



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 24, 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 or available to the Department.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the current 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 written determination is issued on behalf of the Department. Pursuant to N.C. Gen. Stat. § 105-264, "[i]t is the duty of the Secretary to interpret all laws administered by the Secretary."

Overview and Relevant Facts

You advise that "[Taxpayer] is based in [REDACTED]" and "recently added an employee who will be located in North Carolina thereby creating sales and use tax nexus for the company." Your letter states, "[Taxpayer] is the developer and owner of an enterprise software application product used for [REDACTED] services by the [REDACTED] industry. [Taxpayer's] product is a web browser based computer application. [Taxpayer's] software is a type of SaaS software commonly referred to as software as a service. [Taxpayer's] application software is entirely cloud based and accessed via an internet connection. [Taxpayer's] software is located on servers owned by [Taxpayer]. [Taxpayer's] servers are not located in North Carolina. [Taxpayer] charges its customers a monthly subscription fee for use of [Taxpayer's] services. The software is not transferred to the customer and customers do not have the right to download, copy or modify the software."

Taxpayer's website, [REDACTED], on August 18, 2017, states that "[Taxpayer] builds and markets web based [REDACTED] solutions." The website states the "[Taxpayer's] applications help maximize the efficiencies possible in the [REDACTED] . . . by utilizing the Internet as a communications and procurement medium and providing access to collaborative [REDACTED] tools." The website also states that Taxpayer is "[h]elping healthcare organizations improve operations, enhance

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margins and achieve [REDACTED] success through web based [REDACTED] management and [REDACTED] collaboration.”

Issue

Is Taxpayer’s license revenue from its master subscription agreements for access to cloud based software subject to North Carolina sales or use tax when the subscriber is located in North Carolina?

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, 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.

Ruling

North Carolina does not currently impose sales and use tax on revenue from access to cloud based software accessed electronically via an internet connection. Based on the facts furnished in your letter and the information provided on Taxpayer’s website, Taxpayer’s license revenue from its master subscription agreements for access to cloud based software as discussed herein is not subject to North Carolina sales 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 letter 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 letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division

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.