



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

April 27, 2011

Account ID: [REDACTED]
FEIN: [REDACTED]

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

Dear [REDACTED]:

You requested a private letter ruling dated July 1, 2010 concerning the proper rate of tax applicable to computer purchases used for administration, sales and marketing, product development, production support, and education purposes. You provided the number of computers by department for 2007, 2008, 2009, and 2010. At the request of our director, you resubmitted the request by letter of July 8, 2010 and provided a copy of documents and additional information.

At the time of your resubmission, you provided a copy of an invoice dated November 9, 2009 from [REDACTED] for a monthly fee of \$ [REDACTED] plus tax of \$ [REDACTED] for [REDACTED] Estimates – [REDACTED] Level 1. You advised "...the data is intrinsic and necessary to the manufacturing of [your] software..." and you asked "[c]an you give us some guidance on whether the [REDACTED] feed subscription might qualify for a reduced manufacturing rate."

We understand that "[REDACTED] is a manufacturer of [REDACTED] software" with a production facility in [REDACTED], N.C. "[Your] proprietary software is burned onto a DVD and sent to [your] customers..." and you "include phone and internet support with [your] software." You provided an overview of the [REDACTED], North Carolina operations for each of the following areas:

Data Processing/Software Manufacturing – "[REDACTED] Inc. receives data from various data providers for both fundamental [REDACTED] and pricing [REDACTED] data. The processing of this data is as follows:

[REDACTED] Data – "[REDACTED] data is received at [your] [REDACTED] center located in [REDACTED], North Carolina and is then streamed to [your] [REDACTED], Ohio location. The Data Managers in [your] [REDACTED], Ohio location load the data into [your] proprietary [REDACTED] software application. This application processes the data and generates proprietary indicators via proprietary formulas. At the completion of the [REDACTED] application process, the data is sent back to [your] [REDACTED] [REDACTED] servers in the

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██████████, North Carolina ██████████ and then to [your] ██████████ operations. It is then integrated into each of the ██████████ products. The next stage is to burn the proprietary software onto a CD ROM, where it is packaged and then delivered to [your] customers. Continual updates are then provided on a web-based application where the customer accesses the product ██████████ via a subscription log-in access point by entering their user name and password.”

██████████ **Data** - “...the ██████████ data is integrated into the product and delivered to [your] customers via CD-ROM. Updates are provided on a web-based application, where the customer accesses the product, on [your] ██████████, via a subscription log-in access point by entering their user name and password.”

Product Development - You advised, “[s]taff engineers and develops software to deliver the organization’s proprietary indicators and other information to the organization’s customers.” You indicated the product development staff consists of fifteen employees, which includes eight developers and one tester along with other positions. The Development Staff’s objectives are to:

1. develop products that the company sells to customers on a subscription fee basis,
2. develop add-on products that the company sells on a per product basis,
3. maintain the products to ensure error-free delivery and service to [your] customer base,
4. continually improving the ██████████ products to enhance the customer’s experience.

Production Support - You advised, “[s]taff provides customer support for computer hardware, software, sales and other issues to the organization’s customers.” Also you indicated “[t]he production support computers are used in the following ways:

1. Servers that receive daily ██████████ feeds from a third party. The ██████████ data is then used as raw data inputs into [your] software and are continually updated on a daily basis.
2. Customer support. The sale of [your] software includes customer support for software/hardware issues.”

Education – You advised “[s]taff provides educational materials to [your] customers and staff via a host of venues, some of which include printed and video training guides, presentations delivered via video, web-hosting and in-person seminar presentations.” You also indicated “[your] Educational Services Department’s [sic] chief responsibility is to maintain the integrity of the ██████████ products and presentations.”

G.S. § 105-187.51(a)(1) imposes a privilege tax on “[a] manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State.” Sales and Use Tax Technical Bulletin 57-1 Classification of Activities of Manufacturing and Industrial Processing states in section A.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 a processing or assembly line turning out a finished product of manufacture for sale.... Purchases by a manufacturing industry or plant of machinery, or parts or accessories therefor for use in production, as defined above, are classified as mill machinery or mill machinery parts or accessories. The term **production**’ shall also mean the work of experimentation and research performed on the manufactured products. 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 the

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development of products which it will manufacture are classified as mill machinery or mill machinery parts or accessories.”

G.S. § 105-164.3(46) defines tangible personal property as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam, and prewritten computer software.” Based on the description of the operations and the information provided, computers used in the product development area to design and manufacture your firm’s prewritten software are subject to the 1% privilege tax provided such software is sold by your company and such computers are **dedicated** and used for purposes that fall within “production” as defined above. Computers used to design and create online information services or “...products that the company sells to customers on a subscription fee basis...” that are not tangible personal property or certain digital property subject to tax pursuant to G.S. 105-164.4(a)(6b), will not qualify for the 1% privilege tax.

The list of computers you provided by year and by department for the ██████████ NC location does not indicate there are any computers **dedicated** to the actual process of burning the software to the DVDs. In the event there are computers dedicated to burning the software on the DVDs, such computers will be subject to the 1% privilege tax. Computers used in administration, sales and marketing, production support, and education purposes are subject to the applicable State and local sales and use tax as the activities performed within those areas do not fall within the purview of “production” and are not afforded the reduced rate of tax.

Your firm should accrue and remit the privilege tax on its purchases of qualifying computers to the Department. Your firm should issue Form E-595 E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, to vendors as their authority not to charge North Carolina sales tax on such qualifying purchases. Your firm should register for a privilege tax account by completing Section IV of the Form NC-BR, available on the Department’s website, www.dorncc.com/downloads/sales.

In your August 30, 2010 facsimile you advised ██████████ Inc. uses data obtained through a data feed subscription and incorporates this information into its product. You stated, “[w]e take in ██████████ from [your] two data providers (██████████ and ██████████ with each supplier backing up the other. The ██████████ data comes over the internet through a product called ██████████. The ██████████ data comes over a leased line to the ██████████ ██████████ through a product called ██████████. We then take that data into the Legacy ██████████. This service enriches the data (adds [your] valuations of a ██████████ value, safety and timing) and sends it simultaneously to [your] database and to [your] fanout service...The data is displayed on customer machines through an application called ██████████ 7. This application receives ██████████ requests data through the Web Servers. The web servers get their data either from the database or the broadcast container, depending on the type of data.”

The fanout service broadcasts the data to any internal services which are listening. These services include the following:

- ██████████ Server - Analyzes the performance of specific ██████████ strategies throughout the day
- Monitor Servers - Watches for specific actions in ██████████ throughout the day
- Broadcast Containers - Streams the data to your customers over the internet through a top connection (pub/sub)
- Web Servers - Handles data requests from customers

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- Delay Server - Adds a █████ minute delay to the data for customers who do not have 'real-time' access.

You further stated "[w]e have been paying sales tax on an ██████████ Estimates – ██████████ Level 1. This is a daily [sic] ██████████ feed of ██████████ which is taken and input into [your] proprietary software." You asked whether the ██████████ subscription from ██████████ might qualify for a reduced manufacturing rate.

G.S. 105-164.3(14a) defines information service as: "[a] service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information." G.S. 105-164.4(a)(6b) states: "[t]he general rate applies to [certain] digital property that..., is delivered or accessed electronically, is not considered tangible personal property, and would be taxable...if sold in a tangible medium...[t]he tax does not apply...to an information service...." The daily ██████████ data received from ██████████ appears to be an information service and is likely exempt from sales and use tax and the mill machinery privilege tax. However, we suggest that you provide a letter to ██████████ along with the above definition of information service and ask for an explanation as to why sales tax is being charged on the subscription fees. While we conducted some Internet research, we cannot unequivocally advise if the daily ██████████ subscription is an information service as defined per statute without information from ██████████

In the event your company paid tax to your vendors in error, Sales and Use Tax Technical Bulletin 34-21A. states, in part, "[w]hen taxes are paid to a vendor in error, the customer/vendee must request a refund or credit from the vendor who in turn may obtain a refund or credit from the Department. The vendor must issue a refund or credit to the customer/vendee and provide documentation thereof to the Department before receiving a refund or credit from the Department of Revenue. A taxpayer who requests a refund or credit from a vendor should retain copies of such requests and make them available for review by the Department."

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 requesting this ruling may not rely on it. If a 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 the 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.

Very truly yours,

██████████
Administration Officer
Sales and Use Tax Division

cc: ██████████ Director of Sales and Use Tax
██████████, Assistant Director of Sales and Use Tax