



# North Carolina Department of Revenue

Pat McCrory  
Governor

Lyons Gray  
Secretary

December 23, 2014

Account ID: [REDACTED]  
FEIN: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Attention: [REDACTED] Chief Financial Officer

Re: Private Letter Ruling Request

Dear Ms. [REDACTED]

We have the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, and your letter dated December 30, 2013, which was mailed under Mr. [REDACTED] cover letter dated January 28, 2014. Members of the Sales and Use Tax Division met with Mr. [REDACTED] Managing Director of Operations, on December 15, 2014, to discuss your firm's request for a private letter ruling. You have inquired as to your firm's North Carolina sales and use tax liability on the fees it charges customers who ride its tourist excursion trains.

[REDACTED] ("[REDACTED]"), [REDACTED]  
[REDACTED]  
[REDACTED]

receives grant funds from the [REDACTED] considered "State Funds" as defined in N.C. Gen. Stat. § 143C-1-1(d)(25), which [REDACTED] uses for road-improvement, bridge rebuilding, and cross-tie replacements. [REDACTED] approximately 99% of its revenues are now derived from operating tourist excursion trains." During 2012, "of the total of 135,956 passengers who were transported on [REDACTED] trains, 59,686, or approximately 44%, rode on special-event trains."

Your letter of December 30, 2013 states, in part, that "[s]pecial-event trains" include "trains on which passengers experience some form of incidental entertainment, like the story of the [REDACTED]." The passengers on the [REDACTED] train, for example, visit with [REDACTED] during a ride to the [REDACTED] as well as enjoy hearing sounds from the [REDACTED] motion picture soundtrack, drinking warm cocoa, and listening to the story along the way. You have inquired whether any of the fees your firm charges to any of its passengers for admission to such special excursion trains are subject to North Carolina sales and use tax.

Effective January 1, 2014, N.C. Gen. Stat. § 105-164.4(a)(10) imposes a privilege tax on the retailer's net taxable sales or gross receipts to admission charges to certain entertainment activities at the 4.75% general State and applicable local rates of sales and use tax. Effective May 29, 2014, N.C. Gen. Stat. § 105-164.4(a)(10) was amended, and N.C. Gen. Stat. § 105-164.4G was enacted. N.C. Gen. Stat. § 105-164.4G is discussed in detail below.

December 23, 2014

Page 2

Effective May 29, 2014, the term “entertainment activity” as amended by N.C. Gen. Stat. § 105-164.4G(a)(3) is defined as “[a]n activity listed in this subdivision:

- a. A live performance or other live event of any kind, the purpose of which is for entertainment.
- b. A movie, motion picture, or film.
- c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.
- d. A guided tour at any of the activities listed in the sub-subdivision c. of this subdivision.”

Effective January 1, 2014, and for admissions sold prior to January 1, 2015, N.C. Gen. Stat. § 105-164.13(60) exempts from sales and use tax the sale at retail and the use, storage, or consumption in this State of “[a]dmission charges to . . . [a] State attraction. A State attraction is a physical place supported with State funds that offers cultural, educational, historical, or recreational opportunities. The term ‘State funds’ has the same meaning as defined in [N.C. Gen. Stat. §] 143C-1-1.”

Also effective May 29, 2014, N.C. Gen. Stat. § 105-164.4G(e) provides that receipts derived from the following are not an admission charge to an entertainment activity and, therefore, are not subject to sales and use tax. However, where such items are included in a bundled transaction, sales and use tax applies to the sales price of the bundled transaction in accordance with N.C. Gen. Stat. § 105-164.4D. The exceptions noted below as not being an admission charge to an entertainment activity are consistent with the information provided in SD-13-4, Admission Charges, issued December 18, 2013, regarding charges that generally do not constitute admission charges:

- (1) An amount paid for the right to participate in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships.
- (2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes.
- (3) A political contribution.
- (4) A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.
- (5) *An amount paid solely for transportation* [emphasis added].

Effective for gross receipts derived from an admission charge sold at retail on or after May 29, 2014, N.C. Gen. Stat. § 105-164.4G(f), provides the following are specifically exempt from sales and use tax for gross receipts derived from an admission charge to an entertainment activity on or after May 29, 2014:

- (1) The portion of a membership charge that is deductible as a charitable contribution under Section 170 of the Code.
- (2) A donation that is deductible as a charitable contribution under section 170 of the Code.
- (3) Charges for an amenity. If charges for amenities are separately stated on a billing document given to the purchaser at the time of the sale, then the tax does not apply to the separately stated charges for amenities. If charges for amenities are not separately stated on the billing document given to the purchaser at the time of the sale, then the transaction is a bundled transaction and taxed in accordance with [N.C. Gen. Stat. §] 105-164.4D except that [N.C. Gen. Stat. §] 105-164.4D(a)(3) does not apply.

Effective May 29, 2014, N.C. Gen. Stat. § 105-164.4G(a)(2) defines “[a]menity” as “[a] feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under [Article 5 of the N.C. General Statutes] and that are not available with the purchase of admission to the same event without the feature. The term includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under [Article 5 of the N.C. General Statutes].” Charges for an “[a]menity” were also excluded from the imposition of sales and use tax to an admission charge for the period January 1, 2014 through May 28, 2014. See SD-13-4, Admission Charges, on the Department’s website for additional information.

December 23, 2014

Page 3

The Department understands that ██████ contends that the taxation of the admission charges to the special-event trains is discriminatory against a rail carrier. The Department's General Counsel reviewed the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L No. 94-210, 90 Stat. 31, codified in various sections of Title 49 of the U.S. Code), also referred to as the "4-R Act," and he did not find that the 4-R Act forbids the State from imposing a sales and use tax to an admission charge to an entertainment activity required by ██████ or any other railroad. The imposition of sales and use tax in question pursuant to N. C. Gen. Stat. § 105-164.4(a)(10) is imposed on the retailer's net taxable sales or gross receipts derived from admission charges to an entertainment activity and is not an imposition of sales and use tax on the gross receipts derived from providing passenger train transportation.

N.C. Gen. Stat. § 105-164.4G(a)(1) defines the term "[a]dmission charge," in part, as "[g]ross receipts derived for the right to attend an entertainment activity." We do not find that the imposition of the sales and use tax on an admission charge for the right to attend a special-event train that includes a live performance or a live event, the purpose of which is for entertainment, or a show, similar attraction or other entertainment activity, as defined in N.C. Gen. Stat. § 105-164.4G(3) discriminates against ██████ in any way. The sales and use tax is imposed on many other retailers who require an admission charge to an entertainment activity. We can find no authority for ██████ to not collect the 4.75% general State and applicable local rates of sales and use tax on its admission charges to certain entertainment activities on or after January 1, 2015, merely because those activities occur on a train.

Where your firm charges its customer a fee that allows a person to enter the train and such fee is *solely for transportation*, such as a fee for a train ride where no live event or live performance of any kind, the purpose of which is entertainment, nor other activity that falls within the definition of "entertainment activity" as defined in N.C. Gen. Stat. § 105-164.4G(a)(3) occurs, and a passenger is entitled to ride the train and enjoy the scenic view, the Department does not believe that such fee is an admission charge to an entertainment activity and, therefore, such fee is not subject to the 4.75% general State and applicable local rates of sales and use tax. However, any charges your firm makes to its customer for the sale of prepared food, soft drinks, candy, mixed beverages, beer, wine, or other tangible personal property before, during, or after train rides of this nature are subject to the 4.75% general State and applicable local rates of sales and use tax.

A charge that provides for a special dining event during the train ride is not a bundled transaction that includes a train ride and a meal and the entire sales price is subject to the 4.75% general State and applicable local rates of sales and use tax for gross receipts before, and on or after January 1, 2015. N.C. Gen. Stat. § 105-164.3(1i) defines "[b]undled transaction," in part, as "[a]retail sale of two or more distinct and identifiable products, at least one of which is taxable and one of which is exempt, for one nonitemized price. Products are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each product. A bundled transaction does not include the retail sale of any of the following:

A product and any packaging item that accompanies the product and is exempt under [N.C. Gen. Stat. §] 105-164.13(23).

- a. A sale of two or more products whose combined price varies, or is negotiable, depending on the products the purchaser selects.
- b. A sale of a product accompanied by a transfer of another product with no additional consideration.
- c. A product and the delivery or installation of the product.
- d. A product and any service necessary to complete the sale."

For example, if passengers pay a fee to sit in a first class train car during the train ride that affords the passengers the opportunity to enjoy the view and a prepared meal, the entire charge is subject to the 4.75% general State and applicable local rates of sales and use tax and is not a bundled transaction. In this instance, there are not two or more distinct and identifiable products. The entire charge a passenger pays is considered the sales price of the prepared food and includes "charges by the retailer for any services necessary to complete the sale." The Department understands that all persons that elect to sit in the first class train car pay the same amount and a passenger cannot elect to pay a lesser amount and not be entitled to the prepared food. N.C. Gen. Stat. § 105-164.3(36) defines the term "[s]ale or selling,"

December 23, 2014

Page 4

in part, as “[f]urnishing or preparing tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared.”

Prior to January 1, 2015, where your firm charges its customer a fee to ride a special-event train where a live event or live performance of any kind occurs, the purpose of which is for entertainment, such fee is an admission charge to a State attraction. Therefore, the fee for a special-event train that is for an admission charge is exempt from sales and use tax for admission charges sold prior to January 1, 2015. As we have discussed with Mr. [REDACTED] the exemption for admission charges to a “State attraction” is repealed for gross receipts derived from an admission charge sold at retail on or after January 1, 2015.

Effective for admission charges sold on or after January 1, 2015, where your firm charges its customer a fee to ride a special-event train that includes a live performance or live event of any kind, the purpose of which is entertainment, or an activity including a similar attraction that falls within the definition of “entertainment activity” as defined in N.C. Gen. Stat. § 105-164.4G(a)(3), such fee is an admission charge subject to the 4.75% general State and applicable local rates of sales and use tax. Events such as visits on the train from [REDACTED] or other characters, or other live events or performances, such as live music, storytelling, or comedic or dramatic performances, are “entertainment activities” within the meaning of N.C. Gen. Stat. § 105-164.4G(a)(3). Therefore, the gross receipts derived from admission charges to such entertainment activities are subject to sales and use tax, notwithstanding that the entertainment activities may occur on your firm’s trains. Gross receipts derived on or after January 1, 2015 from a fee your firm charges a customer to attend the [REDACTED] event is subject to 4.75% general State and applicable local rates of sales and use tax. As the purpose of such charges is for admission to the entertainment event and not solely for transportation, the entire charge is subject to tax as the Department does not believe that such transaction falls within the definition of a bundled transaction as there are not two distinct and identifiable products. Each person paying the admission charge is entitled to sit in a train seat in order to experience the entertainment activity, in much the same manner as if the event were to occur in a performing arts center or similar facility.

Through review of your firm’s website, the Department acknowledges that there are various types of excursions offered by your firm. Based on the information available on the firm’s website, it is the Department’s opinion that tickets to the upcoming [REDACTED] The [REDACTED] [REDACTED] & [REDACTED] [REDACTED] sold at retail on or after January 1, 2015 are admission charges to an entertainment activity and subject to the 4.75% general State and applicable local rates of sales and use tax. Additionally, based on the website information, the sales price of tickets to the [REDACTED] [REDACTED] [REDACTED] appear to be for prepared food and [REDACTED] during the trip and are subject to the 4.75% general State and applicable local rates of sales and use tax. The Department does not see any distinction from a patron enjoying [REDACTED] and prepared food on a moving train than it does if a person were to enjoy dinner and drinks in a revolving restaurant on top of a high-rise building. However, the Department recognizes that additional facts and information that may not be available on the firm’s website may alter the taxation of the [REDACTED] [REDACTED] [REDACTED]

During the meeting with Mr. [REDACTED] on December 15, 2014, he advised that for many of the train rides, special events, etc. that passengers are provided with a free ticket to the [REDACTED] [REDACTED] [REDACTED] Museum. Additionally, the Department notes that the firm’s website as of the date of this letter provides “[w]ith every purchased train ticket your admission to the [REDACTED] [REDACTED] [REDACTED] Museum is FREE!” Provided the firm does not account for any portion of a train ticket in its books and records as income derived from admission charges to the museum on or after January 1, 2015, and provided the museum is operated by the firm, sales and use tax is not due on the free museum tickets given away by the firm.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. The response is not intended to provide guidance for every type of transaction offered by your firm. 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.

████████████████████  
December 23, 2014

Page 5

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 at the bottom of the first page of this letter.

Very truly yours,

██████████  
Sales and Use Tax Director