



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

April 28, 2014

ACCOUNT ID: [REDACTED]
FEIN: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Re: [REDACTED]
Private Letter Ruling Request

Dear Mr. [REDACTED]

We have the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, and your letters dated July 19, 2013 and October 24, 2013. You inquired as to your above-referenced client's North Carolina sales and use tax liability on its sales of [REDACTED] to customers in this State.

You advise that your client, [REDACTED] ([REDACTED]), "is a leading provider of cloud-based services that automate enterprise Information Technology ("IT") operations. Its service includes a suite of applications built on a proprietary platform that automates [REDACTED] [REDACTED] [REDACTED]. . . . [REDACTED] [REDACTED]. As such, [REDACTED] service is accessed via the Internet and customers can deploy the service in a modular fashion and configure and build new applications on an as-needed basis. [REDACTED] service offering includes various software applications, all of which are hosted on [REDACTED] servers."

[REDACTED] enters into a contract with each customer, pursuant to which it charges each customer a subscription fee for the license to use and access [REDACTED] 'Product,' which includes uses of [REDACTED] proprietary software applications. [REDACTED] [REDACTED]. . . . No software must be loaded or downloaded onto [REDACTED]'s customers' computers in order to run [REDACTED] software service. . . . No components of [REDACTED] software resides on a customer's computer equipment. . . . [REDACTED] runs its software from various server locations [REDACTED]. However, none of such servers are located in North Carolina."

You provided a copy of a Master Subscription Service Agreement ("Service Agreement") for our review. The Service Agreement provides that customers may order and purchase the [REDACTED] platform and [REDACTED] applications from a "Reseller pursuant to a separate agreement specifying price, payment and other commercial terms. [REDACTED] is not a party to

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such separate agreement but will provide the purchased services pursuant to this [Service Agreement].” When a customer purchases services from a reseller, the reseller will provide the customer “with a Use Authorization and a Product Overview issued by [REDACTED] that specify the services that Customer has purchased from Reseller. Customer shall promptly sign the Use Authorization and return it to [REDACTED]. [REDACTED] shall have no obligation to provide services unless and until it has received the applicable Use Authorization as signed by Customer.”

You have inquired whether [REDACTED] software subscription revenues from software hosted on a server located outside North Carolina are subject to this State’s sales and use tax. Based on the information provided, it is our opinion that [REDACTED] revenues derived from subscription fees for the license to use and access its products hosted on servers located outside of North Carolina do not constitute the sale of tangible personal property or certain digital property and are not subject to North Carolina sales and use tax. Any reseller’s receipts derived from [REDACTED] software subscriptions are also exempt from sales and use tax, provided the [REDACTED] proprietary software applications are not downloaded onto customer’s computer equipment but are run from various server locations located outside this State in the same manner as discussed above.

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 below.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

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