



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 19, 2018

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]
Private Letter Ruling Request
Account ID: [REDACTED]
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a written determination on behalf of your client, [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request as well as any supplemental information provided.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished by you on behalf of Taxpayer. This written determination is applicable only to the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued on behalf of the Department.

Overview and Relevant Facts

Taxpayer is engaged in business as a manufacturer and retailer of [Taxpayer] brand [REDACTED]. No manufacturing plants are located in North Carolina; however, [REDACTED] [REDACTED] [REDACTED] and other support functions are located in [REDACTED] North Carolina. Taxpayer's servers, computer-related equipment, software, and other tangible personal property located at [REDACTED] and facilities in North Carolina provide IT services to other divisions and affiliated companies of Taxpayer as well as to third parties.

[REDACTED] ("Buyer") is a provider of information technology ("IT") services to companies in the United States. [Buyer], together with its affiliates and parent company, acquired all of the operations of the IT Division of [Taxpayer] and its affiliates, which has operations located throughout the world. [Buyer] acquired only the operations of the IT Division [of Taxpayer] located in the United States. Some of the assets purchased in connection with the acquisition of the IT Division of [Taxpayer]

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[by Buyer] include servers and other computer-related equipment, such as software and other tangible personal property, located at data centers and other facilities in North Carolina. . . . [Taxpayer] is not engaged in the business of selling such servers and other computer-related equipment.”

“[Taxpayer’s IT Division] used such tangible personal property to provide IT services to other divisions and affiliated companies of [Taxpayer] as well as to third parties.”

Issue

Is the sale of servers and other tangible personal property by Taxpayer to Buyer as discussed in the overview and relevant facts, provided herein, subject to North Carolina sales tax?

Applicable Statutes and References

Under Article 5 (“Article”) of the North Carolina Revenue Act (“Act”)¹, N.C. Gen. Stat. § 105-164.1 et. seq., Subchapter VIII: Local Government Sales and Use Tax, and Chapter 1096 of the 1967 Session Laws, State, applicable local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer’s net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the percentage rates listed in subdivision N.C. Gen. Stat. § 105-164.4(a) and the applicable local and applicable transit rates of sales and use tax. N.C. Gen. Stat. §§ 105-164.3(1k), 105-164.3(9), 105-164.3(14), 105-164.3(24), 105-164.3(35), 105-164.3(46), 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.3(1k) defines the term “business” as “[a]n activity a person engages in or causes another to engage in with the object of gain, profit, benefit, or advantage, either direct or indirect. The term does not include an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.”

N.C. Gen. Stat. § 105-164.3(35)a. defines the term “retailer,” in part, as “[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property for storage, use, or consumption in this State, or services sourced to this State.”

Ruling

N.C. Gen. Stat. §105-164.3(1k) defines the term “business,” in part, as excluding “an occasional and isolated sale or transaction by a person who does not claim to be engaged in business.” Based on the information provided, Taxpayer is not in the business of selling servers and other computer-related equipment and did not hold itself out to be selling such items in its regular course of business. Therefore, sales tax is not due on the servers and other computer-related equipment transaction as such is an occasional or isolated sale.

¹ References to the Act and North Carolina General Statutes are based on the laws in effect as of the date of issuance of this private letter ruling except as otherwise noted herein.

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ruling.

By the Sales and Use Tax Division