

Roy Cooper  
Governor

Ronald G. Penny  
Secretary

August 28, 2024



Re:



Dear



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 supplies "and installs windows and doors as a subcontractor for contractors building new homes" in North Carolina.

Based on the supplemental information provided to the Department, a contractor issued a completed Form E-589CI, Affidavit of Capital Improvement, to Taxpayer. Taxpayer provided a quote and subsequently invoiced the contractor for supplying and installing windows and doors in a new home.

### **Issue**

Is Taxpayer's transaction subject to tax as a real property 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, 105-164.4B, 105-164.4H, 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.

N.C. Gen. Stat. § 105-164.3(207) defines the term "real property contract" as "[a] contract between a real property contractor and another person to perform a capital improvement to real property."

N.C. Gen. Stat. § 105-164.3(209) defines the term "real property contractor," in part, as "[a] person that contracts to perform a real property contract in accordance with [N.C. Gen. Stat. §] 105-164.4H. The term includes a general contractor, a subcontractor, or a builder."

501 N. Wilmington St., Raleigh, NC 27604  
PO Box 871, Raleigh, NC 27602-0871  
Website: [www.ncdor.gov](http://www.ncdor.gov)  
*An Equal Opportunity Employer*



N.C. Gen. Stat. § 105-164.3(31) defines the term “capital improvement,” in part, as “[o]ne or more of the following:

- a. New construction . . .”

N.C. Gen. Stat. § 105-164.3(157) defines the term “new construction” as “[c]onstruction of or site preparation for a permanent new building, structure, or fixture on land or an increase in the square footage of an existing building, structure, or fixture on land.”

N.C. Gen. Stat. § 105-164.4H(a) provides “[a] real property contractor is the consumer of the tangible personal property or certain digital property that the real property contractor purchases, installs, or applies for others to fulfill a real property contract and that becomes part of real property or used to fulfill the contract. A retailer engaged in business in the State shall collect tax on the sales price of an item sold at retail to a real property contractor unless a statutory exemption in [N.C. Gen. Stat. §] 105-164.13 or [N.C. Gen. Stat. §] 105-164.13E applies. Where a real property contractor purchases tangible personal property or certain digital property for storage, use, or consumption in this State, or a service sourced to this State, and the tax due is not paid at the time of purchase, the provisions of [N.C. Gen. Stat. §] 105-164.6 apply except as provided in [N.C. Gen. Stat. § 105-164.4H(b)].”

N.C. Gen. Stat. § 105-164.4H(a1) states, in part, “[a] person may substantiate that a transaction is a real property contract . . . by receipt of an affidavit of capital improvement. The receipt of an affidavit of capital improvement, absent fraud or other egregious activities, establishes that the subcontractor or other person receiving the affidavit should treat the transaction as a capital improvement, and the transaction is subject to tax in accordance with [N.C. Gen. Stat. § 105-164.4H(a)].”

### **Ruling**

Based on the information furnished, Taxpayer has been subcontracted to supply and install windows and doors in a new home as part of new construction. Pursuant to N.C. Gen. Stat. § 105-164.3(31), new construction is a capital improvement. In accordance with N.C. Gen. Stat. §§ 105-164.3(207) and 105-164.3(209), Taxpayer’s transaction is a real property contract and Taxpayer is a real property contractor.

Taxpayer must pay the sales and use tax due on any items that it purchases, installs, or applies to fulfill the real property contract. Taxpayer must also maintain proper records including the affidavit of capital improvement and records of the sales and use tax paid on items it purchases, installs, or applies to fulfill the real property contract.

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