

Roy Cooper
Governor

Ronald G. Penny
Secretary

August 30, 2024

Re: Private Letter Ruling Request

Taxpayer: [REDACTED]

Account: [REDACTED]

Dear [REDACTED]

The Department has completed its review of your request for a written determination on behalf of [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your request 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 Taxpayer. This written determination is applicable only to the taxpayer addressed herein and, as such, has no precedential value except to the taxpayer to whom the written determination is issued.

Overview and Relevant Facts

You advise that, "[Taxpayer] is a [REDACTED] headquartered . . . in . . . [REDACTED] [Taxpayer] is [REDACTED] [REDACTED] [REDACTED] aviation fuel, selling as a [REDACTED] Noncommercial operators are charged federal excise taxes as levied under the IRC Chapter 31, Section 4041."

You advise that Taxpayer sells aviation gasoline and jet fuel and that both are subject to the Federal Excise Taxes. Taxpayer's "[i]nvoices separately itemize the following taxes:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

(collectively 'Federal Excise Taxes')



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You describe a transaction involving these fuel sales as follows: “When [Taxpayer] receive[s] an order for 8000 gallons from a customer in NC, [Taxpayer] will [REDACTED] [REDACTED] will then bill [Taxpayer] for the gallons and will include on that invoice the federal and NC taxes. [Taxpayer] will then pay that invoice and pay the federal and state taxes to [REDACTED]. [REDACTED] is tasked with paying the federal excise tax and the other federal taxes to the federal government on the first withdrawal of fuel from the pipeline. [REDACTED] passes that tax/cost on to [Taxpayer] and [Taxpayer] pass[es] it on to [its] customers.”

Issue

Are Taxpayer’s separately stated charges to noncommercial aviation operators of the Federal Excise Taxes on aviation fuel a part of Taxpayer’s gross receipts 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. §§ 105-164.2, 105-164.4, 105-164.4I, 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. § 105-164.4(a)(15) imposes sales and use tax at the combined general rate on the gross receipts derived from the retail sale of aviation gasoline and jet fuel.

The gross receipts from the sale of aviation gasoline and jet fuel “include any federal excise tax imposed on the retailer, even if the federal excise tax is listed separately on the invoice, bill of lading, or similar billing document. Gross receipts do not include federal excise taxes imposed directly on a consumer if the tax is separately stated on the invoice, bill of sale, or similar document given to the customer.” 17 NCAC 07B.2105

The internal revenue code (“IRC”) imposes various federal excise taxes on fuels including the excise taxes in 26 USC § 4041 and § 4081.

26 USC § 4081 imposes federal excise taxes on certain fuels including aviation gasoline. The federal excise taxes imposed on aviation gasoline include taxes at the rate of 19.3 cents per gallon, increased by .01 cent a gallon for the leaking underground storage tank trust fund.

26 CFR 48.4081-2 or -3 provides that liability for the tax is imposed on the position holder (supplier), terminal operator, or both.

IRS Publication 510 provides: “[t]ax [on gasoline] is imposed on the removal, entry, or Sale of gasoline.” The publication provides the position holder (supplier), the terminal operator, or both are liable for the tax. Further, “[t]he sale of gasoline located within the bulk transfer/terminal system to a person that isn’t a registrant is taxable if tax wasn’t previously imposed” at removal or entry. In such case, “[t]he seller is liable for the tax.”

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26 USC § 4041 imposes federal excise taxes on certain fuels including “any liquid for use as a fuel [in aviation] other than aviation gasoline.” The taxes imposed in this section include taxes at the rate of 21.8 cents per gallon and .01 cent a gallon.

26 CFR 48.4041-4(b) provides: “[t]he tax on the taxable sale of any liquid used as fuel in aircraft in noncommercial aviation is payable by the person who sells the liquid to the owner, lessee, or operator of an aircraft in noncommercial aviation.”

Ruling

Based on the information furnished, Taxpayer’s charges to non-commercial aviation customers of Federal Excise Taxes on aviation fuel are part of Taxpayer’s gross receipts¹ subject to sales and use tax. These charges are part of the gross receipts because federal law does not impose the Federal Excise Taxes directly on Taxpayer’s customers, but rather the first legal incidence of the Federal Excise Taxes fall on the position holder [REDACTED], terminal operator, or both, or on Taxpayer.

The Federal Excise Taxes are imposed under 26 USC § 4041 and 26 USC § 4081. In the transactions described by Taxpayer, federal law imposes the Federal Excise Taxes on someone other than Taxpayer’s customers.

For example, 26 CFR 48.4081-2 or -3 provides the excise taxes on aviation gasoline are imposed on the position holder (supplier), terminal operator, or both. Further, 26 CFR 48.4041-4(b) provides the excise taxes on jet fuel are imposed on Taxpayer as the seller of the fuel. As a result, in the transactions described, federal law does not impose the Federal Excise Taxes directly on Taxpayer’s customers.

The transaction details provided by Taxpayer confirm the Federal Excise Taxes are not directly imposed on Taxpayer’s customers. Instead, [REDACTED] charges Taxpayer the Federal Excise Taxes when Taxpayer purchases the fuel from [REDACTED]. Taxpayer then separately itemizes the costs associated with the imposition of the Federal Excise Taxes on its invoices to its customers. The invoices’ indirectly pass on costs associated with the Federal Excise Taxes.

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.

¹ Taxpayer’s invoices also include a state inspection tax. Taxpayer did not request a ruling on this fee in its request. However, the Department notes that generally receipts from fees not imposed directly on Taxpayer’s customers are included in the gross receipts subject to the sales and use tax.

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Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division