



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

May 24, 2012

Account ID: [REDACTED]
FEIN: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]
Sales and Personal Property Tax Manager

Dear Mr. [REDACTED]

This letter is a written response subsequent to your discussions with [REDACTED], Sales and Use Tax Director, and in response to your letters of July 29, 2010 and October 25, 2010, in which you request a ruling from the Department concerning the application of sales or use tax to your firm's North Carolina retail sales of [REDACTED] software. You also provided copies of the [REDACTED] Agreement and [REDACTED] License Agreement.

Effective January 1, 2010, pursuant to N.C. Gen. Stat. § 105-164.13(43a)a., the sale at retail and the use, storage, or consumption of computer software designed to run on an enterprise server operating system is exempt from sales and use tax. In the "Important Notice: Computer Software" issued by the Department during February of 2010, we advised that "[t]he 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."

In your letter of July 29, 2010, you advised that your firm sells [REDACTED] software "[REDACTED]"
[REDACTED] software
[REDACTED] supports multiple users in the same enterprise.
[REDACTED] products are sold to customers for an upfront one-time charge ("OTC") perpetual license or for monthly license charge ("MLC") for a license duration limited to a contract period."

You assured Mr. [REDACTED] that [REDACTED] knows the [REDACTED] software products at issue are “designed” to run on an enterprise server operating system; therefore, you asked for confirmation from the Department that you will not be required to obtain Streamlined Sales and Use Tax Agreement Certificates of Exemption from customers for [REDACTED] software transactions on or after January 1, 2010. The Department is in agreement that provided such products meet the “designed” requirement, your company will not be required to obtain certificates of exemption for sales of such items sourced to North Carolina. However, during your phone conversation with Mr. [REDACTED] he expressed his concern that some of your company’s customers may assume that tax was incorrectly left off of your company’s invoices and the customers may independently accrue and pay use tax on such transactions to the Department. As discussed with Mr. [REDACTED] any descriptive notations you can add to your invoices to identify such qualifying items as products “designed to run on an enterprise server operating system” would likely be favorable for customers.

Pursuant to N.C. Gen. Stat. § 105-164.26, “all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records.” N.C. Gen. Stat. § 105-164.22 further states in part, “[f]ailure of a retailer [or wholesale merchant] to keep records that establish that a sale is exempt . . . subjects the retailer [or wholesale merchant] to liability for tax on the sale.” As with any exemption claimed, your firm must be able to support upon audit that its [REDACTED] software sales are properly exempt from sales and/or use 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, you may reach me at the number listed at the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

[REDACTED]
cc: [REDACTED], Director