

Roy Cooper
Governor

Ronald G. Penny
Secretary

May 29, 2024

Re: [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

Taxpayer provides surveillance solutions at their customer's site. Taxpayer's [REDACTED] systems are designed to [REDACTED] providing surveillance [REDACTED], Notification, Police Dispatch & Remote Site Management."

"[REDACTED] [provides] [REDACTED] access on any smart phone or browser." Customer's can "[v]iew and control all of . . . [the] cameras on any browser or smart phone. Customer's [REDACTED] can be controlled from anywhere."

Taxpayer provided a copy of its contract and invoices with a customer ("Sample Customer") for review. Sample Customer's site is located in North Carolina. Pursuant to Taxpayer's letter of January 31, 2024, "[t]here are no other documents made available to the customer."

Taxpayer's contract with Sample Customer states that it is "Based on a [REDACTED] contract – Automatic [REDACTED] renewal until [REDACTED] written cancellation[.]" It further states "[REDACTED] that the price [REDACTED] is based solely on the value of the Labor and Equipment [REDACTED]." Taxpayer's contract lists a charge for setup, installation, and deployment and an additional charge for cameras, solar, battery, and various services.

Taxpayer's initial invoice lists a charge for setup, installation, and deployment and an additional charge for cameras, solar, battery, and various services. All other invoices solely list a charge for cameras, solar, battery, and various services.



Issue

Are Taxpayer's charges to its customer subject to 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, 105-164.4B, 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)(2) imposes a privilege tax on the gross receipts derived from the lease or rental of tangible personal property.

N.C. Gen. Stat. § 105-164.3(121) defines "lease or rental," in pertinent part, as "[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration."

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 provides a surveillance solution to its customer. Taxpayer charges its customer for tangible personal property and services for a fixed term. Taxpayer's customer has control of the cameras at the contracted location through the use of any browser or smart phone. Taxpayer's transaction meets the definition of lease or rental as defined in N.C. Gen. Stat. § 105-164.3(121). Thus, the gross receipts derived from Taxpayer's lease are subject to the State, and applicable local and transit rates of sales tax.

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