

Roy Cooper
Governor

Ronald G. Penny
Secretary

November 2, 2022

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Re: ████████████████████
 FEIN: ████████████████████

Dear ██████████:

The Department has completed its review of the request for a private letter ruling on behalf of ██████████ ██████████ (“Taxpayer”). In making this written determination, the Department has considered the facts presented in the initial request as well as any supplemental information 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 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 operates “████ facilities in North Carolina with blast freezing operations” and additional services related to freezing. In this letter, you specifically request a ruling regarding equipment used to provide “continuation freezing.”

You advise “[b]efore perishable foods such as ██████████ reach [Taxpayer’s] locations in North Carolina, the [Taxpayer’s] customers (‘Producers’) prepare the perishable foods at their manufacturing facilities and transport the products to [Taxpayer’s] locations. . . . [Taxpayer] . . . engages in receiving, blast freezing, continuation freezing, final packaging, and shipping processes.”

In regard to products being moved from the blast freezing process to the continuation freezing process, you advise “[p]roduct is moved from blast freezing ██████████, then the product is labeled and secured to the pallet with shrink wrap. . . . After repackaging is completed, frozen food is transported to continuation freezing where product temperatures are maintained at ██████████ Fahrenheit preventing deterioration.” In addition, you advise that some product may arrive frozen.

You advise that “[s]imilar to the blast freezing process, the continuation freezing system maintains product temperatures of blast frozen food products to meet the standards and requirements for



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prevention of product spoilage. In addition to the refrigeration systems, racking equipment is specifically designed and essential to the reduction and maintenance of product temperatures by creating space around the sides of the product, which protects the stacked product and facilitates the organization of the products for proper cold airflow around and between the products. Without the racking equipment, airflow between the products would be restricted, and the reduced temperatures generated by the refrigeration system would not be uniform, risking spoilage of products.”

In response to our email dated June 9, 2022, you advised the additional processes performed for manufacturers on products removed from the continuation freezing process primarily consisted of temperature monitoring with a calibrated thermometer, documentation of temperature tracking, export labelling, and stretch wrapping pallets prior to shipping. In addition, you advised “[a]pproximately 30% of [the] volume [at the ████████ location] goes through controlled tempering. . . . There are 3 forms of tempering: air, water, and refrigerated.”

Issue

Is the equipment purchased by Taxpayer and used directly in its continuation freezing process considered mill machinery for purposes of the sales and use tax exemption set forth in N.C. Gen. Stat. § 105-164.13(5e)?

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, 105-467, 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. § 105-164.13(5e) provides an exemption from sales and use tax for “[s]ales of mill machinery or mill machinery parts or accessories to any of the persons listed in this subdivision. For purposes of this subdivision, the term ‘accessories’ does not include electricity. The persons are:

- a. A manufacturing industry or plant. A manufacturing industry or plant does not include (i) a delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of food prepared by it for consumption on or off its premises or (ii) a production company.
- b. A contractor or subcontractor if the purchase is for use in the performance of a contract with a manufacturing industry or plant.
- c. A subcontractor if the purchase is for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.”

Sales and Use Tax Bulletin 57-9, Food Processors, provides “[p]urchases of . . . [mill machinery or mill machinery parts or accessories] by a food processor are exempt from sales and use tax provided such purchases are used in the production process, as the term ‘production’ is defined in [Sales and Use Tax Bulletin] 57-1.”

Sales and Use Tax Bulletin 57-1 provides “[t]he following classifications are based on the three principal activities of a manufacturing industry or plant and shall be followed by manufacturers purchasing tangible personal property that is used or consumed during the different phases of the operation of an industrial plant:

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1. Production as a phase of industrial or manufacturing operations shall mean all steps performed in processing and refining rooms, and in other quarters and departments of a plant, where conditioning, treating, or other operations are done on ingredient materials as an actual routine on the assembly or processing line turning out a finished product of manufacture for sale. It also includes:
 - a. The movement of raw materials or ingredients from an inventory or a stockpile located on the premises of the manufacturing facility to the assembly or processing line.
 - b. The movement of goods in process along the assembly or processing line.
 - c. The movement of manufactured products from the assembly or processing line into shipping or storage areas and yards located on the premises of the manufacturing facility.
 - d. The work of experimentation and research performed on the manufactured products.

Purchases by a manufacturing industry or plant of machinery or parts or accessories for the machinery for use in 'production,' as defined above, are classified as mill machinery or mill machinery parts or accessories. Purchases by a manufacturing industry or plant of research and development equipment and supplies for quality control or the improvement of its manufactured products or for development of products which it will manufacture are classified as mill machinery or mill machinery parts or accessories. Items that are not classified as mill machinery or mill machinery parts or accessories when purchased by manufacturing industries and plants for use in their research and development areas include such items as desks, calculators, computers used for administrative purposes, and chairs which are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

Production does not include any activity connected with the movement of raw materials or ingredients into inventory nor does it include 'distribution' or 'administration' as defined in the subsections below. Sales to manufacturing industries and plants of machinery, parts, or accessories for such machinery, and other tangible personal property used in the movement of raw materials or ingredients into inventory or in 'distribution' activities, as defined in the subsection below, or which are used for similar purposes are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

2. Distribution with reference to manufacturing industries and plants shall mean any activity connected with the movement of manufactured products within storage warehouses, shipping rooms, and other such finished product storage areas and the removal of such products therefrom for sale or shipment. Sales of distribution equipment to manufacturing industries and plants are subject to the general State, applicable local, and applicable transit rates of sales and use tax.
3. Administration with reference to manufacturing industries and plants shall mean and include the administrative work of offices, promotion of sales, and collection of accounts. Sales of administrative equipment and supplies, such as office equipment, paper, pens, pencils, stamps, paper cutters, printer form, file cabinets, scissors, staplers, desk trays, and other miscellaneous tangible personal property generally sold for office use, furniture, and fixtures are subject to the general State, applicable local, and applicable transit rates of sales and use tax."

Ruling

Based on the facts above and other information submitted to the Department, the equipment used by Taxpayer directly in its continuation freezing process does not qualify for the sales and use tax exemption set forth in N.C. Gen. Stat. § 105-164.13(5e) because it is distribution equipment. The equipment is used to store and ship manufactured products. While Taxpayer states that it has contracts

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with manufacturers to perform blast freezing of food products, the continuation freezing services are not part of the production phase of manufacturing. Thus, Taxpayer's purchases of equipment used directly in its continuation freezing process are subject to the general State, applicable local, and applicable transit rates of sales and use tax.

This ruling is based solely on the facts submitted to the Department 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 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