



## North Carolina Department of Revenue

Roy Cooper  
Governor

Ronald G. Penny  
Acting Secretary

March 16, 2017

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

Re: [REDACTED]  
Expedited Private Letter Ruling Request  
Account ID: [REDACTED]  
FEIN: [REDACTED]

Dear Mr. [REDACTED]:

The Department has completed its review of your request for an expedited private letter ruling 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 all supplemental information provided.

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 on behalf of the Department. Pursuant to N.C. Gen. Stat. § 105-264, "[i]t is the duty of the Secretary to interpret all laws administered by the Secretary. . . . An interpretation by the Secretary is prima facie correct."

### Overview and Relevant Facts

You advise that "[Taxpayer] will provide [REDACTED] with a 'vehicle [REDACTED]' to give [REDACTED] an opportunity to drive whatever type of car [REDACTED] while being able to exchange [REDACTED] [motor] vehicles [REDACTED]." Pursuant to our request for additional information dated December 13, 2016, and your response dated December 17, 2016, the Taxpayer elects not to pay the highway use tax imposed under N.C. Gen. Stat. § 105-187.3 when applying for a certificate of title with the North Carolina Division of Motor Vehicles ("NCDMV") for a motor vehicle purchased by the Taxpayer for lease or rental. Rather, Taxpayer completes NCDMV's Form MVR-608 ("Form"), Gross Receipt Declaration for Leased or Rental Vehicles. By completing this Form, Taxpayer elects to collect and pay to the Department the alternate highway use tax on gross receipts from the lease or rental of the motor vehicle pursuant to N.C. Gen. Stat. § 105-187.5.

You state "[REDACTED] . . . will enter into [an] Agreement for one of [REDACTED] packages" which "entitles [REDACTED] to exchange vehicles from a select pool [or more limited pool] of vehicles at any time" or

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“entitles [REDACTED] to exchange vehicles from a select pool [or more limited pool] [REDACTED] per month.” Schedule 1 of the Agreement, “Rules of Use,” provides, in part, “[REDACTED] to the service have the right to use of [sic] one of [Taxpayer’s] vehicles, subject to availability. [REDACTED] will also have the right to swap their current vehicle for a different type of vehicle, again subject to availability. . . . You are not permitted to drive more than [REDACTED] miles in any single vehicle. When you have driven [REDACTED] miles in a single vehicle, you must swap that vehicle for a different vehicle.”

The beginning of the Agreement states, in part, “YOU MAY CANCEL THIS AGREEMENT BY PROVIDING 30 DAYS’ PRIOR NOTICE OF YOUR INTENT TO CANCEL THE AGREEMENT, IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THIS AGREEMENT, INCLUDING SECTION 8 HEREOF; PROVIDED, THAT THIS AGREEMENT HAS AN INITIAL TERM OF [REDACTED] MONTHS].”

Schedule 2 of the Agreement, “Fees and rates,” provides a description of each of the [REDACTED] vehicle lease packages offered by Taxpayer. The lump-sum monthly fee for each package is “payable monthly in advance.” Additionally, the “[f]ee is inclusive of insurance, maintenance, and all taxes.”

Section 4 of the Agreement, “Fees and your responsibilities,” states, in part, “[i]f [Taxpayer] approve[s] your [REDACTED] shortly thereafter your credit or debit card will be automatically charged with (i) the one-time joining fee of [REDACTED] and (ii) the first [one month] of your [REDACTED]. [REDACTED] periods under this Agreement will be for sequential month-to-month periods, with an initial [REDACTED] period of [REDACTED] consecutive months]. Unless and until you cancel your service with [Taxpayer] in accordance with the procedures set forth in this Agreement, including Section 8 [of the Agreement], five (5) days prior to the last day of (i) your initial [REDACTED] period or (ii) any of your subsequent monthly [REDACTED] periods with [Taxpayer], this Agreement will automatically renew for an additional consecutive one-month term.”

Section 8 of the Agreement, “Term and termination,” provides, in part, “[t]he term of this Agreement shall commence upon the acceptance by [Taxpayer] of your application and your payment of any applicable fees and shall continue for an initial [REDACTED] period, unless sooner terminated as set forth herein. After the initial [REDACTED] period, this Agreement shall automatically renew on a month-to-month basis until such time as your [REDACTED] is canceled in accordance with this Section 8.” Section 8 further provides, in part, “if you have fulfilled your [REDACTED] initial [REDACTED] then [Taxpayer] will refund your initial joining fee upon termination. In the event that you terminate your [REDACTED] prior to the expiration of the [REDACTED] initial [REDACTED] period, then you will forfeit your initial joining fee.”

#### Issue

Based on the Taxpayer’s Agreement, are the one-time fee of [REDACTED] and the lump-sum monthly [REDACTED] fees received by Taxpayer taxable gross receipts from the long-term lease of a motor vehicle for purposes of N.C. Gen. Stat. §105-187.5(b)?

#### Applicable Statutes and References

Under Article 5A (“Article”) of the North Carolina Revenue Act (“Act”), N.C. Gen. Stat. § 105-187.1 et. seq., a highway use tax “imposed by this Article is applied to the sum of the retail value of a motor vehicle for which a certificate of title is issued and any fee regulated by [N.C. Gen. Stat. §] 20-101.1. The tax does not apply to the sales price of a service contract, provided the charge is separately stated on the bill of sale or other similar document given to the purchaser at the time of the sale. N.C. Gen. Stat. § 105-187.3.

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Pursuant to N.C. Gen. Stat. § 105-187.5(a), “[a] retailer may elect not to pay the tax imposed by this Article at the rate set in [N.C. Gen. Stat. §] 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. . . . Like the tax imposed by [N.C. Gen. Stat. §] 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle.”

N.C. Gen. Stat. § 105-187.5(b) provides “[t]he tax rate on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent (8%) and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent (3%). Gross receipts does not include the amount of any allowance given for a motor vehicle taken in trade as a partial payment on the lease or rental price. The maximum tax in [N.C. Gen. Stat. §] 105-187.3(a1) on certain motor vehicles applies to a continuous lease or rental of such a motor vehicle to the same person.”

N.C. Gen. Stat. § 105-187.5(c) states “[a] retailer who elects to pay tax on the gross receipts of the lease or rental of a motor vehicle shall make this election when applying for a certificate of title for the vehicle. To make the election, the retailer shall complete a form provided by the [North Carolina] Division [of Motor Vehicles] giving information needed to collect the alternate tax based on gross receipts. Once made, an election is irrevocable.”

N.C. Gen. Stat. § 105-187.5(d) provides, in part, “[a] retailer who makes this election shall report and remit to the Secretary [of Revenue] the tax on the gross receipts of the lease or rental of the motor vehicle. The Secretary [of Revenue] shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section.”

N.C. Gen. Stat. § 105-164.4(a)(2) states, in part, “[t]he applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented.”

N.C. Gen. Stat. § 105-187.1(6) defines the term “retailer” as “[a] retailer as defined in [N.C. Gen. Stat. §] 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles.”

N.C. Gen. Stat. § 105-187.1(3) defines “long-term lease or rental” as “[a] lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.”

N.C. Gen. Stat. § 105-187.1(7) defines “short-term lease or rental” as “[a] lease or rental that is not a long-term lease or rental.”

Pursuant to Sales and Use Tax Technical Bulletin 35-1B(6), items which “are a part of the gross receipts derived from the lease or rental of a motor vehicle and are subject to the alternate highway use tax whether the charges are paid directly to a third party by the lessee on behalf of the lessor or are billed by the lessor to the lessee” include “. . . documentary fees; personal property taxes; . . . titling fees/title processing fees; U.C.C. (Uniform Commercial Code) charges – fee charged to the lessee but paid by the lessor to the Clerk of Court to record a lien on the motor vehicle being leased;

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. . . attorney's fees for the initial, direct cost of establishing a lease (recording fees, preparing lease agreements or other documents); . . . finance charges; licensing fees; . . . administration fees; any other miscellaneous fees charged at the time the lease is initiated.”

### Ruling

Taxpayer meets the definition of “retailer” pursuant to N.C. Gen. Stat. § 105-187.1(6) because Taxpayer is engaged in the business of leasing or renting motor vehicles. At the time Taxpayer applies for a certificate of title for a motor vehicle purchased for lease or rental, Taxpayer completes NCDMV's Form MVR-608 and agrees to collect and pay the alternate highway use tax on the gross receipts of the lease or rental of the motor vehicle.

The statutory definition of a “long-term lease or rental” specifically provides that a lease contract will be considered long-term only if there is a written agreement for the lease or rental of property to the same person for a period of at least 365 continuous days. For the purpose of this definition, the term “property” refers to a single motor vehicle. Had the General Assembly intended the term “property” to apply to more than one motor vehicle, the statute would properly refer to “properties.” Taxpayer's Agreement does not meet the definition of a “long-term lease or rental” since it does not stipulate a single motor vehicle is leased or rented to the same person for a period of at least 365 continuous days. Rather, the premise of the vehicle ██████████ services pursuant to the Agreement, is to provide ██████████ the opportunity to drive whatever type of car ██████████ while being able to exchange or ██████ motor vehicles with as little inconvenience as possible.

Based on the information and documentation furnished, Taxpayer's Agreement is deemed to be a short-term lease or rental and the gross receipts derived therefrom are subject to the 8% rate of alternate highway use tax as set out in N.C. Gen. Stat. § 105-187.5(b). Any portion of the Taxpayer's ██████ joining fee or lump-sum monthly ██████████ fees not refunded to a ██████████ is considered part of the gross receipts of the lease or rental and is subject to tax; any portion refunded to a ██████████ is not subject to tax. The Taxpayer's taxable gross receipts must be supported by its business records kept in the ordinary course of business.

In accordance with this ruling, Taxpayer should file a return ██████████ using Form E-500F, Motor Vehicle Lease and Rental Tax Return, and, if applicable, pay any tax, penalty, and interest due with the return. Additionally, Taxpayer should file amended Form E-500F returns ██████████ ██████████ reflecting gross receipts and tax at the 8% alternate highway use tax rate and pay the additional alternate highway use tax due and any applicable interest due with the amended returns.

This ruling solely addresses Taxpayer's transactions as set out above, does not apply to Taxpayer's subsidiaries or affiliates, and is based 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