



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

September 29, 2010

[REDACTED]
[REDACTED]
[REDACTED]

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

Dear Mr. [REDACTED]:

We have your letter dated July 21, 2010, requesting a ruling on the applicability of sales and use tax to your client's sales of computer software. You have provided the following facts:

1. [REDACTED], an LLC organized and doing business in the state of North Carolina, sells [REDACTED] software. The company buys the software from [REDACTED] Software Company, marks up the software and resells it to its clients.
2. Clients purchase the software via download and by delivery of a C.D.
3. Clients are both North Carolina clients and out of state clients.
4. Clients are business clients who install the software on [REDACTED] Servers as well as [REDACTED] desktops and laptops in peer to peer and enterprise domain environments.
5. The software is installed on multiple computers with one computer housing the database as a server.
6. Use of the software ranges from one person user to multiple users up into the 100s.

N.C.G.S. 105-164.13(43a) exempts from sales and use tax "Computer 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."

Based on the fact that the software is installed on multiple computers with one computer housing the database as a server, it appears the software is designed to run on an enterprise server operating system and is exempt from sales and use tax. If there is any uncertainty that the software will be installed on a server and one computer, we recommend that you obtain a Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, to support any exempt 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.

If you have any questions, please advise.

Very truly yours,

Administration Officer
Sales and Use Tax Division

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