



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

April 22, 2013

FEIN: [REDACTED]
Account #: [REDACTED]

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

Re: [REDACTED]

Dear Ms. [REDACTED]

We have completed our review of your correspondence dated January 24, 2012 requesting a private letter ruling on behalf of your above referenced client regarding the application of North Carolina sales and use tax on business transactions. Please accept our apology for the delay in responding to your inquiry.

Overview

It is our understanding that [REDACTED] ([REDACTED]) provides "various web-based services ('Web Services') in North Carolina that enable subscribers to have [REDACTED] [REDACTED] to their internal and external customers." The Web Services offered by [REDACTED] included in your letter ruling request are [REDACTED], and [REDACTED].

In the provision of these services, [REDACTED] "will not sell or license software or other tangible personal property to its customers as part of the Web Services. Instead, [REDACTED] will utilize its proprietary system (hardware and software) to provide the Web Services and charge for these web-based services on a [REDACTED], subscription basis." In order to use the Web Services "[c]ustomers . . . access the Web Services via the [REDACTED] websites by downloading an applet that will allow them to connect to the [REDACTED] proprietary system over the Internet and use the Web Services via the user's computer. Unless connected to the Web Services, the applet will have no functionality. Furthermore, the subscribers cannot access [REDACTED] internal software for any functional purposes whatsoever. They cannot modify code, create documents, or manipulate files on the system. [REDACTED] will not license any software to its customers for their use as part of the Web Services."

In your correspondence, you state that "[t]he purpose of the applet is to enable a secure connection between the Web Services and the user's computer. In this manner, the applet is incidental to the service subscription and there will be no additional fee charged for the applet. The applet cannot be used without connecting to [REDACTED] proprietary system over the Internet. Thus, it has no value in and of itself." You further state that "[t]he Web Services are used by subscribers, participants invited by any subscribers, and trial users. These users cannot alter or manipulate the applet at any time. The applet works with [REDACTED]"

proprietary system to facilitate connections between the subscriber/user and the subscriber's/user's computer, and once a connection is established, an encrypted data stream is passed through the communication servers located in ██████████ data centers." You further state, "[n]o data centers will be located in North Carolina."

You further state in your correspondence that, "██████████ is not an Internet Service Provider, nor does it provide or charge for telecommunication services to its customers. In order to utilize any of ██████████ Web Services, subscribers must obtain an Internet connection and/or telecommunications service from a third party."

Discussion of Web Services

██████████ service "allows a ██████████ to remotely assist and provide support to the subscriber's employees and/or customers. . . . This service does not entail the transfer of any ██████████ software or data to the subscriber. Further, the service does not allow subscribers to access ██████████ software code or manipulate the software in any way. Rather, ██████████ will use its own equipment to provide the service. ██████████ proprietary software will be maintained ██████████, on its equipment, and the equipment and software will be at all times under the control of ██████████.

██████████. ██████████ will not provide any troubleshooting beyond ongoing support for the service itself."

██████████ service "allows a subscriber to access their own computer ██████████" and "the service does not entail the transfer of any ██████████ software to the subscriber (other than an applet necessary to access the service) and does not allow subscribers to access ██████████ software code or manipulate the software in any way. Rather, the service will be provided through ██████████ proprietary equipment and software, which is at all times under the control of ██████████."

██████████ or ██████████ services utilize technical infrastructures to "allow multiple users to view a presenter's computer screen. ██████████ will not transfer any software (other than an applet necessary to access the service), and subscribers/users cannot access ██████████ software code or manipulate the software resident on ██████████ equipment in any way. Once a connection is made, the service will be provided by ██████████ through one of its data centers." With these services, "[s]ubscribers are able to present ██████████ Internet meetings ██████████ and invite anyone ██████████ participants) to attend and view the meeting material displayed during the meeting" securely online. Webinars allow a greater number of participants (generally up to 1,000 attendees), but "[t]here is no charge to the meeting or ██████████ attendees ██████████." You also advise, "[a]s a part of the [services], the participants have an option to use a fully integrated voice-over-Internet protocol ("VOIP") feature to communicate with other online meeting participants. ██████████ will purchase the underlying VOIP services from an unrelated third party and pays tax on the VOIP services at the time of purchase when such [VOIP] services are deemed to be taxable by the state in question. ██████████ will not resell the VOIP services to its subscribers. Instead, the subscribers and the other meeting participants have the option to use the integrated VOIP feature free of charge as part of [the ██████████ or ██████████ services].

service “enables subscribers to conduct online training sessions with their respective invited attendees” allowing “online training sessions, distribution of course materials, testing and assessments, publishing upcoming courses to a catalog, and maintaining a reusable content library.” VOIP may be obtained and provided in the same manner as described for the or services and “on occasion the subscribers and the other participants use their own alternative service () during the online meetings.

In conjunction with the or , as well as the services, “participants have an option to use a fully integrated voice-over-internet protocol (‘VOIP’) feature to communicate with other online meeting participants.” Per the correspondence received by this Department, “will purchase the underlying VOIP services from an unrelated third party and pays tax on the VOIP services at the time of purchase when such services are deemed to be taxable by the state in question.” Furthermore, “will not resell the VOIP services to its subscribers. Instead, the subscribers and the other meeting participants have the option to use the integrated VOIP feature free of charge.”

Statutory Authority

N.C. Gen. Stat. § 105-164.4(a) provides the State and applicable local rates of tax apply to the “sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section. “ N.C. Gen. Stat. § 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.” N.C. Gen. Stat. § 105-164.3(29a) defines prewritten computer software as “[c]omputer software, including prewritten upgrades, that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser.” N.C. Gen. Stat. § 105-164.3(4c) defines computer software as “[a] set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.” N.C. Gen. Stat. § 105-164.13(43a), effective for sales on or after January 1, 2010, provides an exemption for “[c]omputer software that meets any of the following descriptions:

- a. It is designed to run on an enterprise server operating system.
- b. It is sold to a person who operates a datacenter and is used within the datacenter.
- c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming.”

N.C. Gen. Stat. § 105-164.4(a)(6b) provides the State and applicable local rates of tax apply “to the digital property that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable . . . if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:

- a. An audio work.
- b. An audiovisual work.
- c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card“

N.C. Gen. Stat. § 105-164.4C provides that “[t]he gross receipts derived from providing telecommunications service or ancillary service in this State are taxed at the rate set in [N.C. Gen. Stat. §] 105-164.4(a)(4c). Telecommunications service is provided in this State if the service is sourced to this State. . . . Ancillary service is provided in this State if the telecommunications service to which it is ancillary is provided in this State.”

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N.C. Gen. Stat. § 105-164.3(48) defines telecommunications service in part as, “[t]he electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. . . . The term does not include . . . [a]ncillary service.” N. C. Gen. Stat. § 105-164.3(1a) defines ancillary service in part as, “[a] service associated with or incidental to the provision of a telecommunications service.

Based on the information presented, [REDACTED] is not liable for collecting North Carolina sales and use tax on the gross receipts derived from subscribers located in this State who utilize the [REDACTED], [REDACTED], [REDACTED] or [REDACTED] and [REDACTED]. It is the Department’s position that the gross receipts derived from providing these services to subscribers are not subject to tax as sales of tangible personal property or taxable digital property, and do not constitute numerated taxable services per N.C. Gen. Stat. § 105-164.4(a). Further, it is the Department’s position that any telecommunications services provided in conjunction with the [REDACTED] [REDACTED] or [REDACTED] are used by [REDACTED] in providing the various web services and do not constitute the sale of telecommunications service or ancillary services to subscribers.

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 factual 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.

If you have any questions, you may contact me at the telephone number listed below.

Very truly yours,

[REDACTED]
Director - Sales and Use Tax Division