



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 8, 2013

Federal ID: [REDACTED]
Account ID: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

Re: Private Letter Ruling

Dear Ms. [REDACTED]

We have your letter dated May 25, 2010 in which your firm has requested a determination as to whether the Private Letter Ruling previously issued by the Department on April 10, 2008, determining that the optional maintenance agreements made available to your customers were a non-taxable transaction for [REDACTED] still stands due to changes brought forth by G.S. 105-164.13(43a).

Your letter states that [REDACTED] is a licensed reseller for [REDACTED] providing sales and service of financial and business management tools to handle the functions of accounting, operations, distribution, manufacturing, human resources, customer relationship management, etc. We are also a licensed reseller for several software publishers who provide enhancement packages that can be integrated with the [REDACTED] products that we offer.

“Related to the sale of these software packages, optional software maintenance agreements are available to our customers beginning one year after their initial software purchase and product registration. Maintenance plans can be renewed by the customer directly with the publisher or through [REDACTED]. [REDACTED] serves only as an administrative pass through for these renewals, offering customers the convenience of dealing with one vendor for placing orders and making payments. These maintenance agreements are between the software publisher and the end user, with the publisher owning the agreement and providing all software updates, upgrades and technical support services associated with the maintenance plan. [REDACTED] does not receive or maintain copies of any software maintenance agreements.”

After reviewing the information provided it is our opinion that the gross receipts derived from [REDACTED] optional maintenance agreements offered for sale by your company could be a taxable transaction. Enclosed is an excerpt from the October 1, 2012 Streamlined Sales Tax Governing Board Section 328 Taxability Matrix Library of Definitions published by the Department and available on the Department's website. We encourage you to review the excerpt to determine the taxation of computer software maintenance agreements.

Additionally, as a Full Member of the Streamlined Sales Tax Governing Board, there are a number of amendments that as a full member, we are required to adopt. Please note that Section 330: Bundled Transactions was amended effective December 6, 2008 and added section D. specific to optional computer maintenance contracts. The Streamlined Board also adopted Rule 327.5 regarding computer software maintenance contracts.

If you would like a binding written response concerning the optional maintenance agreements for [REDACTED] and associated with the other brands of software offered by [REDACTED] you should resubmit your inquiry along with a copy of the maintenance agreement for each software brand. In addition, while you indicate that [REDACTED] is a pass through for renewals, based on the information provided we are unclear if you are the reseller, agent, or the specifics of your relationship with [REDACTED] for the transactions.

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.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

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