



North Carolina Department of Revenue

Pat McCrory
GovernorLyons Gray
Secretary

June 24, 2013

FEIN: [REDACTED]
Account #: [REDACTED]

[REDACTED]

Re: Private Letter Ruling

Dear Mr. [REDACTED]:

We have completed our review of your letters dated October 12, 2011, in which you request a private letter ruling on the application of North Carolina sales and use taxes to business transactions. Please accept our apology for the delay in providing a response.

Facts

It is our understanding [REDACTED] (“[REDACTED]”) is a “[m]anufacturer of compost” and that you “receive payment for intake of waste-water by-products, wood waste and other materials.” Per your correspondence, your firm’s customers are “tax-exempt farmers, tax-exempt resellers, and on occasion taxable individuals or businesses” and that your firm “receive[s] and send[s] product from [your firm’s] facilities using 3rd party carriers and [your firm] own[s] [a] fleet of trucks and drivers.” Following are the questions you ask on behalf of your firm followed by responses from the Department.

Issues

Issue # 1: If an out-of-state customer who is not exempt from taxes picks up product at one of [REDACTED] North Carolina facilities, should North Carolina sales tax be charged and, if so, is it at the rate of the county where the product was picked up?

Answer: An out-of-state customer who is not exempt from taxes that picks up [REDACTED] product in North Carolina is subject to North Carolina State and local sales taxes. The local tax rate applicable to the transaction is the county for the [REDACTED] location where the customer receives the property. N.C. Gen. Stat. § 105-164.4B(a)(1) states “[w]hen a purchaser receives a product at a business location of the seller, the sale is sourced to that business location.”

Issue # 2: If an out-of-state customer who is not exempt from taxes has a third-party transportation service pick-up product at one of [REDACTED] North Carolina facilities, should North Carolina sales tax be charged and, if so, is it at the rate of the county where the product was picked up?

Answer: If the transportation service provider is a common carrier, the sale is not subject to North Carolina State and local sales taxes. If the transportation service provider is not a common carrier, North Carolina State and local sales taxes should be charged and the local rate applicable to the transaction is the county for the [REDACTED] location where title to the property transfers from [REDACTED] to the transportation service provider.

North Carolina Sales and Use Tax Technical Bulletins Section 42-1D. states, in part, “[s]ales of tangible personal property delivered in this State to the buyer or his agent, *if such agent is not a carrier* [emphasis added], are subject to the general rate of State tax and any applicable local sales or use tax, notwithstanding that the buyer may subsequently transport, or employ someone else to transport, the property out of this State, except as provided by [exemptions and exclusions allowed by] G.S. 105-164.13.”

Issue # 3: If [REDACTED] delivers product to an out-of-state customer who is not exempt from taxes, should North Carolina sales tax be charged and, if so, is it at the rate of the county where the product was picked up?

Answer: North Carolina Sales and Use Tax Technical Bulletins Section 42-1A. states “[s]ales within the State of tangible personal property that the vendor delivers to the purchaser at a point outside the State, or that the vendor delivers to a common carrier or to the mails for transportation and delivery to the purchaser at a point outside the State, are not subject to the applicable State tax and any applicable local sales or use tax if the property is not returned to a point within the State, *and the vendor furnishes acceptable proof of transportation to a point outside the State* [emphasis added]. The most acceptable proof of transportation and delivery to a point outside the State is any of the following:

1. a waybill or bill of lading made out to the seller's order calling for delivery; or
2. an insurance or registry receipt issued by the United States Postal Service, or a postal service receipt; or
3. a trip sheet that is signed by the seller's delivery agent and shows the signature and address of the person who received the delivered goods outside the State.”

Issue # 4: If [REDACTED] uses a 3rd party transportation service to deliver product to an out-of-state customer who is not exempt from taxes, should North Carolina sales tax be charged and, if so, is it at the rate of the county where the product was picked up?

Answer: See North Carolina Sales and Use Tax Technical Bulletins Section 42-1A. information included in response # 3 by the Department.

Issue # 5: If incoming freight is charged by 3rd party carriers on materials which are included in the final product, is the incoming freight subject to sales tax? If incoming freight involves the company-owned fleet of trucks, would upkeep expenses for the company's transportation fleet be tax-exempt?

Answer: North Carolina sales and use tax is generally due, absent other applicable exemptions, on the “sales price” of tangible personal property, certain digital property, and certain services. “Sales price” is defined in N.C. Gen. Stat. § 105-164.3(37) and includes “[t]he cost of materials used, labor or service costs, interest, losses, *all costs of transportation to the retailer* [emphasis added], all taxes imposed on the retailer, and any other expense of the retailer.” Incoming freight costs passed by [REDACTED] to a customer in conjunction with the sale of taxable product are taxable as part of the sales price of tangible personal property, taxable digital products, and taxable services.

In regards to the upkeep expenses for [REDACTED] transportation fleet, such expenses incurred by [REDACTED] are subject to State and applicable local sales or use taxes at the time of purchase. There is not a statutory exemption for such items.

Issue #6: If delivery is made by the company-owned fleet of trucks of tax-exempt product and some non-exempt product, can any shipping expenses (rentals and upkeep of company fleet of vehicles) be exempt from tax?

Answer:
The purchase of upkeep expenses and payments for rentals of company vehicles incurred by [REDACTED] are not exempt from North Carolina State and applicable local sales and use taxes.

If [REDACTED] makes a sale of product that is subject to North Carolina State and applicable local sales and use taxes that includes taxable and non-taxable goods to a customer, North Carolina Sales and Use Tax Technical Bulletins Section 38-2B. provides, in part, "the vendor should allocate the delivery charge by using:

1. a percentage based on the total sales price of the taxable property compared to the total sales prices of all property in the shipment; or
2. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The vendor must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property."

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 factual 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 we may be of additional assistance, you may contact the Sales and Use Tax Division at the telephone number listed at the bottom of the first page.

Sincerely,

[REDACTED]
Administration Officer
Sales and Use Tax Division

[REDACTED]
cc: [REDACTED] Director of Sales and Use Tax Division