



North Carolina Department of Revenue

Pat McCrory  
Governor

Lyons Gray  
Secretary

August 21, 2014

Account ID: [REDACTED]  
FEIN: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Attention: [REDACTED]

Re: [REDACTED]  
Private Letter Ruling Request

Dear Mr. [REDACTED]

We have the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, and your letter dated January 17, 2014. You have inquired as to [REDACTED] North Carolina sales and use tax liability on "service offerings" to customers in this State.

[REDACTED] ([REDACTED]), an affiliate of [REDACTED] offers "information technology infrastructure services to customers in the form of web services. The services allow customers to access computing power and storage capacity without significant information technology capital investment. Specifically, companies may access server capacity and storage capacity through the internet without having to spend capital on servers, information technology support staff, or real estate to house the servers."

[REDACTED] is headquartered in [REDACTED] with offices in [REDACTED] and [REDACTED]. "While [REDACTED] does not own any data centers, it does utilize large data centers located in [REDACTED] to provide its services (the [REDACTED] network)". Besides the large data centers, [REDACTED] also utilizes very small clusters of servers ('Point of Presence' locations or 'PoP sites') [REDACTED] in order to provision a small subset of its services. The data centers and PoP sites are owned and operated by affiliated entities."

The first web service, [REDACTED] remote storage service, [REDACTED] ([REDACTED]). [REDACTED] "allows customers to store and retrieve content, data, applications, and software on its servers. [REDACTED] essentially provides customers with remote access to computing infrastructure so that they can store and retrieve large amounts of data at any time and from any location via the internet. Customers do this by [REDACTED]."

Customers of the [REDACTED] service retain ownership of their content uploaded to the [REDACTED] network. "[REDACTED] merely provides a service to securely store digital content; customers do not receive access to or possession of the tangible property, including software and hardware, which [REDACTED] uses to store that content in connection with the [REDACTED] service. The remote storage services are also scalable . . ." Customers are not necessarily aware of the exact server that is hosting their data. [REDACTED] makes available, free of charge, certain software development kits and a management console to aid customers in uploading and managing the data they are storing. [REDACTED]



August 21, 2014

N.C. Gen. Stat. § 105-164.3(46) provides that the term “tangible personal property” means “[p]ersonal property that can be seen, weighed, measured, felt, or touched or is in any other manner perceptible to the senses. The term includes electricity, water, gas, steam and prewritten computer software.”

N.C. Gen. Stat. § 105-164.4(a)(6b) provides that the digital property subject to sales tax includes an audio work, an audiovisual work, a book, a magazine, a newspaper, a newsletter, a report, another publication, a photograph, or a greeting card. “The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. . . .”

N.C. Gen. Stat. § 105-164.6 provides for a use tax on the purchase of tangible personal property or digital property purchased, leased, or rented inside or outside North Carolina for storage, use, or consumption in this State, including property that becomes a part of a building or another structure. A product is subject to the use tax only if it subject to tax under N.C. Gen. Stat. § 105-164.4. N.C. Gen. Stat. § 105-164.3(49) provides that the term “use” means “[t]he exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes the withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser. . . .” The rate of use tax due is equal to the rate of sales tax due on a product.

N.C. Gen. Stat. § 105-164.3(36) defines the term “sale or selling” as “[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property of the performance for consideration of a service. The transfer may be conditional or in any manner or by any means. . . .”

Based on the information provided, the services [REDACTED] provides, including the [REDACTED] storage service, the [REDACTED] virtual computing environment service (whether with an Open Source [REDACTED] or with a Third Party [REDACTED] and the Data Transfer fees, do not represent sales of tangible personal property, digital property, or taxable services and, therefore, are not subject to North Carolina 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 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.

If you have any questions, you may reach me at the number listed below.

Very truly yours,

[REDACTED]  
Administration Officer  
Sales and Use Tax Division

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