



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

April 22, 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 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 Taxpayer.

Overview and Relevant Facts

You advise that "[Taxpayer's] stores are selling [REDACTED] prepaid cards that are now being marketed by the service provider as inclusive of all applicable taxes and fees The cards are for wireless services including phone minutes, application downloads, ringtones, etc. . . . [REDACTED] . . . states [that the] cards should now be treated by retailers at the point of sale as store-value cards. . . ."

Taxpayer also provided an affidavit from [REDACTED] that states: "[REDACTED] is changing its marketing, advertising, and pricing strategy for its prepaid plans and services. . . . [REDACTED] is discontinuing the sale of prepaid wireless calling cards. [REDACTED] new product will be [REDACTED] ([REDACTED] Wireless Card[®]). [REDACTED] will be responsible for the application and remittance of such taxes that apply to the sale and use of its [REDACTED] Wireless Cards at the time the cards are redeemed for [REDACTED] products and services."

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Taxpayer provided a copy of the packaging in which the [REDACTED] Wireless Card is enclosed when sold by Taxpayer. The packaging includes the [REDACTED] Wireless Card's terms and conditions, which states, in part, the following:

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

Issue

Are Taxpayer's retail sales of the [REDACTED] Wireless Card subject to sales and use tax and the 911 service charges?

Applicable Statutes and References

North Carolina imposes State, local, and applicable transit sales and use tax on a retailer engaged in business in the State on a retailer's net taxable sales of, or gross receipts derived from, tangible personal property, certain digital property, and taxable services. N.C. Gen. Stat. §§ 105-164.4, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-537 and Chapter 1096 of the 1967 Session Laws.

N.C. Gen. Stat. § 105-164.3(235) defines the term "sale or selling", in part, as "[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or certain digital property or the performance for consideration of a service. . . ."

Pursuant to N.C. Gen. Stat. § 105-164.4(a)(4d), "[t]he general rate applies to the gross receipts derived from the sale or recharge of prepaid telephone calling service. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with [N.C. Gen. Stat. §] 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service."

N.C. Gen. Stat. § 105-164.3(177) defines the term "prepaid wireless calling service" as "[a] right that meets all of the following requirements:

- a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.
- b. Must be paid for in advance.
- c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis."

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In addition to the sale and use tax, North Carolina imposes a 911 service charge “on each retail purchase of prepaid wireless telecommunications service occurring in this State.” N.C. Gen. Stat. § 143B-1403. “A seller of prepaid wireless telecommunications service shall collect the 911 service charge for prepaid wireless telecommunications service from the consumer on each retail transaction occurring in this State. The 911 service charge for prepaid wireless telecommunications service is in addition to the sales tax imposed on the sale or recharge of prepaid telephone calling service” N.C. Gen. Stat. § 143B-1414.

Ruling

Based on the information furnished, the ██████████ Wireless Card meets the definition of a prepaid wireless calling service pursuant to N.C. Gen. Stat. § 105-164.3(177). Taxpayer’s retail sales of the ██████████ Wireless Card are subject to the general State, applicable local, and applicable transit rates of sales and use tax and the 911 service charge when sold by Taxpayer at the point-of-sale.

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 the 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