

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 31, 2024

[REDACTED]

Re: Private Letter Ruling

[REDACTED]

Dear [REDACTED]:

The Department has completed its review of the request for a private letter ruling on behalf of [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in the initial request as well as any supplemental information obtained by the Department.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished on behalf of Taxpayer. This written determination is applicable only to Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You advise Taxpayer "is a technology-based [REDACTED] training services company." You further advise "[t]he Taxpayer licenses prewritten software through a [REDACTED] license agreement and associated technology platform. The content is remotely accessed via SaaS, rather than downloaded in the traditional sense, and no software is transferred to the user. A subscribed member's browser interface allows them access, but the content is not transferable and [REDACTED]. The software is licensed on an enterprise basis, meaning that it is designed to be run on an enterprise server operating system, for high-volume, simultaneous use on multiple computers, housed or maintained on an enterprise server or end users' computers. The platform contains a database of instructional content, generally shown in the 'form' of live streaming content and digital works; each platform user can search, select, and curate the instructional content in which they are interested. However, no individual works or items of program content are ever 'purchased'; instead, the entire library database of content is purchased (through the subscription license). Put another way, the entire point of subscribing is to gain access to the overall platform and the software that allows a user to select content applicable to their evolving [REDACTED] situations pulling from the entire database. The Taxpayer's software and the database work seamlessly together and are sold for one price; they are not distinct from each other. . . The Taxpayer is not a school, nor does it make its offerings available on behalf of schools."

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The Department reviewed Taxpayer's website, [REDACTED], on November 20, 2023 ("Website"). At that time, the Website stated that [REDACTED]

The Website describes the features of the product as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Issue

Are the Taxpayer's subscription fees subject to tax as certain digital property?

Applicable Statutes and References

North Carolina imposes State, local, and transit rates of sales and use tax on a retailer engaged in business in the State based on the retailer's net taxable sales of, or gross receipts derived from, tangible personal property, certain digital property, and taxable services. N.C. Gen. Stat. §§ 105-164.4, 105-164.6, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-537 and Chapter 1096 of the 1967 Session Laws.

N.C. Gen. Stat. § 105-164.3(33) defines the term "certain digital property" as "[s]pecified digital products and additional digital goods. The term does not include an information service or an educational service."

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N.C. Gen. Stat. § 105-164.3(5) defines the term “additional digital goods” as “[a]ll of the following if transferred electronically:

- a. A magazine, a newspaper, a newsletter, a report, or another publication.
- b. A photograph.
- c. A greeting card.

N.C. Gen. Stat. § 105-164.3(253) defines the term “specified digital products” as “[d]igital audio works, digital audiovisual works, and digital books.”

N.C. Gen. Stat. § 105-164.3(57) defines the term “digital audio work” as “[a] work that results from the fixation of a series of musical, spoken, or other sounds, including a ringtone, that is transferred electronically.”

N.C. Gen. Stat. § 105-164.3(59) defines the term “digital audiovisual works” as “[a] series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that is transferred electronically.”

N.C. Gen. Stat. § 105-164.3(61) defines the term “digital book” as “[a] work that is generally recognized in the ordinary and usual sense as a book that is transferred electronically.”

N.C. Gen. Stat. § 105-164.3(271) defines the term “transferred electronically” as “[o]btained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically.”

N.C. Gen. Stat. § 105-164.4(a)(1)b. provides, in part, “[t]he general rate of tax applies to. . . [t]he sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments.”

N.C. Gen. Stat. § 105-164.4D(a) provides, in part, “[t]ax applies to the sales price of bundled transaction unless . . . [t]he bundle includes a service, and the retailer determines an allocated price for each item in the bundle based on a reasonable allocation of revenue that is supported by the retailer’s business records kept in the ordinary course of business [or] [t]he price of the taxable items in the bundle does not exceed ten percent (10%) of the price of the bundle.”

N.C. Gen. Stat. § 105-164.3(23) defines the term “bundled transaction” as “[a] retail sale of two or more distinct and identifiable items, at least one of which is taxable and one of which is nontaxable, for one nonitemized price. The term does not apply to real property or services to real property. Items are not sold for one nonitemized price if an invoice or another sales document made available to the purchaser separately identifies the price of each item. A bundled transaction does not include the retail sale of any of the following:

- a. An item and any packaging that accompanies the item and is exempt under G.S. 105-164.13(23).
- b. A sale of two or more items whose combined price varies, or is negotiable, depending on the items the purchaser selects.
- c. A sale of an item accompanied by a transfer of another item with no additional consideration.
- d. An item and the delivery or installation of the item.
- e. An item and any service necessary to complete the sale.

[REDACTED]
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Ruling

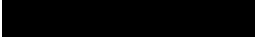
Based on the information reviewed, Taxpayer charges a subscription fee which provides its customers a license to access and use its website and site materials. The site materials include digital videos, live events that are recorded and can be accessed later, digital books, and audiobooks (“Digital Content”). The definition of certain digital property includes the Digital Content that Taxpayer provides to its customers because each of these content types is a specified digital product which is a component of certain digital property. Specifically, the definition of digital audiovisual works includes the digital videos and live streaming events that are recorded and can be accessed later because they are “[a] series of related images that when shown in succession, impart an impression of motion, together with accompanying sounds” and are transferred electronically. The definition of digital audio works includes audiobooks because they are “[a] series of spoken . . . sounds” that are transferred electronically. Finally, the definition of specified digital products includes digital books.

Here, the customers of Taxpayer seek and receive access to the Digital Content when they pay the subscription fee and thus the transaction is subject to sales and use tax. North Carolina imposes sales and use tax on charges for access to certain digital property, including the Digital Content. The tax applies “regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments.” As a result, Taxpayer must collect sales and use tax on its subscription fee unless an exemption applies to the sale.

The Department finds taxpayer is not selling software as a service when it provides access to the Digital Content, nor is it providing an information service. While Taxpayer uses software and databases to deliver the content to its customers, the customers are paying for access to the Digital Content and not for the underlying software that is used by Taxpayer to deliver the content. Most, if not all, modern on-demand or streaming digital media content providers use software and databases to deliver content to their customers. The software sorts and allows for searching of the content. The use of such software by the content providers does not allow the providers to avoid tax on their sales of certain digital property. The use of such software by Taxpayer is part of the sales price of certain digital property.

Finally, Taxpayer provides at least one service that would not be subject to sales and use tax as a standalone product. Specifically, Taxpayer provides customers access to [REDACTED]. Based on Taxpayer’s Website, the [REDACTED] are provided to allow customers to practice [REDACTED] found in some of the Digital Content. Taxpayer represents that customers do not download the software that allows [REDACTED], but instead access it remotely on Taxpayer’s website. As a result, the standalone sale of this product would be software as a service, a nontaxable service in North Carolina. Since this product is sold for one nonitemized price with the taxable Digital Content, and it appears to meet the other requirements of a bundled transaction, the sale is a bundled transaction. Tax applies to the full sales price of the bundled transaction unless N.C. Gen. Stat. § 105-164.4D(a)(2) or (3) apply to the transaction.

This ruling is based solely on the facts submitted to the Department for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then Taxpayer may not rely on it. If Taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of Taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford 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.


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Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division