



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

October 31, 2011

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

Re: Private Letter Ruling Request

[REDACTED]
Federal ID: [REDACTED]

Dear Ms. [REDACTED]

We are in receipt of Ms. [REDACTED] February 14, 2011 letter requesting a ruling on whether your above referenced client's web-based training courses, also known as e-learning, are subject to sales and use tax. We are also in receipt of your May 18, 2011 letter, that was sent via facsimile, in which you provided additional information and a sample copy of an [REDACTED] Membership Agreement.

We are restating the two scenarios provided in your letter followed by our response.

Scenario [sic] #1

[REDACTED] ([REDACTED] whose business is based in [REDACTED] [REDACTED] [REDACTED] . . . develop[s] and maintain[s] a library of online classes. [REDACTED] customers contract to lease the right to access this library of classes for a period of one year. [REDACTED]
[REDACTED]

[REDACTED] servers are all located in [REDACTED]. The customers access the library of courses over the Internet using a registered user log-on and password. (The customers do not have anything installed on their computer hard drives nor do they receive any tangible personal property such as CD-Roms.) The courses are interactive in that the user must take and pass an exam at the end of the class. Once the user passes the exam they will be issued a completion certificate which is transferred to the user electronically. Many of these classes meet industry required continuing education requirements.

"After the initial one-year period the contract will renew automatically unless terminated in writing. Upon the termination, the customers must discontinue the use of the online classes and return or destroy all course files, documents and other tangible materials representing [p]roprietary [i]nformation."

Scenario [sic] #2

“On occasion [REDACTED] customers (also called members) will provide course content to [REDACTED] in digital format. [REDACTED] develops an interactive course, accessible online only by the customer. In these instances title to the course passes to the customer/member. The customer/member only has the right to reproduce the ‘content’ they provided to our client.”

Response:

If the training courses described in Scenario #1 are not available in a tangible medium, the license fees charged for access to the web-based training courses are not subject to sales or use tax. If the training courses are available in a tangible medium, the charges associated would likely be subject to tax as digital property pursuant to N.C. Gen. Stat. § 105-164.4(a)(6b).

Receipts for development and access to the interactive courses for specific customers as described in Scenario #2 are not subject to sales or use tax provided such does not constitute computer software. Computer software is defined in N.C. Gen. Stat. § 105-164.3(4c) as “[a] set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.”

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,

[REDACTED]
Administration Officer
Sales and Use Tax Division

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