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Issue

Are sales of Taxpayer’s products [REDACTED] subject to North Carolina sales and use tax?

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; the applicable State, applicable local, and applicable transit rates of 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. 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.”

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 State and applicable local and transit rates of sales and use tax. N.C. Gen. Stat. § 105-164.13B.

N.C. Gen. Stat. § 105-164.3(179) 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.”

N.C. Gen. Stat. § 105-164.3(229)a. defines the term “retailer,” 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 items sourced to this State. . . .”

Ruling

Based on the information furnished, Taxpayer’s retail sales of the following products are subject to the general 4.75% State and applicable local (2.25% or 2.00%) and transit (0.50%) rates of North Carolina sales and use tax:

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

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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For each product listed, Taxpayer mixes or combines two or more foods to sell as a single product. Accordingly, Taxpayer's sales of the products are sales 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