



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 2, 2021

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

Re: Private Letter Ruling

Taxpayer: [REDACTED]

FEIN: [REDACTED]

Dear [REDACTED]:

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

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 Taxpayer and Taxpayer's representative on behalf of Taxpayer. This written determination is applicable only to Taxpayer addressed herein and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

"[Taxpayer] provides a web-based [REDACTED] for handling the administration, management, and record-keeping of [REDACTED]. . . . [Taxpayer] provides its services via a 'Software as a Service' ('SaaS') model. This SaaS model is a web-based software model that allows a consumer to access a vendor's software application that is running on a cloud-based infrastructure. Under this model, the software resides exclusively on the vendor's server and is accessed by the customer via the Internet. Customers generally cannot install, download, or transfer the application software to their own computers. The SaaS provider owns, operates, and maintains the software applications, as well as the servers that support the application software. Thus, the customer has no control over the network, servers, operating systems, storage, or application capabilities.

"In 2016, [Taxpayer] developed an application which it provides to its customers for free. Customers have the option of downloading the application to a personal device, such as a phone, tablet, etc., which the customer can then use to more easily upload [REDACTED] necessary for [REDACTED]. [Taxpayer] does not provide the customer with the personal device (i.e. tablet, cell phone, etc.) for use with the application: nor does it provide any other tangible personal property. In addition, [Taxpayer] pricing did not change for the services performed after the application was made available."

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“Historically, the user of the application could only upload information into the application when they were connected to the Internet. However, [Taxpayer] recently introduced a limited "opt-in" feature that allows the user to enter information specific to [REDACTED] into the application whether or not they are connected to the Internet, which can then be uploaded at a later time. However, the majority of other data and information related to [REDACTED] has to be entered into the application while connected to the Internet.

“It is important to note that the users of the application are typically the [REDACTED] who only have access to a portion of the platform for purposes of data entry. The individuals using the [REDACTED] software solution for purposes of [REDACTED] typically view the data through a web portal on their computers, but will also have the ability to view the information on the application as well.

“Finally, it is worth noting that the application does not have the capability of sending or receiving messages, such as communications with a [REDACTED] etc. The application is used solely for uploading data related to [REDACTED].”

Issue

Is Taxpayer’s provision of web-based [REDACTED] services via a SaaS model subject to North Carolina sales and use tax?

Applicable Statutes and References

Under 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, 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 percentage rates listed in subdivision N.C. Gen. Stat. § 105-164.4(a) and the applicable local and applicable transit rates of sales and use tax. N.C. Gen. Stat. §§ 105-164.4, 105-467, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

North Carolina Sales and Use Tax Bulletin 19-3 provides, in part, that “[g]enerally, software as a service is a computer software distribution model that involves a service provider’s use of computer hardware infrastructure and computer software to allow a consumer electronic access to the service provider’s computer software. The computer software is not downloaded to the consumer’s computer, but is instead accessed electronically over a computer network, usually the Internet. North Carolina does not impose sales or use tax on charges for such services.”

Ruling

This letter only addresses charges by Taxpayer for its web-based [REDACTED] services. Based on the facts presented, the application provided free of charge does not constitute a sale or a part of the charges for Taxpayer’s web-based [REDACTED] services.

North Carolina does not currently impose sales and use tax on revenue from access to cloud based software accessed electronically via an internet connection. Based on the facts furnished in your letter, Taxpayer’s charges for access to its web-based [REDACTED] services are not subject to North Carolina sales and use tax.

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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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 Taxpayer may not rely on it. If Taxpayer relies on this letter 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 letter ruling, the letter ruling will not afford Taxpayer. 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