



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

October 16, 2020

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Re: Private Letter Ruling Request
Account ID: ██████████
FEIN: ██████████

Dear ██████████:

The Department has completed its review of your request for a written determination on behalf of ██████████ ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request as well as any supplemental information provided to the Department for consideration.

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 by you on behalf of Taxpayer. This written determination is applicable only to the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued.

Overview and Relevant Facts

You advise Taxpayer is "an Information Technology company that provides managed services to a number of small to medium-sized businesses. Some of [Taxpayer's] clients purchase equipment from [Taxpayer], but some already have equipment that [Taxpayer] maintain[s] for them." The scope of services provided by Taxpayer to its clients is governed by and set out in the Taxpayer's Terms of Use ("Agreement").

Section ██████ of the Agreement provides "[Taxpayer] will be responsible for the following:

- (a) 'Network Equipment Support' [Taxpayer] shall provide all labor related to maintaining configuration, logging (if possible and appropriate), and monitoring of network equipment, including routers, firewalls, switches, spam filters, and other equipment used to move, monitor, or intentionally affect Ethernet traffic on Client's local area network. . . . [Taxpayer] will provide all service related to these products."

In addition, Section ██████ of the Agreement states "[Taxpayer] will . . . monitor software updates and patches and if necessary deploy updates and patches during the maintenance windows for supported operating systems." Section ██████ of the Agreement further states "[u]nder certain

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circumstances [Taxpayer] may need to perform emergency maintenance, such as security patch installation or hardware replacement.”

Based on Section [REDACTED] of the Agreement, “[t]he Term for this contract shall be month by month. The Term shall renew automatically at the end of each month unless [the client] provide[s] written notice 30 days in advance of the service termination date.”

Issue

Are Taxpayer’s charges for its Agreement subject to North Carolina sales and use tax?

Applicable Statutes and References

Under Chapter 105 of the North Carolina General Statutes, Article 5 ("Article") of the North Carolina Revenue Act ("Act")¹, N.C. Gen. Stat. § 105-164.1 *et. seq.*, Subchapter VIII: Local Government Sales and Use Tax, N.C. Gen. Stat. § 105-463 *et. seq.*, and Chapter 1096 of the 1967 Session Laws; State, local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer's net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the applicable State, applicable local, and applicable transit rates of sales and use tax. N.C. Gen. Stat. §§ 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.4(a)(11) provides “[t]he general rate of tax applies to the sales price of or the gross receipts derived from a service contract. A service contract is taxed in accordance with [N.C. Gen. Stat. §] 105-164.4I.”

N.C. Gen. Stat. § 105-164.4I(a) provides, in part, “[t]he sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in [N.C. Gen. Stat. §] 105-164.4 and is sourced in accordance with the sourcing principles in [N.C. Gen. Stat. §] 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax.” N.C. Gen. Stat. § 105-164.4I(a)(1) provides “[w]hen a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.” An “obligor” is a person who is legally, or contractually, obliged to provide the services for the service contract to the purchaser.

N.C. Gen. Stat. § 105-164.3(195) defines the term “retailer,” in part, as “[a]ny of the following persons:

- a. A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State.”

N.C. Gen. Stat. § 105-164.3(193) defines the term “retail sale or sale at retail” as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

N.C. Gen. Stat. § 105-164.3(211) defines the term “service contract,” in part, as “[a] contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair,

¹ References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.

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maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract. . . . Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.”

N.C. Gen. Stat. § 105-164.3(191) defines the term “repair, maintenance, and installation services.” The term includes the activities listed below and applies to tangible personal property, certain digital property, and real property.

- a. To keep or attempt to keep property in working order to avoid breakdown and prevent deterioration or repairs.
- b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property to proper working order or good condition.
- d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property.

N.C. Gen. Stat. § 105-164.3(223) defines the term “tangible personal property,” in part, 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. § 105-164.4B provides the sourcing principles to be used in determining where to source the retail sale of a service contract. Generally, a service contract is sourced where the purchaser can potentially first make use of the service.

Ruling

Based on the information furnished, Taxpayer's Agreement meets the definition of service contract as defined in N.C. Gen. Stat. § 105-164.3(211). Pursuant to N.C. Gen. Stat. § 105-164.4(a)(1), Taxpayer is the retailer of the service contracts and must collect the tax due at the time of the retail sales of such contracts. Therefore, the sales price of or the gross receipts derived from Taxpayer's retail sales of its Agreements sourced to this State are subject to the general State, applicable local, and applicable transit rates of sales and 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 letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

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