



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

May 28, 2021

[Redacted]

Re: Private Letter Ruling Request

Account ID: [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 Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You state Taxpayer "is the obligor under service contracts of motor vehicles that it sells in North Carolina . . . [Taxpayer] is not an insurer.

"[Taxpayer] . . . enters into [Redacted] with [Redacted] and other entities in North Carolina. . . . The [Redacted] acts as [Taxpayer's] agent in selling service agreements to automobile owners. The [Redacted] forwards the premiums to [Taxpayer] minus the [Redacted] premium. [Taxpayer] reserves the right to decline any service agreement submitted by the [Redacted]. The [Redacted] does not have the authority to, and does not, enter into service agreements on [Taxpayer's] behalf.

[Redacted]

[Redacted]

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[REDACTED]

In response to the Department's questions, you stated "[n]o tangible personal property is sold with the agreements. Agreements are generally purchased by customers at the time of financing but there is an open enrollment so that customers can purchase agreements at any time. The purchase of a service agreement is not a condition that has to be met to purchase a motor vehicle or for obtaining financing for the motor vehicle."

Issue

Are sales of Taxpayer's service agreements for motor vehicles exempt as "motor vehicle service contracts" from North Carolina sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(61)?

Applicable Statutes and References

North Carolina imposes State, local, and transit rates of sales and use tax on a retailer engaged in business in the State based on the 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, 105-164.6, 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. § 105-164.13(61) provides an exemption from sales and use tax for the sale at retail and the use, storage, or consumption in this State of "[a] motor vehicle service contract."

N.C. Gen. Stat. § 105-164.3(151) defines the term "motor vehicle service contract" as "[a] service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle when sold by a motor vehicle dealer, by a motor vehicle service agreement company, or by a motor vehicle dealer on behalf of a motor vehicle service agreement company. For purposes of this subdivision, the term 'motor vehicle dealer' has the same meaning as defined in [N.C. Gen. Stat. §] 20-286 and the term 'motor vehicle service agreement company' is a person other than a motor vehicle dealer that is an obligor of a service contract for a motor vehicle or for one or more components, systems, or accessories for a motor vehicle and who is not an insurer."

N.C. Gen. Stat. §§ 105-164.3(245) defines the term as "service contract" as "[a] contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract."

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Ruling

Based on the information furnished, the service agreements sold by Taxpayer are service contracts that are classified as motor vehicle service contracts as defined in N.C. Gen. Stat. § 105-164.3(151). As illustrated by the service agreement included in your request for private letter ruling, Taxpayer serves as Administrator and Obligor and agrees to reimburse the repair facility or agreement holder for the repair or replacement of parts that are covered by the service agreement. Therefore, sales of Taxpayer's service agreements are exempt from sales and use tax as provided in N.C. Gen. Stat. § 105-164.13(61).

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 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 ruling, then the ruling will not afford 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