



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 13, 2019

[REDACTED]
[REDACTED]
[REDACTED]

Attention: [REDACTED]

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

Dear [REDACTED]:

The Department has completed its review of [REDACTED] ("Taxpayer") request for a written determination. In making this written determination, the Department has considered the facts presented in Taxpayer's 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 law to a specific set of existing facts furnished by 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

"The Taxpayer is a provider of authentication solutions for businesses and individuals seeking to perform secure electronic commerce and communications over the internet. One such solution is the provision of a digital certificate and authentication and resolution services on a subscription basis.

"Digital certificates are commonly used to facilitate the secure transmissions between end user browsers and the Taxpayer's customers' ('customers') servers. A digital certificate allows an end user to recognize that they are, indeed, accessing the customers' server. For illustration purposes, assume 'InternetRetailer.com' is a customer of the Taxpayer. An end user of 'InternetRetailer.com' will access the website and know that they are accessing the real 'InternetRetailer.com' . . . because [REDACTED] will appear on the real 'InternetRetailer.com' site, indicating that the website is authenticated by the Taxpayer. This [REDACTED], [REDACTED] serves as the visible indication on the end user's screen that the customer's site is who it purports to be."

"A digital certificate is provided through an online process, and the first step in this process is the customer's access of the Taxpayer's online portal to complete a registration form. As part of the customer's request of a certificate through registration, a private and public key pair is generated by the customer's web server. The private key is retained by the customer on its web server. The public key is part of the information sent to the Taxpayer in the registration process.

"The Taxpayer performs all due diligence necessary to authenticate the identity of the applicant, the related website and business, and the information presented by the customer during the registration process, including the public key. Once the Taxpayer authenticates the identity of the applicant, a digital certificate is electronically sent to the customer. A digital certificate is a flat file containing: the customer's public key, metadata with information such as certificate expiration date, the certificate owners' name, the name of the issuer (certification authority, i.e. the Taxpayer), serial number of the certificate, and an electronic signature of the issuer. . . . [T]he exact contents of a certificate adhere to certain established standards . . . that specify what can or cannot be contained on a certificate. The flat file does not contain binary code.

"The digital certificate is installed by the customer on a customer's web server. When end users connect to the customer's server through a web browser, the browser establishes the authenticity of the digital certificate (and thus the authenticity of the web site) by mathematically proving that the certificate presented by the customer's web server was digitally signed by the Taxpayer. The digital certificate also contains the aforementioned public key. It is described as a 'public' key because the digital certificate (and key contained therein) is readily viewable by any browser.

"The end user's web browser creates a session key that is used to encrypt the transmission between the customer's server and the end user's browser. However, the end user's browser must first use the public key to encrypt the session key and then transmit the session key to the web server. The web server will use the private key to decrypt the session key so that both the web server and browser can begin using the session key for the encrypted transmissions. After the initial handshake between the browser and web server, the session key is used for the encryption of the transmissions. The encryption strength of the transmission is directly related to the bit length of the session key. The encryption/decryption is performed by the cryptographic software built into the web browser and customer's server. This software is not provided by the Taxpayer.

"In addition to authenticating the digital certificate and website, the end user's browser communicates with the Taxpayer's servers to verify that the digital certificate is valid and not revoked (resolution service). If the certificate is valid, the end user's browser will show the end user a notification that the certificate is valid and has not been revoked. The charges for the authentication service, digital certificate, and resolution service are part of a lump sum subscription charge and must be renewed periodically."

Issue

Whether Taxpayer's provision of digital certificates, authentication services, and resolution services for consideration are subject to North Carolina sales and use tax when provided to customers located in North Carolina.

Applicable Statutes and References

N.C. Gen. Stat. §§ 105-164.4(a)(1), 105-467, 105-483, 105-498, 105-507, 105-509 and 105-537 provide the State and applicable local and applicable transit rates of tax apply to "the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section."

N.C. Gen. Stat. § 105-164.3(46) defines tangible personal property as "[p]ersonal property that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term includes . . . prewritten computer software."

N.C. Gen. Stat. § 105-164.3(29a) defines prewritten computer software as "[c]omputer software, including prewritten upgrades, that is not designed and developed by the author or another creator to the specifications of a specific purchaser. The term includes software designed and developed by the author or another creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser."

N.C. Gen. Stat. § 105-164.3(4c) defines computer software as "[a] set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task."

N.C. Gen. Stat. § 105-164.13(43a) provides “[t]he sale at retail and the use, storage, or consumption in this State of the following tangible personal property . . . [is] specifically exempted from” sales and use tax: “[c]omputer software that . . . is purchased to run on an enterprise server operating system. 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. The exemption includes software designed to run a computer system, an operating program, or application software.”

N.C. Gen. Stat. § 105-164.3(14a) defines information service as “[a] service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information.”

N.C. Gen. Stat. § 105-164.4(6b) provides “[t]he general rate [of tax] applies to the sales price of digital property that is sold at retail and that is listed in this subdivision, is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under this Article if sold in a tangible medium. The tax applies regardless of whether the purchaser of the item has a right to use it permanently or to use it without making continued payments. The tax does not apply to a service that is taxed under another subdivision of this subsection or to an information service. The following property is subject to tax under this subdivision:

- a. An audio work.
- b. An audiovisual work.
- c. A book, a magazine, a newspaper, a newsletter, a report, or another publication.
- d. A photograph or a greeting card.

Ruling

Based on the information provided, the digital certificates, authentication services, and resolution services provided on a subscription basis by Taxpayer are not considered sales of tangible personal property or certain digital property, delivered or accessed electronically. Therefore, the gross receipts sourced to North Carolina from Taxpayer's provision of digital certificates, authentication services, and resolution services are not subject to North Carolina sales and use tax.

This letter 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