NCDOR NORTH CAROLINA DEPARTMENT OF REVENUE

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 8, 2024

[redacted]

Re: Private Letter Ruling
[redacted]

Dear [redacted]:

The Department has completed its review of your requests 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 constructing an [redacted] to assemble [redacted] for sale. [Taxpayer] has entered into a [redacted] contract with [redacted] Contractor")] to build the facility and provide certain equipment."

You further advise that [redacted] Contractor will purchase equipment under the [redacted] contract ("Construction Contract") and provide the equipment to Taxpayer. You specifically seek guidance related to the following items:

1. Electrical Equipment
2. Compressed Air System
3. Electrical Power Distribution Equipment
4. [redacted]
5. HVAC Equipment
6. [redacted]

You described each item as follows:

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Electrical Equipment
"This facility is designed with [redacted] electrical rooms which are fed with [redacted] services from [redacted]. [redacted] electrical room then feeds [redacted] which will then branch out to feed numerous devices throughout the entire facility. Due to the manufacturing process, we have identified the portion of the purchase price of the electrical equipment that feeds the components which specifically supports the manufacturing of [redacted] versus the electrical service that feeds the general building.

The portion of the purchase price of the electrical equipment (specifically the electrical panels, breakers, and wiring that are directly related to the tooling) . . . are used solely for the production process and are clearly essential for the assembly [redacted]."

Compressed Air System
"The compressed air system (related specifically to 'tooling', which is the process compressed air that drives the tools that drill and assemble the [redacted] this includes both the compressed air equipment, as well as the [redacted] infrastructure and labor to install . . . ."

A [redacted] exists to house "the compressed air equipment ([c]ompressors, dryers, [r]eceiver [t]ank, etc.), that feeds the various compress air lines throughout the [redacted]. The sole purpose of the air compressor system is to support the tools that will be utilized to assemble [redacted] The Company's air compression system [is] used to drive the tools that drill and assemble [redacted] "

Electrical Power Distribution Equipment
"The electrical power distribution equipment and related wiring, is associated with the power that goes to the [redacted] to provide electrical power to the Company's tools. . . . electrical conduit and wire that starts at the various electrical panels from two separate main electrical rooms to feed the [redacted] throughout the [redacted]. These [redacted] are solely used to feed power to the tools used in the assembly [redacted]."

[redacted], which houses the compressed air fitting connections, as well as the electrical that drives the Owner's tools for manufacture/assembly."

You provided a diagram that showed [redacted] which will house the compressed air & electrical connection points for [redacted]. [redacted] The sole purpose of these [redacted] is to support the tools that will be utilized to [redacted]."

Taxpayer's '[redacted] are equipment which act as an essential storage center of compressed air to be switched on / off and the electrical connection points for use exclusively in driving the tools that drill and [redacted]."

In response to the Department's email, you stated "[t]he [redacted]

HVAC Equipment

"The HVAC Equipment: The final assembly area HVAC equipment is specifically related to the factory/manufacturing area. Typically, an industrial building would not have conditioned air for its use. This project requires specific HVAC to both cool and heat the air to provide an engineered specified space requirement [redacted] in addition to providing humidity control. A typical manufacturing facility that does not have [redacted] that are susceptible to [redacted] with ambient temperature could condition a large factory with simple exhaust fans and building louvers.

The HVAC equipment. . . is specifically needed to maintain the sensitive components used in the assembly [redacted] at a certain temperature as they progress through the [redacted] elated to the factory/manufacturing area and is not equipped to a building that is used for general/ administration purposes. The [redacted] assembled has specific temperature and humidity requirements during assembly and these HVAC units are essential to control those specific humidity and temperature conditions. Without the HVAC units present, it is likely that [redacted] could be damaged via [redacted]."

[redacted] This [redacted] is specific to the [redacted] movement of the [redacted] throughout the assembly process."

The Company's [redacted] is used exclusively to [redacted] move the [redacted] throughout the assembly process, which is essential for the assembly [redacted]

Issue

Are the identified items exempt from sales and use as tax mill machinery or mill machinery parts or accessories when purchased by [redacted] Contractor and provided to Taxpayer under the Construction Contract?

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. North Carolina imposes a complementary use tax, in part, on items of tangible personal property purchased for storage, use, or consumption in this State. *Id.* Generally, if an item purchased becomes a part of real property in the State, the real property contractor, the retailer-contractor, the subcontractor, the lessee, and the owner are jointly and severally liable for the tax. N.C. Gen. Stat. § 105-164.6(b).

N.C. Gen. Stat. § 105-164.13(5e) provides an exemption from sales and use tax for "[s]ales of mill machinery or mill machinery parts or accessories to any of the persons listed [below]. For purposes of this [exemption], the term 'accessories' does not include electricity. The persons are:

a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged

in the retail sale of food prepared by it for consumption on or off its premises or (ii) a production company.

b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant."

The Department publishes Sales and Use Tax Bulletins for the purpose of presenting the administrative interpretation and application of sales and use tax. The Department's Sales and Use Tax Bulletins are prima facie correct. N.C. Gen. Stat. § 105-264(a).

Sales and Use Tax Bulletin 57-3 identifies examples of "mill machinery or mill machinery parts or accessories, when purchased by a qualifying person as set out in SUTB 57-2, for use in the production process, as the term 'production' is defined in SUTB 57-1." These examples include in part:

- Electrical equipment, including control panels, wiring and related conduit, ***affixed*** to mill machinery to furnish power to mill machinery. (emphasis added)
- Pumps for industrial processes, air compressors, air hoses and nozzles, and pipe for carrying compressed air from compressor to hose for cleaning machinery and equipment; pumps used to remove waste of a manufacturing process.
- The portion of the purchase price of general air conditioning systems allocated to conditioning materials for processing.
- Conveyors, hoists, and hoist cables (but not track or other fixtures determined to be a part of and that lend support to the building or structure), roving trucks and other materials handling equipment, including forklifts, lift trucks, and similar items used at the plant for transporting materials from inventory to the production process, transporting materials during temporary interruptions in the production process, or moving the finished product from the manufacturing or processing line into shipping and storage areas or yards at the plant.

In contrast, Sales and Use Tax Bulletin 57-4 provides examples of items that are not considered mill machinery or mill machinery parts or accessories. These examples include in part:

- Generally, tangible personal property attached to or in any way a part of any building or structure of any kind whatsoever; freight elevators; plumbing and sprinkler systems; electric wiring and electric fixtures; electric lamps and tubes; and fuses and fuse links. Electrical equipment or wiring and related conduit that is used for general distribution of power to or in a manufacturing industry or plant.

Ruling

Based on the information furnished, [redacted] Contractor is constructing a facility for Taxpayer in North Carolina. You have stated that Taxpayer will use the facility to assemble [redacted] for sale. As a result, the facility is a manufacturing plant and the assembly of [redacted] for sale at the facility is the production phase of a manufacturing process. The [redacted] Contractor may purchase mill machinery or mill machinery parts or accessories for use in the performance of the Construction Contract exempt from sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(5e).

The Department reviewed each of the items listed and described in your request for written determination and determined whether the item is mill machinery or a mill machinery part or accessory based on your description. In summary, the Department determines the following items are mill machinery or mill machinery parts or accessories:

1. Compressed Air System
2. HVAC Equipment
3. [redacted]

The Department determines the following items listed and described in your request for written determination are not mill machinery or mill machinery parts or accessories:

1. Electrical Equipment
2. Electrical Power Distribution Equipment
3. [redacted]

Compressed Air System
You state that the "sole purpose of the air compressor system is to support the tools that will be utilized to assemble [redacted]." Specifically, the compressed air will be used to drive the tools that drill and assemble [redacted]. The Department determines the compressed air system qualifies as an accessory to mill machinery because the system will be used exclusively to drive the tools that will be utilized to assemble [redacted].

HVAC Equipment
You state that is "the [redacted] being assembled has specific temperature and humidity requirements during assembly and these HVAC units are essential to control . . . specific humidity and temperature conditions." The Department determines the HVAC units qualify as mill machinery because they are required to condition the [redacted] during manufacturing, as described in Sales and Use Tax Bulletin 57-3(8).

[redacted]
You provide that the [redacted] is "used exclusively to [redacted] and move the [redacted] and [redacted] parts throughout the assembly process, which is essential for the assembly of the [redacted]." The Department determines the [redacted] qualifies as mill machinery because it will be used exclusively to handle [redacted] and move materials during the assembly process, as described in Sales and Use Tax Bulletin 57-3(10).

Electrical Equipment
You have asked about a portion of the purchase price of electrical equipment, specifically the electrical panels, breakers, and wiring that are directly related to the tooling, in [redacted] electrical rooms. You state that a portion of the equipment will feed components that support manufacturing. Generally, real property and tangible personal property attached to real property, including electrical equipment, is not considered mill machinery. While a portion of the equipment you describe will be used to power tool and machinery on the assembly line, the request does not describe electrical equipment that is affixed to any piece of mill machinery. Instead, the request describes electrical equipment that will be used for general distribution of power to the building including the assembly line. As a result, the Department determines this item is part of the building, as listed in Sales and Use Tax Bulletin 57-4(1), and is not mill machinery or a mill machinery part or accessory.

Electrical Power Distribution Equipment

You have asked about conduit and electrical wiring that runs from the electrical rooms to the [redacted] The electrical wiring and conduit you describe is not affixed to a piece of mill machinery. Instead, it will provide power to the [redacted] located in the [redacted] assembly area of the building. As a result, the Department determines this item is part of the building, as listed in Sales and Use Tax Bulletin 57-4(1),and is not mill machinery or a mill machinery part or accessory.

[redacted]

The [redacted] are parts of the floor slab of the building. The [redacted] contain electrical and compressed air connections. The [redacted] do not contain a piece of mill machinery or equipment, rather they are part of the structure of the building to provide for the distribution of power and compressed air to be used by various equipment. As a result, the Department determines the [redacted] are part of the building, as listed in Sales and Use Tax Bulletin 57-4(1), and are not mill machinery or a mill machinery part or accessory.

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