



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

October 20, 2017

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

Re: Private Letter Ruling

Taxpayer: [REDACTED]

Taxpayer's FEIN: [REDACTED]

Dear [REDACTED]

The Department has completed its review of the request for a written determination made on behalf of your client, [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in the initial request as well as any supplemental information provided to the Department subsequent to the original request.

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 and Taxpayer's representative on behalf of 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 determination is issued on behalf of the Department.

Overview and Relevant Facts

Taxpayer advises it "is a [REDACTED] of apartments and/or hotel rooms. Similar to traditional travel agents, [Taxpayer] contracts with companies to select and negotiate the rental terms of apartments and/or hotel rooms on their behalf . . . [Taxpayer] contracts with its clients as accommodations seekers." The [REDACTED] between Taxpayer and a client states the client "[a]grees that [Taxpayer] is Client's agent only. Client, not [Taxpayer] is responsible for any hotel charges, taxes, fees and other charges for lodging. . . . [Client will] pay the quoted room cost, including the [REDACTED] per room, per night billing fee."

Taxpayer advises, "[Taxpayer] is not a rental agent as defined by the statute" In describing its business practices, Taxpayer advises its "business model operates as follows: [Taxpayer]

[REDACTED]
[REDACTED]
[REDACTED] books accommodations on the client's behalf."

"[Taxpayer's] clients use one of two methods to pay their charges to accommodation providers:

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and process our direct billing. [Taxpayer] will make reservations for our guests, audit, approve Hotel charges and will process our payment to the Hotel(s).”

Issue

Is Taxpayer a “facilitator” pursuant to N.C. Gen. Stat. § 105-164.4F?

Applicable Statutes and References

N.C. Gen. Stat. § 105-164.1 *et. seq.*, and Subchapter VIII: Local Government Sales and Use Tax (“Local Tax”), impose the State, applicable local, and applicable transit sales and use taxes on a retailer’s gross receipts derived from the rental of an accommodation sold at retail. N.C. Gen. Stat. §§ 105-164.3(34), 105-164.3(35), 105-164.3(36), 105-164.3(37), 105-164.4(a)(3), 105-467, 105-483, 105-498, 105-507.2, 105-509.1, 105-537. An accommodation is “[a] hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.” N.C. Gen. Stat. § 105-164.4F(a)(1). A retailer is defined, in part, as “[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property for storage, use, or consumption in this State, or services sourced to this State.” N.C. Gen. Stat. §§ 105-164.3(35). Additionally, a “retailer” includes “[a] person, other than a facilitator, required to collect the State tax levied under this Article or the local taxes levied under Subchapter VIII of this Chapter and under Chapter 1096 of the 1967 Session Laws.

Under N.C. Gen. Stat. § 105-164.4(a)(3), the general rate of sales tax applies to the “gross receipts derived from the rental of an accommodation. These rentals are taxed in accordance with N.C. Gen. Stat. § 105-164.4F.” Under N.C. Gen. Stat. § 105-164.4F(b), “[t]he gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.” A facilitator is “[a] person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.” N.C. Gen. Stat. § 105-164.4F(a)(2). “The term [rental agent] includes a real estate broker, as defined in G.S. 93A-2.” N.C. Gen. Stat. § 105-164.4F(a)(2). Additionally, N.C. Gen. Stat. § 105-164.4F(d) provides under the term “rental agent” that “[a] person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this Section.”

The word “**agent**” is defined, in part, in the Merriam-Webster Dictionary as “one who is authorized to act for or in the place of another.”

The word “**principal**” is defined, in part, in the Merriam-Webster Dictionary as “the person from whom an agent’s authority derives.”

