

Roy Cooper
Governor

Ronald G. Penny
Secretary

August 23, 2023

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

Re: [REDACTED]
Private Letter Ruling
[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 "manufactures and sells roofing materials to unrelated independent contractors (each, a 'Contractor,' and collectively, the 'Contractors') that use the . . . roofing materials on roofing projects throughout the United States, including North Carolina."

Taxpayer offers several types of warranty coverage for its roofing materials and labor, but has limited this written determination inquiry to [REDACTED] warranty ("Warranty") on roofing labor and materials.

Under the Warranty, Taxpayer "pays for the cost of both the labor and the materials required to repair a leak in a roof for the full duration of the warranty term, and with no dollar limitation placed on the cost of the repairs. If a roof leaks, the owner reports the leak directly to [Taxpayer] and [Taxpayer] dispatches a Contractor (usually the same one that installed the roof) to investigate and repair the leak."

Taxpayer explains their Warranty is handled during the project bidding and payment process. Once a contractor successfully bids on a project and successfully installs a roof, Taxpayer

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August 23, 2023

Page 2

provides the Warranty to the contractor and the contractor “markets the [W]arranty to the Building Owner.” Taxpayer is not a party to the contract between the contractor and building owner. If the building owner purchases a Warranty, Taxpayer issues the Warranty in the name of the building owner. Contractor is not a party to the Warranty.

“Payment of the warranty fee by the Contractor is subject to negotiated payment terms, but most Contractor's [sic] must remit payment to [Taxpayer] within [REDACTED]. In the event that a Contractor provides a [Taxpayer] Warranty to a Building Owner but [REDACTED] [Taxpayer] directly approaches the Building Owner to collect if the Building Owner wants the warranty to remain in force In such cases, [Taxpayer] collects from the Building Owner [REDACTED]

[REDACTED] Once again, [Taxpayer] is not a party to the contract between Building Owner and Contractor.”

Issue

Is Taxpayer liable for collecting and remitting sales and use tax on Warranties marketed and sold by contractors on its behalf?

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, 105-164.4I, 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. § 105-164.4I(a) imposes a privilege tax on “[t]he sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in [N. C. Gen. Stat. §] 105-164.4 and is sourced in accordance with the sourcing principles in [N. C. Gen. Stat. §] 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with [N. C. Gen. Stat. §] 105-164.16.”

N.C. Gen. Stat. § 105-164.4I(a), provides, in part, “[t]he retailer of the service contract is the applicable person listed below:

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- (2) When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract, the service contract facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.
 - (3) When a service contract is sold at retail to a purchaser by a service contract facilitator on behalf of the obligor under the contract and there is an agreement between the service contract facilitator and the obligor that states the obligor will be liable for the

August 23, 2023

Page 3

payment of the tax, the obligor is the retailer. The service contract facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A service contract facilitator that does not send the retailer the tax due on the sales price or gross receipts is liable for the amount of tax the service contract facilitator fails to send. A service contract facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a service contract facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a service contract facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a service contract facilitator. The requirements imposed by this subdivision on a retailer and a service contract facilitator are considered terms of the agreement between the retailer and the service contract facilitator.”

N.C. Gen. Stat. § 105-164.3(229)a. defines a “retailer,” in part, as “[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State.”

N.C. Gen. Stat. § 105-164.3(247) defines “service contract facilitator,” as “[a] person who contracts with the obligor of a service contract to market the service contract and accepts payment from the purchaser for the service contract.”

N.C. Gen. Stat. § 105-164.3(235)g. defines “sale or selling,” in part, as “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property . . . or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. The term applies to . . . [a] service contract.”

N.C. Gen. Stat. § 105-164.3(245) defines a “service contract” as “[a] contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer’s warranty or dealer’s warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.”

Ruling

Based on the information furnished, the Warranty provides that Taxpayer will maintain, monitor, inspect, repair or provide other services included in the definition of repair, maintenance and installation services for the roofs installed by contractors. As a result, the Warranty is a service contract as defined in N.C. Gen. Stat. § 105-164.3(245) and Taxpayer is the obligor.

August 23, 2023

Page 4

Further, based on the facts presented, contractors agree to market the Warranty on behalf of Taxpayer and collect payment from the building owner. These facts make the contractors service contract facilitators as defined in N.C. Gen. Stat. § 105-164.3(247).

Finally, the facts described do not show that Taxpayer, as obligor, has agreed to be liable for payment of the sales and use tax. As a result, the contractors, as service contract facilitators, are liable for remitting the sales and use tax due to the Department, as provided in N.C. Gen. Stat. § 105-164.41(a)2. Taxpayer, as obligor, is not liable for sales and use tax on these facilitated sales unless it agrees with contractors to be responsible for payment of the tax or sells directly to customers as described in the next paragraph.

Taxpayer states that in some cases it seeks payment directly from building owners when █
 █. In these cases, Taxpayer is the retailer because Taxpayer is selling to the building owner and collecting the payment from the building owner. Therefore, Taxpayer is liable for collecting, remitting, and reporting the general State, applicable local and applicable transit rates of sales and use tax for these 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