been provided by the purchaser.

(3) For a sale made over the Internet or by other remote means, the seller obtains the purchaser's name, address, certificate of registration number, reason for exemption, and type of business and maintains this information in a retrievable format in its records. If a certificate of exemption is provided electronically for a remote sale, the requirements of subdivision (1) of this subsection apply except the electronic certificate is not required to be signed by the purchaser.

(4) In the case of drop shipment sales, a third-party vendor obtains a certificate of exemption provided by its customer or any other acceptable information evidencing

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qualification for a resale exemption, regardless of whether the customer is registered to collect and remit sales and use tax in the State.”

N.C. Gen. Stat. § 105-164.22 requires retailers to keep records that establish their tax liability. Failure of a retailer to keep records that establish a sale is exempt subjects the retailer to liability for tax on the sale.

Ruling

Based on the information furnished, Taxpayer makes remote sales of tangible personal property sourced to this State. Taxpayer's gross sales in this State exceeded one hundred thousand dollars (\$100,000) during 2023. Thus, Taxpayer is a retailer engaged in business in this State because it made remote sales sourced to the State in excess of \$100,000 during the prior calendar year. Taxpayer's retail sales of its Products are subject to the general State and applicable local and transit rates of sales and use tax unless exempt by statute.

Taxpayer's request for a private letter ruling cites numerous exemptions from sales and use tax which may apply to sales made to its customers. Generally, these exemptions are based on the customer purchasing the product or the use of the product by the purchaser, or both. In such cases, Taxpayer must collect sales and use tax or obtain completed certificates of exemption from its customers, or the required data elements, in compliance with N.C. Gen. Stat. § 105-164.28. The law relieves Taxpayer of liability if it accepts these certificates of exemption at the time of sale, or within 90 days of the time of sale.

In addition, Taxpayer states that it sells “regulated pharmaceutical (prescription) drugs” and various other health care related items.¹ Sales of drugs required by federal law to be dispensed only on prescription (“Prescription Drugs”) are exempt from sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(13). Taxpayer is not required to obtain a certificate of exemption for sales of Prescription Drugs but must maintain records that establish the sales are exempt from tax.

Generally, sales of the other healthcare items identified by Taxpayer are subject to sales and use tax.² Sales and Use Tax Bulletin 40 provides general guidance about the sales of these healthcare related items.

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

¹ This information is provided for general information. If Taxpayer seeks specific written advice about any specific health item, it must submit an additional request for a private letter ruling.

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