



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 7, 2015

Account ID: [REDACTED]
FEIN: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED] Tax Specialist

Re: [REDACTED]
Private Letter Ruling Request

Dear Ms. [REDACTED]

We have received the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, and your letter dated July 14, 2014. You have inquired as to the taxability of your company's lease receipts and other nontaxable items collected from your lessees.

It is our understanding that [REDACTED], [REDACTED] ([REDACTED]) is a nationwide lessor of motor vehicles and is headquartered in [REDACTED]. [REDACTED] purchases lease contracts from independent dealerships within North Carolina. When negotiating the lease contract, dealers may offer optional extended warranties to their lease customers. The sales tax on these optional warranties is collected from the customer at lease signing and remitted to North Carolina by either the dealer or the third-party warranty underwriter. The lessee has the option of paying for the extended warranty at lease signing; however, in most cases the customer elects to capitalize (finance) the cost of the extended warranty into the monthly lease payment."

"Once the lease contract is finalized and signed by both the dealer and the lessee, the lease is then purchased by [REDACTED] as a financing instrument. [REDACTED] books the account as a lease receivable and does not record or track the receivable's underlying components in its accounting system. Even if an extended warranty is cancelled and the cost refunded to the consumer after the lease has been booked, the original lease payment remains unchanged. Cancelled warranty refunds are made outside of, and remain separate from, the original financing instrument."

You advise, "[c]onsumer motor vehicle leases in North Carolina are subject to a 3% motor vehicle lease gross receipts tax (motor vehicle lease tax). Under NC ¶64-929, NCAC Rule, Sec 17:07B.4401, the Department has determined, [REDACTED] that not only is [REDACTED] required to collect the 3% motor vehicle lease tax on the entire lease payment, but that [REDACTED] is also required to collect the 3% motor vehicle lease tax on any and all separately stated, non-sales-taxable items collected from its lessees, including late fees and property taxes[.]"

You indicate, “[b]ased on the Department’s instructions to [REDACTED], [REDACTED] continues to treat a motor vehicle lease payment as a financing instrument that cannot be separated into its underlying components and, as such, it is 100% taxable for the purposes of reporting North Carolina motor vehicle lease tax. [REDACTED] also continues to collect motor vehicle lease tax on late fees and property taxes, even though these items, when collected outside of a lease agreement, are not subject to North Carolina sales tax. “

In your letter, you state “on February 7, 2014, the Department published a notice that seems to contradict its earlier instructions to [REDACTED]. You provided a copy of such notice that states, in part, the following:

Any portion of a lease or rental payment for a motor vehicle that represents any amount applicable to the sales price of or sales tax on a service contract sold at retail and sourced to this State should not be included in the gross receipts subject to the motor vehicle lease tax. Such amount of the lease or rental payment applicable to the sales price of or sales tax on a service contract sold at retail and sourced to this State should be separately stated on the monthly billing or other documentation given to the purchaser.

You further state “[s]ince [REDACTED] cannot separately state the portion of the monthly lease payment attributable to an extended warranty, service contract or any other underlying component, can you please answer the following questions for us[.]”

Question One:

“When the service contract is NOT separately stated on the monthly lease invoice to the customer, is the entire lease payment then subject to the 3% motor vehicle lease tax?”

Answer:

N.C. Gen. Stat. § 105-187.5(a), as amended effective October 1, 2014 and applicable to gross receipts derived from a service contract sold at retail on or after October 1, 2014, provides that “[t]he portion of a lease or rental billing or payment that represents any amount applicable to the sales price of or sales tax on a service contract sold at retail that is subject to the tax imposed by Article 5 [Sales and Use Tax] of this Chapter [105] and sourced to this State should not be included [emphasis added] in the gross receipts subject to the tax imposed by this Article [5A North Carolina Highway Use Tax]. The amount of the lease or rental billing or payment applicable to the sales price of or sales tax on a service contract sold at retail subject to the tax imposed by Article 5 of this Chapter [105] and sourced to the State should be separately stated [emphasis added] on documentation given to the purchaser at the time the lease or rental agreement goes into effect, or [emphasis added] on the monthly billing statement or other documentation given to the purchaser.”

It is the Department’s opinion that provided the sales price of or sales tax on a service contract sold at retail is separately stated on the documentation given to the purchaser (lessee) at the time the lease or rental agreement goes into effect, such amounts do not have to be separately stated on the monthly billing statement or other documentation given to the purchaser.

Question Two:

“When the service contract is NOT separately stated on the monthly lease invoice provided to the customer, is the entire lease payment then subject to a lower tax rate, based on the percentage of the monthly payment attributable to a capitalized extended warranty or service contract? “

Answer:

No. The portion of the lease payment that represents the gross receipts derived from the lease or rental of a motor vehicle is subject to 3% (8% as applicable) North Carolina motor vehicle lease tax pursuant to N.C. Gen. Stat. § 105-187.5. The percentage of the monthly payment attributable to a capitalized warranty or service contract and the sales tax charged on such at the time of the retail sale of the service contract is not subject to the motor vehicle lease tax.

Based on the legislation enacted, it is the desire of the North Carolina General Assembly that a customer not be required to pay the sales and use tax on the sales price of a service contract that is financed and also pay the motor vehicle lease tax on any portion of the sales price of and sales tax on a service contract that is financed. If your firm elects not to separately state the applicable amount of the sales price of the service contract and applicable sales and use tax thereon on the monthly lease billing, your firm should charge and collect the motor vehicle lease tax on the allocable amount attributable to the gross receipts derived from the lease or rental of the motor vehicle and should not charge and collect the motor vehicle lease tax on the allocable amount attributable to the sales price of and sales tax on the service contract.

Question Three:

“Do **separately-stated** items that are **not** subject to North Carolina sales and use tax, such as late fees and property taxes, continue to be subject to the 3% North Carolina motor vehicle lease tax?”

Answer:

Yes. Separately stated items such as late fees and property taxes are a part of the gross receipts derived from the lease or rental of a motor vehicle, including personal property taxes and fees or charges incurred in collecting delinquent accounts, and such charges are subject to the 3% (8% as applicable) North Carolina motor vehicle lease 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 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.

If you have any questions, you may reach me at the number listed below.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: [REDACTED], Director – Sales and Use Tax Division