



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 28, 2022

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

Re: [REDACTED]
Private Letter Ruling
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a private letter ruling on behalf of [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your request provided to the Department.

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 advise Taxpayer is located in [REDACTED] and is "an affiliate of certain companies that manufacture and distribute [REDACTED] and related [REDACTED] (known as original equipment manufacturers or 'OEMs'). The OEMs sell the [REDACTED] and parts to their network of [REDACTED] located across the United States, and the [REDACTED] in turn resell these and other products to their customers. . . . [REDACTED]
[REDACTED]

Taxpayer "has created a business-to-business ('B2B') online platform known as [REDACTED] to enable participating [REDACTED] to list their inventory of [REDACTED] parts on the Internet and allow customers to place parts orders through the platform. . . . [Taxpayer] owns and administers the electronic infrastructure of the platform and provides the necessary support to the [REDACTED] to enable them to connect to the platform."

[REDACTED] is not open to the general public. The website can be accessed only by qualified customers with log-on credentials. To receive log-on credentials, a customer must request an invitation from its [REDACTED]. Alternatively, [REDACTED] may automatically create accounts for their established customers and send the log-on credentials to them." Once logged-on to the site, customers may view and order inventory only from the specific [REDACTED] that invited them.

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“When a customer identifies a part on the platform that it wants to purchase, it will add the item to its order. The customer must then select a delivery and payment method to place the order. The customer generally has three delivery options: (1) pick up the purchased item at one of the physical locations, (2) request that the deliver the item, or (3) request that the ship the item.

“The customer has two payment options: (1) account or (2) credit card.

“The majority of orders are expected to be processed through accounts, which is when the customer has a pre-existing credit line established with the directly. When this payment option is selected, ‘pings’ the management system^{1]} and the management system] will send back an initial order approval or rejection. If approved, forwards the order to the dealer’s system] and provides an order confirmation to the customer. . . . The then collects the customer account balance directly from the customer according to their agreed payment terms.

also allows to accept credit card payments if they choose to enter into their own agreements directly with [Taxpayer’s] designated credit card processor for the platform, who is an unrelated third party. When this payment option is selected, transfers the customer to the credit card processor’s payment gateway (via a ‘pop-up window’), and the customer enters its credit card information. The credit card processor, operating under the terms of its agreement with the requests an initial payment authorization for the preliminary order amount from the credit card issuer and sends an immediate approval or rejection to the platform. If the transaction is approved, forwards the order to the management system] and provides an order confirmation to the customer. . . . The then submits a payment settlement request for the final invoice amount directly from its management system] to the credit card processor. The credit card processor/issuer deposits the payment . . . directly into the merchant account.”

Issue

Is Taxpayer a marketplace facilitator pursuant to N.C. Gen. Stat. § 105-164.3(133)?

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, 105-164.4J, 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. § 105-164.4(a) imposes a privilege tax on a retailer engaged in business in this State on the sales price of each article of tangible personal property.

N.C. Gen. Stat. § 105-164.3(229) defines “retailer,” in part, as “[a] marketplace facilitator that is subject to the requirements of [N.C. Gen. Stat. §] 105-164.4J.”

N.C. Gen. Stat. § 105-164.4J(b) states, in part, “[a] marketplace facilitator . . . is considered the retailer of each marketplace-facilitated sale it makes and is liable for collecting and remitting the

¹ A management system is a commercially available software suite used by and to manage and administer their sales, service, and financing operations.

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sales and use tax on all such sales. A marketplace facilitator is required to comply with the same requirements and procedures as all other retailers registered or who are required to be registered to collect and remit sales and use tax in this State.”

N.C. Gen. Stat. § 105-164.3(131) defines a “marketplace-facilitated sale” as “[t]he sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.”

N.C. Gen. Stat. § 105-164.3(133) defines “marketplace facilitator” as “[a] person that, directly or indirectly and whether through one or more affiliates, does both of the following:

- a. Lists or otherwise makes available for sale a marketplace seller’s items through a marketplace owned or operated by the marketplace facilitator.
- b. Does one or more of the following:
 1. Collects the sales price or purchase price of a marketplace seller’s items or otherwise processes payment.
 2. Makes payment processing services available to purchasers for the sale of a marketplace seller’s items.”

N.C. Gen. Stat. § 105-164.3(135) defines “marketplace seller” as “[a] person that sells or offers to sell items through a marketplace regardless of any of the following:

- a. Whether the person has a physical presence in this State.
- b. Whether the person is registered as a retailer in this State.
- c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.
- d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.”

N.C. Gen. Stat. § 105-164.3(129) defines “marketplace” as “[a] physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.”

N.C. Gen. Stat. § 105-164.3(261) defines the term “tangible personal property,” in part, as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses.”

Ruling

Based on the information furnished, Taxpayer is a marketplace facilitator who makes marketplace facilitated sales in North Carolina. North Carolina provides a two part definition of a marketplace facilitator. First, the person “[l]ists or otherwise makes available for sale a marketplace seller’s items through a marketplace owned or operated by the marketplace facilitator.” Second, the person collects the sales or purchase price, processes payments, or makes payment processing available. A person may satisfy either part of the definition directly or indirectly.

Here, Taxpayer meets both parts of the definition of marketplace facilitator. First, Taxpayer owns or operates a marketplace that lists and makes a marketplace seller’s items available for sale. Taxpayer’s online platform lists [REDACTED] parts inventory of [REDACTED] for sale. “When a customer identifies a part on the platform that it wants to purchase, it will add the item to its order. The customer must then select a delivery and payment method to place the order.” One of the customer’s delivery options is to pick up the [REDACTED] parts at a [REDACTED] physical location in this State.

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Second, Taxpayer makes payment processing services available in two ways. Taxpayer makes credit card processing available via a “pop-up window” to a third-party credit card processor. In addition, Taxpayer provides processing of pre-existing [REDACTED] with [REDACTED] by sending “pings” to the [REDACTED] Management System.

As a result, Taxpayer meets the definition of a marketplace facilitator in N.C. Gen. Stat. § 105-164.3(133). Sales of items through the online platform are marketplace-facilitated sales.

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 the 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