



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 25, 2021

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

Re: Private Letter Ruling Request

Account ID: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a written determination 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 for consideration.

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

In your letter, you stated that Taxpayer is "a contractor located in [REDACTED] North Carolina. It performs a variety of services including replacing and repairing roofs. . . . Taxpayer performed a substantial roof repair on a commercial building in 2017. The building had been vacant, and without maintenance, for a long time, necessitating extensive rehabilitation. Due to confusion over the tax on repair, maintenance, and installation services, and changes in the treatment of repairs for deferral purposes, the customer initially did not believe the project resulted in a capital improvement. . . . When the job was complete, Taxpayer was paid in full, including sales tax on the entire charge. That tax was timely remitted to the Department of Revenue."

With the work performed on the roof by the Taxpayer, "the entire roof was not replaced. Instead, the existing roof was substantially repaired at great expense. . . . The customer has indicated to Taxpayer that the charge has been capitalized and is being depreciated according to the requirements of the IRC [Internal Revenue Code]."

In response to the Department's questions, you stated that the work performed on the roof "was not part of a larger project" and that "[t]he only other work performed by [Taxpayer] was cleanup." The roof was a single project completed during the period of [REDACTED]. The terms of the contract included, in part, removing debris, trash, and "loose gravel." The gravel on the eve flashing needed to be "scraped down to the existing felts and . . . primed and repaired with asphalt and fiber glass to match existing." Once repairs were done, the gravel set was installed in "hot asphalt . . . and blended back into existing roof. [Approximately] [REDACTED] fans and [REDACTED] curbs and pipes where base flashing [was] pulled loose

February 25, 2021

Page: 2

[were] repaired with base flashing and tied into existing roof. . . . At ■ roof drains, gravel [was] scraped and removed . . . and repaired with hot asphalt and glass felts and gravel reinstalled. . . .”

Issue

Is the roof project performed by Taxpayer a capital improvement to real property as provided in N.C. Gen. Stat. § 105-164.3(31)?

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, applicable local, and applicable transit rates of sales and use taxes are imposed on a retailer’s net taxable sales or gross receipts, as applicable, of tangible personal property, certain digital property, and certain services at the percentage rates listed in N.C. Gen. Stat. § 105-164.4(a). N.C. Gen. Stat. §§ 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.3(31) defines the term “capital improvement,” in part, as including “[o]ne or more of the following:

- a. New construction, reconstruction, or remodeling.
- b. Performance of work that requires the issuance of a permit under the State Building Code, other than repair or replacement of electrical components, gas logs, water heater, and similar individual items that are not part of new construction, reconstruction, or remodeling.

...

- d. Installation of equipment or a fixture that is attached to real property and that meets one or more of the following conditions:
 1. Is capitalized and depreciated under Generally Accepted Accounting Principles or International Financial Reporting Standards.
 2. Is depreciated under the Code.
 3. Is expensed under Section 179 of the Code.

...

- f. Replacement or installation of a septic tank system, siding, roof, plumbing, electrical, commercial refrigeration, irrigation, sprinkler, or other similar system. The term does not include the repair, replacement, or installation of electrical or plumbing components, water heaters, gutters, and similar individual items that are not part of new construction, reconstruction, or remodeling.”

N.C. Gen. Stat. § 105-164.4(a)(16) states, in part, that “[t]he general rate applies to the sales price of or the gross receipts derived from repair, maintenance, and installation services for real property and generally includes any tangible personal property or certain digital property that becomes a part of or is applied to a purchaser’s property. . . .”

N.C. Gen. Stat. § 105-164.3(225) defines the term “repair, maintenance, and installation services,” in part, as “[t]he term includes the activities listed [below] 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:

...

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.

February 25, 2021

Page: 3

- b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property . . . to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.

. . .

- d. To install, apply, connect, adjust, or set into position tangible personal property. . . . 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. of Article 5 of Chapter 105 of the North Carolina General Statutes] and substantiated as a capital improvement under [N.C. Gen. Stat. §] 105-164.4H(a1)”

N.C. Gen. Stat. § 105-164.3(205) defines the term “real property” as “[a]ny one or more of the following:

- a. Land.
- b. Building or structure on land.
- c. Permanent fixture on land.
- d. A manufactured home or a modular home on land.”

N.C. Gen. Stat. § 105-164.3(219) defines the term “remodeling” as “[a] transaction comprised of multiple services performed by one or more persons to restore, improve, alter, or update real property that may otherwise be subject to tax as repair, maintenance, and installation services if separately performed. The term includes a transaction where the internal structure or design of one or more rooms or areas within a room or building are substantially changed. The term does not include a single service that is included in repair, maintenance, and installation services. The term does not include a transaction where the true purpose is repair, maintenance, and installation services no matter that another service included in repair, maintenance, and installation services is performed that is incidental to the true purpose of the transaction; examples include repair of sheetrock that includes applying paint, replacement of cabinets that includes installation of caulk or molding, and the installation of hardwood floors that includes installation of shoe molding.”

Sales and Use Tax Directive SD-18-1 Repair, Maintenance, and Installation for Real Property and Real Property Contracts, published by the Department on April 18, 2018, includes a list of transactions which provides “general guidance to assist with making a determination as to the application of sales and use tax to various services to real property.”

Ruling

According to the facts provided by you, the roof project performed by Taxpayer during the period of [REDACTED] 2017 through [REDACTED] 2017, was not an installation of a new roof and was not a complete roof replacement but was a single project to repair the existing roof. Although the repairs were extensive, the purpose of the roof project was to repair the existing roof not to install a new roof or completely replace the existing roof. Therefore, the roof project does not meet the definition of the term “remodeling” as provided in N.C. Gen. Stat. § 105-164.3(219) and is not a capital improvement in accordance with N.C. Gen. Stat. § 105-164.3(31)a.

Although Taxpayer’s customer was advised by its accountant to depreciate the repair on the roof for federal tax purposes, because the roof project did not include “[i]nstallation of equipment or a fixture that is attached to real property” as provided in N.C. Gen. Stat. § 105-164.3(31)d and the roof was not entirely replaced, depreciating the amount paid for roof repair does not qualify the roof project as a “capital improvement”.

February 25, 2021

Page: 4

As listed in the chart of transactions in the Sales and Use Tax Directive SD-18-1 Repair, Maintenance, and Installation for Real Property and Real Property Contracts, published by the Department on April 18, 2018, “repairing, maintaining, or replacing (other than complete replacement) all types of roofs or roofing materials (asphalt, shingle, slate, tile, built-up, metal, single ply)” is taxable as repair, maintenance, and installation services pursuant to N.C. Gen. Stat. § 105-164.4(a)(16). The roof project meets the definition of the term “repair, maintenance, and installation services” as provided in N.C. Gen. Stat. § 105-164.3(225)(b) because the work performed on the roof was to restore the roof to proper working order or good condition. Therefore, the roof project is subject to the general 4.75% State, applicable local (2.00% or 2.25%), and applicable transit (0.50%) rates of sales and use tax.

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 the 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. 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