



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

May 22, 2018

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

Re: [REDACTED].
Private Letter Ruling Request
Account ID: [REDACTED]
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a written determination on behalf of your client, [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 for consideration.

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 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

You state Taxpayer "sells and delivers products directly to its customers. The products include individual sized bottled waters; private label bottled waters; [REDACTED] [REDACTED] and [REDACTED] [REDACTED] water bottles used with coolers; packaged ground coffees; tea bags; sweeteners; creamers; cups; cocoa mix; soft drinks; juice; snacks; and other related items. In addition, [Taxpayer] also rents water coolers and coffee makers to customers.

"Generally, [Taxpayer] will deliver product[s] to its customers' businesses or homes. In addition to the delivered items, a limited amount of product is picked up by customers at [Taxpayer's] distribution and manufacturing locations. [Taxpayer] does not sell any of its products via vending machines.

"The majority of the water sold by the [T]axpayer is [REDACTED] water in large capacity bottles [REDACTED] [REDACTED] and [REDACTED]) which is bottled at their [REDACTED] facility. In addition to the [REDACTED] facility, they [sic] also have [sic] [REDACTED] facilities in [REDACTED]."

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N.C. Gen. Stat. § 105-164.13B provides that “[f]ood is exempt from the taxes imposed by [Article 5 of Chapter 105 of the North Carolina General Statutes] unless the food is included in one of the subdivisions in [N.C. Gen. Stat. § 105-164.13B(a)].” Dietary supplements, food sold through a vending machine, prepared food, other than bakery items sold without eating utensils by an artisan bakery, soft drinks, and candy are subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.

N.C. Gen. Stat. § 105-164.3(28) defines the term “prepared food” as “[f]ood that meets at least one of the conditions of this subdivision. Prepared food does not include food the retailer sliced, repackaged, or pasteurized but did not heat, mix, or sell with eating utensils.

- a. It is sold in a heated state or it is heated by the retailer.
- b. It consists of two or more foods mixed or combined by the retailer for sale as a single item. This sub-subdivision does not include foods containing raw eggs, fish, meat, or poultry that require cooking by the consumer as recommended by the Food and Drug Administration to prevent food borne illnesses.
- c. It is sold with eating utensils provided by the retailer, such as plates, knives, forks, spoons, glasses, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.”

Ruling

North Carolina is a member state of the Streamlined Sales Tax Agreement, a multistate effort to simplify and modernize sales and use tax administration. The Streamlined Sales Tax Governing Board Rule 327.8 defines the terms “natural or artificial sweeteners” as “an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.”

Interpretative Opinion 2013-1 of the Streamlined Sales Tax Governing Board provides that “if the label does not list a natural or artificial sweetener, the product is not a soft drink under the Agreement definition.”

Based on the information provided, bottled drinking water meets the definition of “food” as provided in N.C. Gen. Stat. § 105-164.3(10) provided it contains only water and does not list any natural or artificial sweeteners on the label. Sales of bottled drinking water without any natural or artificial sweeteners are subject to a 2% local sales and use rate of tax. It is noted for purposes of this response, the Department did not review any labels for bottled drinking water products sold by Taxpayer and at issue in this letter ruling. However, bottled drinking water that contains natural or artificial sweeteners and such sweeteners are listed on a product label, meets the definition of “soft drink” as defined in N.C. Gen. Stat. § 105-164.3(40). Sales of bottled drinking water that contain natural or artificial sweeteners are subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.

Dry drink mixes and the products added to drinks generally meet the definition of “food” as defined in N.C. Gen. Stat. § 105-164.3(10) and are not generally “prepared food” as defined in N. C. Gen. Stat. § 105-164.3(28).

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The Streamlined Sales Tax Governing Board published Appendix N, originally adopted May 19, 2011 and revised May 21, 2013. Appendix N contains a list entitled “Classification of Products as Candy or Food or Food Ingredients.” The list in Appendix N provides examples of items classified as candy, food or food ingredients. For example, powdered ██████████ which is a dry drink mix is classified as food and therefore subject to a 2% local sales and use tax rate of tax.

Sales of dry drink mixes such as tea bags, ground and whole coffee beans, cocoa mix, cider mix, and other drink mixes, and products that may be added to drinks such as sugar, artificial sweetener, non-dairy creamer, half & half creamer, and flavored creamer are generally “food” as defined in N.C. Gen. Stat. § 105-164.3(10) and subject to the 2% local sales and use tax rate provided Taxpayer, as a retailer, does not heat, roast, or combine ingredients together to make these items or provided the items do not otherwise meet the definition of “prepared food.”

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 the taxpayer requesting this ruling may not rely on it. If a 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 the 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