North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

September 7, 2010

[redacted]

Attention: [redacted], Sales Tax Manager

Re: Private letter ruling request
FID: [redacted]
Sales and Use Tax ID: [redacted]

Dear Ms. [redacted]:

We have your facsimile transmission dated August 3, 2010, referring to your June 24, 2010 letter in which you requested a private letter ruling on the "taxability of products of canned software and maintenance contracts" your firm sells in North Carolina.

In your letter of June 24, 2010 you state, "…[redacted] creates and supports smart systems management products – helping…customers solve every day IT challenges faster and easier, improving productivity and the performance of their core critical systems. The software products can be deployed across the business enterprise, or locally on several desktops simultaneously. The software products are designed to manage and maximize the operational efficiency of databases and enterprise applications…" In your letter of August 6, 2010, you state, "…[redacted] are designed to run on an enterprise server for multiple users."

You provided the following descriptions of your firm's products:

"[redacted]:

[redacted].

[redacted]:

[redacted].

[redacted]:

[redacted]

Phone (919) 733-2151 Fax (919) 733-1821
501 North Wilmington Street, Raleigh, North Carolina 27640
P.O. Box 871 Raleigh, North Carolina 27602-0871
Website: www.dornc.com
An Equal Opportunity Employer

[redacted]

[redacted]:

[redacted]

G.S. 105-164.3 (46) provides that [t]angible personal property is "[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 electricity, water, gas, steam, and prewritten computer software."

G.S. 105-164.13 (43a) exempts from North Carolina sales and use tax "[c]omputer software that meets any of the following descriptions:

a. It is designed to run on an enterprise server operating system.
b. It is sold to a person who operates a datacenter and is used within the datacenter.
c. It is sold to a person who provides cable service, telecommunications service, or video programming and is used to provide ancillary service, cable service, Internet access service, telecommunications service, or video programming."

We posted an important notice regarding computer software in February 2010 on our website. In the notice, we advised that "A sale of computer software that is designed to run on an enterprise server operating system is exempt from sales and use tax. The exemption includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers, that is housed or maintained on an enterprise server or end users' computers. The exemption includes software designed to run a computer system, an operating program, or application software. "

Based on the information and descriptions provided in your letters of June 24, 2010 and August 6, 2010, it appears the products discussed above sold by your firm fall within the exemption set forth in G.S. 105-164.13 (43a) and are, therefore, not subject to North Carolina sales and use taxes. Please note much of our conclusion is based on your comment "all our products in [redacted] are designed to run on an enterprise server for multiple users."

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, please advise.

Very truly yours,

[redacted]
Administration Officer
Sales and Use Tax Division

[redacted]

cc: [redacted] Director of the Sales and Use Tax Division
[redacted] Assistant Director of the Sales and Use Tax Division