



North Carolina Department of Revenue

Pat McCorry
GovernorLyons Gray
Secretary

August 5, 2013

Account ID: [REDACTED]
Federal ID: [REDACTED]

[REDACTED]

Attention: [REDACTED] Manager-Indirect Tax

Re: Private Letter Ruling

Dear Mr. [REDACTED]

We have your letter dated September 21, 2010, in which you have requested a private letter ruling as to the applicability of North Carolina sales and use tax to the sale of an optional maintenance agreement for software that is exempt under N.C.G.S. 105-164.13(43a). Please accept our apology for the delay in responding to your request.

It is our understanding that "[REDACTED] ([REDACTED]) is an apparel manufacturing/distribution company headquartered in [REDACTED], [REDACTED]. [REDACTED] operates plants and distribution centers in North Carolina, as well as [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. All 'headquarter' functions such as centralized accounting, data processing and executive management functions are essentially performed in [REDACTED]." You further advise that "[REDACTED] operates a datacenter in [REDACTED] that meets the requirements of [N.C. Gen. Stat. § 105-164.3(5c)] and utilizes an enterprise server environment for the majority of software products."

In your letter you state that "[REDACTED] licenses various time keeping and time management software from [REDACTED] for use in various facilities to perform time tracking functions for payroll and benefit calculations. This software is designed to run on an enterprise server, and is deployed that way on servers located at [your] datacenter. [REDACTED] chose to purchase an optional maintenance agreement. This optional maintenance agreement allows for telephone assistance, web-based support and access to download service packs, point releases and/or major releases to keep the underlying software current. [REDACTED] practice has been and continues to be, to download software and updates whenever possible."

Also in your letter you state that “our interpretation under current law is that software that meets any of the requirements of G.S. 105-164.13(43a) is not taxable and, therefore, any optional maintenance agreements for that software are also not taxable. The North Carolina Streamlined Sales Tax Taxability Matrix, while stating optional computer software maintenance contracts on pre-written computer software are taxable, also states that some exemptions under G.S. 105-164.13(43a) and G.S. 105-164.13(43b) may be applicable”.

Following are the Department’s responses to the two questions for which you are seeking a response.

1. “Is our interpretation that if software is exempt under G.S. 105-164.13(43a), then any optional maintenance agreement for that software is also exempt a correct interpretation”?

Response: Yes. If the optional maintenance agreement is for software that is exempt from sales and use tax under N.C. Gen. Stat § 105-164.13(43a) then charges for the optional maintenance agreement would be exempt.

2. Can Sales and Use Tax Technical Bulletin Section 28 (3/1/2007), still be relied upon for guidance?

Response: As noted on the Department’s website, the 2009-2012 Legislative Changes have not been incorporated into the Sales and Use Technical Bulletins. Please refer to the North Carolina Streamlined Sales Tax Taxability Matrices as well the Important Notices issued by the Department available on the Department’s website concerning taxability of certain digital property and computer software for guidance.

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: [Redacted] Director of Sales and Use Tax Division
[Redacted] Assistant Director of Sales and Use Tax Division