North Carolina Department of Revenue

Pat McCory
Governor

Lyons Gray
Secretary

August 6, 2013

Account ID: [redacted]
Federal ID: [redacted]

[redacted]

Attention: [redacted]
Assistant Secretary and Tax Director

Re: Private Letter Ruling

Dear Ms. [redacted]:

We have your letter dated September 24, 2010, in which you have requested a private letter ruling on the taxability of an optional software maintenance contract with [redacted]. Please accept our apology for the delay in responding to your request.

In your letter you state that [redacted] ("[redacted]") "...purchases software 'user' licenses from [redacted] and [redacted]. (both collectively considered '[redacted] herein) for the general ledger system, sub-ledgers and other modules, run on an enterprise server operating system, in [your] manufacturing business. The [redacted] software application sits on top of Windows 2003, which is the 'operating system' used by [redacted]. [redacted] is a 3-tier system (or 'instance') application: the 1) 'GUI' or graphical user interface layer allows users, at any location, to interact with programs using icons or visual indicators rather than typed command labels or text navigation; 2) the second layer interfaces with application servers; and 3) the third layer interfaces with the database server, with the servers being located at corporate headquarters. All three tiers communicate to effectively run [your] manufacturing business. The [redacted] software application allows simultaneous use for 1,000 plus individual personal computers and laptops...."

"'Enterprise Support' (called 'Maintenance Services' in the original contract) is also purchased from [redacted]. This represents an *optional software* maintenance contract that includes both software and support services. Specially, [redacted] Support includes new software releases, support packages, technology updates to support other databases, and mission critical support

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services. Such [redacted] upgrades, patches, and support packs would be applied and run in a similar manner as the original software programs on the enterprise server operating system. Although this is a bundled transaction, the policy at [redacted] is to not break out such invoices on a line item basis. The pricing for the [redacted] Support is a percentage based **entirely** on the total net license fee charges for underlying [redacted] software application."

In your letter you state that "[redacted] does not believe the invoices for '[redacted] Support' are subject to sales/use tax in North Carolina". Your firm has provided a Certificate of Exemption to [redacted] and, therefore, you are inquiring about your firm's use tax liability.

N.C. Gen Stat. §105-164.13(43a) provides an exemption from sales and use tax for "[c]omputer software that meets any of the following descriptions: (1) It is designed to run on an enterprise server operating system...." The Department's Important Notice regarding computer software dated February 2010 states that 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."

Based on the above information, the [redacted] software licenses purchased by [redacted] appear to meet the definition of computer software designed to run on an enterprise server operating system and are exempt from sales and use tax under N.C. Gen Stat. §105-164.13(43a). In addition [redacted] purchase of an optional maintenance contract, "[redacted] Support", from [redacted], [redacted] in conjunction with the [redacted] software licenses are also exempt from 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.

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