

David W. Hoyle
Secretary

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FEIN: [REDACTED]

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You assured Mr. [REDACTED] that [REDACTED] knows the [REDACTED] software products at issue are "designed" to run on an enterprise server operating system; therefore, you asked for confirmation from the Department that you will not be required to obtain Streamlined Sales and Use Tax Agreement Certificates of Exemption from customers for [REDACTED] software transactions on or after January 1, 2010. The Department is in agreement that provided such products meet the "designed" requirement, your company will not be required to obtain certificates of exemption for sales of such items sourced to North Carolina. However, during your phone conversation with Mr. [REDACTED] he expressed his concern that some of your company's customers may assume that tax was incorrectly left off of your company's invoices and the customers may independently accrue and pay use tax on such transactions to the Department. As discussed with Mr. [REDACTED] any descriptive notations you can add to your invoices to identify such qualifying items as products "designed to run on an enterprise server operating system" would likely be favorable for customers.

Pursuant to N.C. Gen. Stat. § 105-164.26, "all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records." N.C. Gen. Stat. § 105-164.22 further states in part, "[f]ailure of a retailer [or wholesale merchant] to keep records that establish that a sale is exempt . . . subjects the retailer [or wholesale merchant] to liability for tax on the sale." As with any exemption claimed, your firm must be able to support upon audit that its [REDACTED] software sales are properly exempt from sales and/or 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 at the bottom of the first page of this letter.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

[REDACTED]
cc: [REDACTED], Director