



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

June 22, 2021

[Redacted]

Re: [Redacted]
Private Letter Ruling Request

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 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 Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts Submitted

Taxpayer operates "[Redacted] [Redacted]"

Students "can learn from thousands of academic on-demand digital courses. The on-demand courses are streaming video lessons [Redacted]. Each digital course is accompanied by a written transcript of the audio of the video."

[Redacted]

Taxpayer offers [Redacted] ("Product") which includes access to a digital course and "interactive chapter quizzes to assess the [s]tudent's understanding of the instruction provided. [Product] enables the [s]tudent to enroll in the courses and thereby earn a certificate of completion for each course the [s]tudent passes" Product shows all courses passed and failed on its dashboard and keeps a permanent record of completion certificates that students can access

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even when they are no longer a paid subscriber. Students can download pdf copies of their “quiz questions and a transcript for any course in which [they] are enrolled.”

In your response to the Department’s questions, you indicate that

These courses are available for private, charter, and home school students. The school district’s oversight is not required with the Product. Taxpayer is not an elementary or secondary school (See 20 U.S.C. § 7801) or an institution of higher learning (See 20 U.S.C. § 1002).

Issue

Are sales of subject to North Carolina sales and use tax?

Applicable Statutes and References

North Carolina imposes State, local, and applicable 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. § 105-164.4(a)(1)b. provides, in part, “[t]he general rate of [State] 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. § 105-164.3(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.”

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(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(75) defines the term “educational service” as “[t]he delivery of instruction or training, whether provided in real time, on demand, or at another set time, by or on behalf of a qualifying educational entity where at least one of the following conditions applies:

- a. The instruction or training is part of the curriculum for an enrolled student.
- b. The instruction or training is encompassed within the institution's accreditation or prepares an enrolled student for gainful employment in a recognized occupation.
- c. The participant is evaluated by an instructor. ‘Evaluated by an instructor’ does not include being graded by, scored by, or evaluated by a computer program or an interactive, automated method.

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- d. The participant is connected to the presenter or instructor via the Internet or other networks, allowing the participant to provide, receive, or discuss information through live interaction, contemporaneous with the presentation.”

N.C. Gen. Stat. § 105-164.3(203) defines the term “qualifying educational entity” as “[a]n entity listed in this subdivision. For purposes of this definition, references to the United States Code mean the United States Code as enacted as of January 1, 2020. The entities are:

- a. An elementary or secondary school, as defined in 20 U.S.C. § 7801.
- b. An institution of higher education, as defined in 20 U.S.C. § 1002.”

Ruling

Based on the information furnished, Taxpayer’s product, [REDACTED] offers electronic access to on-demand digital videos. These on-demand digital videos are digital audiovisual works as defined in N.C. Gen. Stat. § 105-164.3(59).

Generally, sales of digital audiovisual works are certain digital property subject to sales and use tax. North Carolina, however, excludes an educational service from certain digital property. An educational service must be delivered by or on behalf of a qualifying educational entity. Here, Taxpayer sells and delivers the digital videos on its own behalf. Therefore, Taxpayer is not a qualifying educational entity and [REDACTED] is not an educational service. The sales of [REDACTED] 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 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.

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