



## North Carolina Department of Revenue

Roy Cooper  
Governor

Ronald G. Penny  
Secretary

February 2, 2021

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

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

### **Overview and Relevant Facts**

You advise "[Taxpayer] operate[s] a retail bakery in [REDACTED] North Carolina that sells decorated cakes, cookies, individual slices of cake and other decorated cake products (cake pops, cake jars, etc.). . . . [Taxpayer's] total annual gross receipts are approximately \$ [REDACTED] . . . . Of the total annual gross receipts, approximately \$ [REDACTED] (91%) are [sales of] decorated cakes [and] . . . approximately \$ [REDACTED] (9%) are sales of individual cake slices. . . . [Taxpayer's] shop has no inside or outside seating for [the purpose of] consumption. . . . The interior seating in [Taxpayer's] shop is for consultation with customers. . . ."

You further advise "[Taxpayer does] not make plates, napkins, forks, spoons, cups[,] or any similar item available to customers . . . meaning these items are not set out for customers to pick up and use at their discretion. . . . [Taxpayer does] physically hand plates, napkins[,] and forks to customers [who] are tasting [Taxpayer's] cake[s] as part of making a purchasing decision for large cakes (wedding cakes, grooms cake, corporate event cakes, etc. . . . Customers receive one or more slices of cake in these tastings and pay a fee."

### Issue

Is Taxpayer liable for collecting and remitting the two percent (2.00%) food rate of sales and use tax or the general State, applicable local, and applicable transit rates of sales and use tax on retail sales of decorated cakes and other food items sold without eating utensils?

### Applicable Statutes and References

Under Chapter 105 of the North Carolina General Statutes, Article 5 (“Article”) of the North Carolina Revenue Act (“Act”)<sup>1</sup>, 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; State, local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer’s net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the applicable State, applicable local, and applicable transit rates of sales and use tax. N.C. Gen. Stat. §§ 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.3(89) defines the term “food” as “[s]ubstances that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The substances may be in liquid, concentrated, solid, frozen, dried, or dehydrated form. The term does not include an alcoholic beverage, as defined in G.S. 105-113.68, or a tobacco product, as defined in G.S. 105-113.4.”

N.C. Gen. Stat. § 105-164.13B provides, in part, that “[f]ood is exempt from the [State] 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)].”

N.C. Gen. Stat. § 105-164.13B(a)(4) provides, in part, the food items that are subject to the State tax rate include “[p]repared food, other than bakery items sold without eating utensils by an artisan bakery. The term “bakery item” includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.”

N.C. Gen. Stat. § 105-164.13B(a)(4) provides, in part that an “artisan bakery” is “a bakery that meets all the following requirements:

- a. It derives over eighty percent (80%) of its gross receipts from bakery items.
- b. Its annual gross receipts, combined with the gross receipts of all related persons, do not exceed one million eight hundred thousand dollars (\$1,800,000).”

N.C. Gen. Stat. § 105-164.3(147) 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.

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<sup>1</sup> 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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- c. It is sold with eating utensils provided by the retailer, such as plates, knives, cups, napkins, and straws. A plate does not include a container or packaging used to transport the food.”

### **Ruling**

Based on the information provided, Taxpayer meets the definition of an “artisan bakery.” Taxpayer’s retail sales of decorated cakes and other bakery items sold without eating utensils are subject to the two percent (2.00%) local food rate of sales and use tax. Retail sales of bakery and food items, including individual slices of cake, sold with eating utensils 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.

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 letter ruling and the Department discovers, upon examination, that the fact situation of Taxpayer is different in any material aspect from the facts and circumstances given in this letter ruling, the letter ruling will not afford Taxpayer any protection. It should be noted that this letter ruling 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