



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

May 21, 2010

██████ – ██████
████████████████████
████████████████████

Attention: ██████████, Chief Financial Officer

Re: Private Letter Ruling Request
Federal ID: ██████████
Account ID: ██████████

Dear Mr. ██████████

We have your letter of May 5, 2010, requesting a private letter ruling on the application of North Carolina sales and use tax to “annual enhancement (i.e. maintenance) plans that accompany the sale of software and are an integral part of that sale.”

You state that “██████ ██████████, Inc. (dba ██████████ – ██████ is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business in ██████████ North Carolina. ██████████ – ██████ is in the business of selling enterprise resource planning (ERP) software to businesses primarily in the Southeastern United States but has done business in many other areas of the country.

“This ERP software is designed to run exclusively on an enterprise server operating system. Upon reliance and authority of G.S. 105-164.13 (43A), ██████████ – ██████ does not charge its clients sales and use tax on the sale of the ERP software since this type of software is exempt from NC sales and use tax...

“Annual enhancement plans provide ██████████ – ██████ clients with ERP software upgrades, updates, hotfixes, and new releases throughout the life of the software. The annual enhancement plan also provides ██████████ – ██████ clients support, training, and community-based services to include tools and resources to allow clients to search support databases; unlimited access to online training; access to newsgroups for news updates and product announcements... The annual enhancement plan is an extension of the ERP software sold to the client. ██████████ – ██████ takes the position that these enhancement plans are not taxable since the enhancement plans are of like kind and similar in nature to the core ERP software they are sold with.”

N.C. Gen. Stat. § 105-164.13 (43a) a. exempts from North Sales and Use Tax sales of computer software that is designed to run on an enterprise server operating system.

Based on the above information, enhancement plans sold with ERP software, which is designed to run exclusively on an enterprise server operating system, are exempt from North Carolina sales and use tax. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers, that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software. The delivery method of the computer software is irrelevant. The customer should provide your firm with exemption documentation to support the purchase is a qualifying purchase exempt from 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 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.

If you have any questions or we can be of further service, please advise.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: [REDACTED], Director of the Sales and Use Tax Division
[REDACTED], Assistant Director of the Sales and Use Tax Division