



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 20, 2020

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

Re: [REDACTED]
Private Letter Ruling Request
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a private letter ruling on behalf of your client [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. In order to comply with the requirements of N.C. Gen. Stat. § 105-264.2, the Department is limiting its ruling to the specific factual information contained in Taxpayer's Terms of Use as modified January 12, 2018 ([REDACTED]) and the invoices identified below. Any other terms or conditions in any agreement between Taxpayer and a Customer that add, subtract, or otherwise conflict with the terms and conditions in the Terms of Use are not considered and are not part of this written determination. Additionally, if any information stated in Taxpayer's representative's letter differ from the factual information stated in the Terms of Use, the Department used only the factual information stated in the Terms of Use for purposes of this written determination. This written determination is applicable only to the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued.

Overview and Relevant Facts

You advise that "[Taxpayer] is principally engaged in providing access via subscription to online [REDACTED] training courses." You state, the Taxpayer "contracts with subject matter experts ('authors') who create pre-recorded training courses on their topic or technology of expertise."

[REDACTED], relative to subscription plans, provides subscribers with "a non-exclusive, non-transferable license . . . to use [Taxpayer's] Site for the subscription term length." Taxpayer charges a monthly or annual subscription fee. Based on Taxpayer's invoice # [REDACTED] (annual subscription fee) and invoice # [REDACTED] (monthly subscription fee), Taxpayer charges a single amount for the specific subscription period.

[REDACTED] provides "[t]he Site contains copyrighted materials, trademarks, proprietary and confidential information, and intellectual property of [Taxpayer] and licensors of [Taxpayer] (collectively, 'Proprietary Materials'), including without limitation source code, video, text, software, photos, graphics, images, music, and sound. . . . Proprietary Materials may only be accessed through the Site. . . . The applicable License granted [Customers] by these Terms of Use is a right of access through the Site only. . . ."

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[REDACTED] of the Terms of Use provides “the Site contains content and materials that are viewable through online streaming methods.” Additionally, you advise “Customers can access the online courses via any device that can connect to the Internet via an Internet browser or that can access the appropriate viewing app. During their subscription period, [C]ustomers can also download content for certain training courses, including exercise files, course files, and [REDACTED]. Customers can download a free viewer that enables them to temporarily download and view training videos offline during the subscription period. Once the subscription period ends, the Customer’s access to video learning content is terminated and they must renew their subscription in order to regain access to the educational material again.”

Issue

Are the subscription fees paid to Taxpayer by Customers for access to online pre-recorded training courses (“Videos”) subject to North Carolina sales and use tax?

Applicable Statutes and References

Under Chapter 105 of the North Carolina General Statutes, 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, N.C. Gen. Stat. § 105-463 *et. seq.*; 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, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.4(a) provides, in part, “[a] privilege tax is imposed on a retailer engaged in business in the State. . . . The general rate of [State] tax is four and three-quarters percent (4.75%).” N.C. Gen. Stat. § 105-164.4(a)(1) provides, in part, “[t]he general rate of [State] tax applies to the following items sold at retail:

- . . .
- b. The sales price of certain digital property. The [State] tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments.”

N.C. Gen. Stat. § 105-164.3(195) defines the term “retailer,” in part, as “[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State.”

N.C. Gen. Stat. § 105-164.3(193) defines the term “retail sale or sale at retail” as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

N.C. Gen. Stat. § 105-164.3(201) defines the term “sale or selling,” in part, as “[t]he transfer for consideration of . . . license to use or consume . . . certain digital property.”

N.C. Gen. Stat. § 105-164.3(203) defines the term “sales price” as “[t]he total amount or consideration for which an item is sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

- a. The term includes all of the following:
 1. The retailer’s cost of the item sold.
 2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
 3. Charges by the retailer for any services necessary to complete the sale.
 4. Delivery charges.
 5. Installation charges.
 6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.

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.

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7. Credit for trade-in. The amount of any credit for trade-in is not a reduction of the sales price.
8. The amount of any discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
 - I. Presentation by the consumer of a coupon or other documentation.
 - II. Identification of the consumer as a member of a group eligible for a discount.
 - III. The invoice the retailer gives the consumer.
- b. The term does not include any of the following:
 1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
 2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
 3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.”

N.C. Gen. Stat. § 105-164.3(23) defines the term “certain digital property,” in part, as “[a]n item listed in this subdivision that is delivered or accessed electronically and that is not considered tangible personal property. . . . The items are:

- b. An audiovisual work.”

N.C. Gen. Stat. § 105-164.3(9) defines the term “audiovisual work” as “[a] series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.”

N.C. Gen. Stat. § 105-164.4B(f) regarding the sourcing of certain digital property provides “[a] purchaser receives certain digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first.”

Ruling

The term “sale or selling,” as defined in N.C. Gen. Stat. § 105-164.3(201), includes “[t]he . . . license to use or consume . . . certain digital property.” N.C. Gen. Stat. § 105-164.4 imposes sales tax on the sales price of certain digital property, including audiovisual works sold at retail and accessed electronically. Taxpayer’s Videos are audiovisual works because they contain “[a] series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.” N.C. Gen. Stat. § 105-164.3(9). Therefore, Taxpayer’s subscription fees are taxable sales of audiovisual works. Subscription fees paid to Taxpayer by Customers for access to Videos are subject to the general 4.75% State, applicable local, and applicable transit rates of sales and use tax when sourced to North Carolina.

This ruling is based solely on the Terms of Use as set out above, and the documentation provided by Taxpayer that is specifically identified herein. If the facts and circumstances given are not accurate, or if they change, Taxpayer may not rely on this ruling. 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