

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 31, 2024

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 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

In your request for written determination, you advise Taxpayer is "a [REDACTED] [company] with a [REDACTED] and [REDACTED]. The [Taxpayer's] customers are located all over the [REDACTED]. [Taxpayer] has been selling its services to North Carolina customers...."

Taxpayer is "an online provider of [REDACTED] reports to individual customers. The reports are generated from the company's analysis of the customers' [REDACTED]. The customers collect their own [REDACTED] using a kit which is [REDACTED] to them by Taxpayer from a [REDACTED] located in [REDACTED]. Once the customer has used the kit, they mail it from their home to a [REDACTED] lab in [REDACTED] where the [REDACTED] specimens are processed. The customers then access their individualized, personal reports through the company's website."

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Taxpayer indicates “[t]he cost of the kit [REDACTED] relative to the cost of the service [REDACTED] and the use of the kit is integral to the provision of the service.”

Taxpayer has not previously sought a written determination on this matter, is not the subject of an existing audit, protest, appeal, or litigation.

Issue

Is Taxpayer’s direct sale of home [REDACTED] kits and subsequent report to North Carolina customers subject to sales and use 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, 105-164.4I, 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. § 105-164.6 imposes a complementary use tax and states in part as follows: “[a]n excise tax at the applicable rate and maximum tax, if any, set in G.S. 105-164.4 is imposed on the following items if the item is subject to tax under G.S. 105-164.4: ... (3) Services sourced to this State.”

N.C. Gen. Stat. § 105-164.6(c) states, “[a] credit is allowed against the tax imposed by this section for the following: ... (2) The amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar credit for sales or use taxes paid in North Carolina.”

N.C. Gen. Stat. § 105-164.3(229)a. defines a “retailer,” in part, as “[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.”

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. § 105-164.3(43) defines “consumer” as “[a] person who stores, uses, or otherwise consumes in this State an item purchased or received from a retailer or supplier either within or without this State.”

N.C. Gen. Stat. § 105-164.3(113) defines “item” as “[t]angible personal property, digital property, or a service, unless the context requires otherwise.”

N.C. Gen. Stat. § 105-164.3(261) defines “tangible personal property” as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.”

N.C. Gen. Stat. § 105-164.3(235)g. defines “sale or selling,” in part, as “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property . . . or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to . . . [a] service contract.”

N.C. Gen. Stat. § 105-164.3(273) defines “use” as “[t]he exercise of any right, power, or dominion whatsoever over an item by the purchaser of the item. The term includes withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the item by the owner or purchaser. The term does not include a sale of an item in the regular course of business.”

N.C. Gen. Stat. § 105-164.3(99) defines “in this (the) State” as “[w]ithin the exterior limits of the State of North Carolina, including all territory within these limits owned by or ceded to the United States of America.”

Ruling

Based on the information provided, Taxpayer’s direct sales of what it describes as [REDACTED] [REDACTED] reports” to North Carolina consumers or users, including test kits used to collect [REDACTED] at a customer’s home [REDACTED], the processing and analysis of the test kits, and the distribution of the test results, collectively are a service not subject to North Carolina sales tax under N.C. Gen. Stat. § 105-164.4. Here, the [REDACTED] are used to obtain a [REDACTED] and returned to Taxpayer for processing and analysis. The transfer of Taxpayer’s [REDACTED] Kits to its customers to obtain [REDACTED] for testing is merely incidental to the analysis of the results performed by Taxpayer. As a result, these [REDACTED] Kits are used by Taxpayer to perform its analysis services and not separately sold to its customers.

Any items the Taxpayer uses in this State to process the test kits or to distribute the test results is subject to use tax. If any tax is properly due and paid in another state on items brought into North Carolina, then the taxpayer may credit the amount of tax paid to the other state in determining its North Carolina Use Tax liability if allowed by N.C. Gen. Stat. § 105-164.6(c)(2).

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