



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 30, 2012

Account ID: [REDACTED]
FEIN: [REDACTED]

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

Re: Request for Private Letter Ruling

Dear [REDACTED]:

We have completed our review of your letter dated November 10, 2010, in which you have requested a private letter ruling regarding the application of North Carolina sales and use tax on business transactions.

It is our understanding that [REDACTED] ("[REDACTED]") is a "corporation . . . locat[ed] within [REDACTED] County, NC, that is a provider of high tech services delivered through the public internet." The company owns several computer data servers and customers of [REDACTED] put their own software on these data servers and "for a monthly fee, [you] provide [your] customers secure access to their own software and their own data and allow them to acquire, store, process, and retrieve their data and information." Customers of [REDACTED] create a "user account" to access what is referred to, contractually, as an "application hosting service." Under the terms of the [REDACTED] Agreement, [REDACTED] grants a non-exclusive, non-transferable, and non-sublicensable right to use this hosting service. It is our further understanding that [REDACTED] invoices its customers, who may be in any state in the nation and, [REDACTED] [has] no control over the actual location of the users of the data, since the internet allows universal access."

In addition to the application hosting service, [REDACTED] provides "telephone application support agreements" whereby [REDACTED] may offer to customers: (a) unlimited number of telephone support calls; (b) four hours of scheduled [REDACTED] training; (c) access to product webinars on a real-time basis and (d) access to customer support portals. It is our understanding from your letter, and from the company's [REDACTED] Agreement, that all product support and training contained within the agreement is either telephone or internet-based and that the customer is not provided any downloads.

N.C. Gen. Stat. §105-164.4(a)(1) provides that sales tax is a privilege tax imposed on a retailer engaged in business in this State who makes retail sales of taxable tangible personal property to customers located in this State. N.C. Gen. Stat. §105-164.3(46) defines tangible personal

property as “[p]ersonal property that may be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes . . . prewritten computer software.” N.C. Gen. Stat. § 105-164.3(36) defines “sale or selling” in part as “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service. The transfer or performance may be conditional or in any manner or by any means. “

Based on the information presented, your firm is not liable for collecting North Carolina sales and use tax on the gross receipts from consumers located in this State who utilize application hosting services to access their own software. Charges involving a person using online/web-hosted versions of prewritten computer software located on servers where the prewritten software is not downloaded, but is instead accessed electronically via an internet website by using a user ID and password, are not subject to North Carolina sales and use tax. Your firm is also not liable for collecting sales and use tax on the gross receipts received from consumers located in this State who utilize telephone application support services, as these do not provide for the sale of either tangible personal property or taxable digital property and are not a taxable service.

Purchases of tangible personal property, certain digital property and taxable services by for use in North Carolina to provide the above services are subject to the applicable State and local sales and use taxes pursuant to N. C. Gen. Stat §§ 105-164.4 and 105-164.6, unless certain purchases qualify for the 1% privilege tax pursuant to N.C. Gen. Stat. § 105-187.51C.

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 factual 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 contact me at the telephone number listed below.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: , Director - Sales and Use Tax Division