NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

Josh Stein
Governor

McKinley Wooten, Jr.
Secretary

August 15, 2025

[redacted]

Re: [redacted]
Private Letter Ruling
FEIN: [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

You advised that Taxpayer performs services on stormwater infrastructure. The scope of service "typically includes restoring stormwater devices to design specifications—covering elevations, materials, vegetation, erosion control, and pipe repairs as needed. The only off-site activity we occasionally undertake is the disposal of dredged sediment from pond bottoms. In some cases, this material is classified as low-grade hazardous waste and must be transported to a landfill accordingly."

You further provide that stormwater control measure inspections are performed by a separate entity and "repair work is performed by [Taxpayer]."

For this ruling, you provided an example contract and corresponding invoice, "Invoice A", which detailed the combined scope of work and was billed as one figure. The scope of work was defined as "

- Mobilize to the site
- Barricade the worksite and equipment for safety

Structure Repair

- Break and remove old mortar around downturn pipe
- Mortar around downturn penetration on inside and outside of riser, ensuring a proper seal

Sediment:
- Excavate sediment, debris, and vegetation from outlet dissipator pad
- Install new geotextile liner
- Set cleaned rip rap back in place

Erosion:
- Aerate and overseed bare areas
- Stabilize with straw matting

Final Steps:
- Stabilize any disturbed or bare dirt in repair area with seed and straw matting
- Clean worksite of all limbs, trash, and repair debris
- Demobilize and dispose of any waste at an approved offsite facility"

ISSUE:

Are repair services performed by Taxpayer within a stormwater utility easement subject to North Carolina 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, 105-467, 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.

N.C. Gen. Stat. § 105-164.3(31) defines the term "capital improvement," in part, as:

a. "… remodeling.

…

c. Installation of a transmission, distribution, or other network asset on land owned by a service provider or on a right-of-way or easement in favor of a service provider, notwithstanding that any separately stated charges billed to a customer for repair, maintenance, and installation services or a contribution in aid of construction are included in the gross receipts derived from services subject to the combined general rate under [N.C. Gen. Stat. §] 105-164.4. For purposes of this sub-subdivision, the term "service provider" means a person, including a governmental entity, who provides any of the services listed in this sub-subdivision, and the term governmental entity means a State agency, the federal government, or a governmental entity listed in [N.C. Gen. Stat. §] 105-164.14(c). The services are:

1. Telecommunications service or ancillary service.
2. Video programming.
3. Electricity or piped natural gas.
4. Water or sewer service.

…

j. Landscaping.

> k. An addition or alteration to real property that is permanently affixed or installed to real property and is not an activity listed in [N.C. Gen. Stat. § 105-164.3(225)] as repair, maintenance, and installation services."

N.C. Gen. Stat. § 105-164.3(117) defines the term "landscaping" as "[a] service that modifies the living elements of an area of land. Examples include the installation of trees, shrubs, or flowers on land; tree trimming; mowing; and the application of seed, mulch, pine straw, or fertilizer to an area of land. The term does not include services to trees, shrubs, flowers, or similar tangible personal property in pots or in buildings."

N.C. Gen. Stat. § 105-164.3(205) defines the term "real property," in part, as "[l]and."

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," 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 for purposes of this Article."

N.C. Gen. Stat. § 105-164.3(219) defines the term "remodeling," as "[a] transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding."

N.C. Gen. Stat. § 105-164.3(225) defines, the term "repair, maintenance, and installation services" in part as "the activities listed in this subdivision and applies to tangible personal property, motor vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with [N.C. Gen. Stat. §] 105-164.4H. The included activities are:

> a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
>
> b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
>
> ...
>
> d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under [N.C. Gen. Stat. § 105-164.3(31)d.] and substantiated as a capital improvement under [N.C. Gen. Stat. §]105-164.4H(a1)."

N.C. Gen. Stat. § 105-164.4H provides the following:

(a) Applicability. - 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 G.S. 105-164.13 or G.S. 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 G.S. 105-164.6 apply except as provided in subsection (b) of this section.

Ruling

Based on the information provided, Taxpayer performs services on stormwater devices within designated stormwater easements. Generally, repair, maintenance, and installation services are subject to North Carolina sales and use tax. N.C. Gen. Stat. §§ 105-164.4(a)(1), (16).

Taxpayer performs services that meet the definition of repair, maintenance, and installation services. However, services used to fulfill a real property contract are excluded from the definition of repair, maintenance, and installation services. Taxpayer's documents list numerous services that meet the definition of repair, maintenance, and installation services when not used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H. These services include removing and repairing the mortar around the downturn penetration and installing a new geotextile liner and are subject to tax if not used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H. As a result, the ruling in this case depends on whether the services provided by Taxpayer are used to fulfill a real property contract taxed in accordance with N.C. Gen. Stat. § 105-164.4H.

Here, Taxpayer provided an invoice that shows it performed a broad scope of work on storm water control infrastructure. The storm water control infrastructure is real property because it consists of land and a fixture or structure on land. The scope of work included numerous different repair, maintenance, and installation services on the real property. The services were all related in time and scope. In addition, the Department finds the true purpose was to remodel the storm water control infrastructure, not to perform a service that is incidental to the true purpose of the transaction. As a result, the Department determines that the services performed by Taxpayer in the example invoice meet the definition of remodeling. Such remodeling is a capital improvement and Taxpayer is a real property contractor executing a real property contract. Accordingly, Taxpayer's contract price for such remodeling is not subject to sales and use tax.

Taxpayer must pay the appropriate sales and use tax due on items it uses to fulfill the real property contract. Taxpayer is the consumer of the tangible personal property or certain digital property that it purchases, installs, or applies to fulfill the real property contract and that becomes part of real property or used to fulfill the contract. For example, Taxpayer is liable for the appropriate sales or use tax due on its purchases of geotextile liner and mortar which it subsequently installed.

Importantly, this ruling only applies to the combined work shown in the example invoice. Taxpayer is not remodeling if it only performs a single service that is included in repair, maintenance, and installation services. In addition, Taxpayer is not remodeling when the true purpose of the transaction is to perform repair, maintenance, and installation services no matter that another service included in repair,

maintenance, and installation services is performed that is incidental to the true purpose of the transaction.

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