

Roy Cooper
GovernorRonald G. Penny
Secretary

July 15, 2024

[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 that:

"Taxpayer provides traffic control services and rents traffic control equipment. Its customers are generally contractors performing some type of road repair, maintenance, or construction. Depending on the project and the contractor's capabilities the level of service provided by Taxpayer varies from [REDACTED] solution that includes flaggers.

"Taxpayer does rent and sell equipment but that is [REDACTED] their revenue. A customer may . . . need equipment such as drums, signs, barricades, etc. Under those circumstances Taxpayer will rent or sell equipment and charge and remit sales tax.

"[REDACTED], a customer needs full service. A typical job for Taxpayer would involve shifting traffic or closing a lane of traffic. Taxpayer would utilize its own equipment such as cones, barrels, and signs to prevent drivers from entering the closed portion of the road.

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Taxpayer's employees use 'stop' and 'slow' paddles to flag traffic around the closed portions of the street. At the end of each day, Taxpayer collects its equipment and reopens the road. Outside of true rentals of equipment, it is exceedingly rare for Taxpayer to leave equipment out overnight."

In addition, you have provided a copy of an estimate, a service agreement, and an invoice for [REDACTED] ["Service"]."

You advise that for the Service an employee [REDACTED] various pieces of equipment. Further, a [REDACTED] plan is developed by an employee of taxpayer with specific training and certification and the job is staffed by employees with varying certifications. When providing the service, you state that Taxpayer's "employees and temporary employees working for [Taxpayer] have control over items at all times."

Issue

Are Taxpayer's charges for the described flagging and monitoring Service subject to North Carolina sales and use tax?

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 the lease or rental of tangible personal property and repair, maintenance, and installation services. N.C. Gen. Stat. §§ 105-164.4, 105-164.6, 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. § 105-164.3(113), defines the term "item" as "[t]angible personal property, digital property, or a service, unless the context requires otherwise."

N.C. Gen. Stat. § 105-164.3(121), defines the term "lease or rental", in part, as "[a] transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration."

N.C. Gen. Stat. § 105-164.3(225) defines the term "repair, maintenance, and installation services" as:

The term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with [N.C. Gen. Stat. §] 105-164.4H. The included activities are:

- a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.

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- b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
- d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under [N.C. Gen. Stat. § 105-164.3(31)d.] and substantiated as a capital improvement under [N.C. Gen. Stat. §] 105-164.4H(a1).
- e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.

N.C. Gen. Stat. § 105-164.3(229)a. defines the term “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(235) defines the term “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.”

Ruling

Based on the information and documents furnished, Taxpayer’s receipts from the Service are not subject to sales and use tax.

Taxpayer’s Service does not meet the definition of lease or rental. To qualify as a lease or rental, North Carolina law requires “a transfer of possession or control” of tangible personal property. Here, Taxpayer’s employees maintain control and possession of the items it uses to provide the flagging service. Further, the invoices and other documents related to the Service do not itemize or otherwise charge customers for the tangible personal property used by Taxpayer’s employees. As a result, the transaction is not a lease or rental.

Further, the Service described by Taxpayer is not included in the definition of repair, maintenance, and installation services. In addition, the Service is not otherwise a service subject to North Carolina sales and use tax. Therefore, there is no sales or use tax imposed on sales of the Service.


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While sales and use tax is not due on the gross receipts, Taxpayer must pay the appropriate sales and use tax on the items it uses to provide the Service. Further, Taxpayer must maintain records that establish its sale and use tax liability including showing the appropriate tax was paid on items used to deliver the Service and records distinguishing taxable lease receipts and non-taxable receipts from performance of the Service.

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