



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 26, 2021

[Redacted]

Re: Private Letter Ruling
FEIN: [Redacted]

Dear [Redacted]:

The Department has completed its review of your request for a written determination made on behalf of [Redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your 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 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 a manufacturer of extruded foam products. . . . Their products are used as end-use items or as components for other manufacturers. Fields of application include the following industries - construction, packaging, furniture, and fitness.

"The extrusion materials are [Redacted]

"The product components are mixed in the barrel [Redacted] according to the desired final product shape. Temperatures and extrusion speeds are tightly controlled. [Redacted]

[Redacted]

January 26, 2021
Page 2

You advise, based on the process described above, “environmental conditioning of the production area [through the use of HVAC equipment] is necessary to the [Taxpayer’s] manufacturing process. . . . This HVAC equipment is installed on the roof immediately above the production area and . . . operates separately from and in addition to other HVAC equipment at the facility. . . . These specific HVAC units are required to maintain temperature ranges, humidity ranges, and air exchange rates essential to the production process.” The facility has additional HVAC units for non-manufacturing and administrative zones.

You further advise Taxpayer “is the purchaser and owner of the HVAC equipment in question.”

Issue

Is the HVAC equipment described above eligible for the sales and use tax exemption provided under N.C. Gen. Stat. § 105-164.13(5e)?

Applicable Statutes and References

Under Article 5 (“Article”) of the North Carolina Revenue Act (“Act”)¹, N.C. Gen. Stat. § 105-164.1 *et. seq.*; Subchapter VIII, Local Government Sales and Use Tax, and Chapter 1096 of the 1967 Session Laws, State, local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer’s net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the applicable State, applicable local, and applicable transit rates of sales and use tax.

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(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.”

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 . . . [a] manufacturing industry or plant.”

Published for the purpose of presenting the administrative interpretation and application of sales and use tax, the Department’s Sales and Use Tax Bulletins are considered “prima facie correct.”

¹ References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.

██████████

Sales and Use Tax Bulletin 57-1 provides “[p]roduction 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. . . . Purchases by a manufacturing industry or plant of machinery or parts or accessories for the machinery for use in ‘production,’ . . . are classified as mill machinery or mill machinery parts or accessories.”

Sales and Use Tax Bulletin 57-3 provides air conditioning systems allocated to conditioning materials for processing are considered mill machinery when such systems are purchased by a manufacturing industry or plant for use in the production process.

Ruling

Based on the information furnished, Taxpayer is a manufacturer of extruded foam products. Taxpayer states the purchase of the specific HVAC equipment referenced above is necessary for the manufacturing process and describes the impact of temperature and humidity on the production phase of the manufacturing operation and the manufactured product. As described in Sales and Use Tax Bulletin 57-3, Taxpayer’s purchase of the HVAC equipment is eligible for the sales and use tax exemption provided under N.C. Gen. Stat. § 105-164.13(5e).

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 requesting this ruling 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