



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 5, 2020

[REDACTED]

Re: Private Letter Ruling Request
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a written determination on behalf of your [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 the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued.

Overview and Relevant Facts

You state that "[i]t is the [REDACTED] opinion that our [REDACTED] [REDACTED] fall within the scope of a manufacturer. . . [REDACTED] ("Taxpayer") consists of [REDACTED] [REDACTED] operations located throughout the [S]tate, plus administrative offices in [REDACTED] and a central warehouse in [REDACTED]." You also state "[t]he mission of [Taxpayer] is . . . 'to provide quality goods and services [REDACTED].'"

You further state that "[t]he [Taxpayer] operation [employs] approximately [REDACTED] [REDACTED]"

[REDACTED]

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[REDACTED]

In addition, you state “[t]he [REDACTED] is a major consumer of [Taxpayer] products, but [Taxpayer] is empowered and authorized to market and sell products and services to any of the following entities:

[REDACTED]

Your letter also states “[Taxpayer] Customer Sales for 2010 were distributed as follows:

[REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]
[REDACTED] - [REDACTED]”

Issue

Does Taxpayer fall within the scope of a manufacturer that would benefit from the exemption provided in N.C. Gen. Stat. § 105-164.13(57)?

Applicable Statutes and References

Under Chapter 105 of the North Carolina General Statutes, Article 5 (“Article”) of the North Carolina Revenue Act (“Act”)¹, N.C. Gen. Stat. § 105-164.1 *et. seq.*; Subchapter VIII, Local Government Sales and Use Tax, N.C. Gen. Stat. § 105-463 *et. seq.*; and Chapter 1096 of the 1967 Session Laws; a retail sales tax is imposed on a retailer’s net taxable sales or gross receipts, as applicable, from sales of tangible personal property, certain digital property, and certain services at the applicable State, applicable local, and applicable transit rates of tax. N.C. Gen. Stat. §§ 105-164.4, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.4(a)(9) provides, in part, that “[t]he combined general rate applies to the gross receipts derived from sales of electricity and piped natural gas.”

¹ References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.

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N.C. Gen. Stat. § 105-164.13(5e) provides, in part, an exemption from sales and use tax on “[s]ales of mill machinery or mill machinery parts or accessories to any of the persons listed in this subdivision. For purposes of this subdivision, the term "accessories" does not include electricity. The persons are:

- a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises or (ii) a production company.”

N.C. Gen. Stat. § 105-164.13(57) provides, in part, an exemption for “[f]uel, electricity, and piped natural gas sold to a manufacturer for use in connection with the operation of a manufacturing facility. The exemption does not apply to the following:

- a. Electricity used at a facility at which the primary activity is not manufacturing.”

[REDACTED]

Ruling

Based on the documentation provided, with the exception of the [REDACTED], Taxpayer qualifies for the exemption from sales and use tax available to a manufacturer on purchases of electricity pursuant to N.C. Gen. Stat. § 105-164.13(57) provided such facilities are metered and billed separately by the provider of the electricity. Pursuant to N.C. Gen. Stat. § 105-164.4(a)(9), the combined general rate of tax applies to purchases of electricity for use by Taxpayer in the [REDACTED], the [REDACTED], the [REDACTED], and the [REDACTED], unless specifically exempted by statute.

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