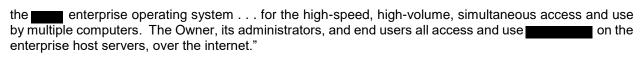


## North Carolina Department of Revenue

Roy Cooper Governor	Ronald G. Penny Secretary
March 5, 2020	
Re: Private Letter Ruling Request FEIN:	
Dear ::	
The Department has completed its review of your request for a wr client, ("Taxpayer"). In making this written considered the facts presented in your initial request as well as any the Department.	determination, the Department has
This private letter ruling is a written determination issued under N.C the tax law to a specific set of existing facts furnished by you of determination is applicable only to the taxpayer addressed herein are except to the taxpayer to whom the determination is issued.	n behalf of Taxpayer. This written
Overview and Relevant Facts	
You state that Taxpayer "is a corporation with its principal pathat operates a sales office in North Carolina with one sale Carolina "solicits customers in [the State] to license the right to use for this software are submitted to [Taxpayer] in for acceptance and payment of all fees are made to [Taxpayer] in	lesperson. The salesperson in North software. Orders
You further state that Taxpayer "licenses its customers to use solution that permits businesses and organizations to build, run and no designed to run solely on an enterprise server operating system. which is one of the more common platforms for website hosting."	runs only on
In addition, you state that "consist of [and] [m]ost modules must be populated with the website owner's ('O meet Owner's needs and website designs As delivered, only becomes usable [sic] following the modifications, additions and website design and implementation meetings. Once customized for allows the [Owners] to continue to create and manage the content a maintain [the] website."	is not useable as a website. It d customizations that result from the the Owner and launched,
	ed to the customer, either by tangible terprise internet host servers running

Page 2 March 5, 2020



Taxpayer "licenses to customers pursuant to a [Taxpayer] Website Agreement . . . executed by the customer, and an End User License Agreement that is agreed to in a click through box the first time [the] customer accesses its website. . . . "

## Issues

Are the fees charged by Taxpayer exempt from North Carolina sales and use tax?

## **Applicable Statutes and References**

Under Chapter 105 of the North Carolina General Statutes, 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, N.C. Gen. Stat. § 105-463 *et. seq.*; and Chapter 1096 of the 1967 Session Laws; a retail sales tax is imposed on a retailer's net taxable sales or gross receipts, as applicable, from sales of tangible personal property, certain digital property, and certain services at the applicable State, applicable local, and applicable transit rates of tax. N.C. Gen. Stat. §§ 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. § 105-164.4 imposes a sales tax on the retail sale of tangible personal property, certain digital property, and other specified transactions. N.C. Gen. Stat. § 105-164.6 imposes a complementary use tax on items in N.C. Gen. Stat. § 105-164.4 that are purchased inside or outside this State for storage, use, or consumption in this State and sourced to this State.
- N.C. Gen. Stat. § 105-164.3(223) defines the term "[t]angible 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 electricity, water, gas, steam, and prewritten computer software."
- N.C. Gen. Stat. § 105-164.3(151) defines the term "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. § 105-164.13(43) provides an exemption from sales and use tax for "[c]ustom computer software and the portion of prewritten computer software that is modified or enhanced if the modification or enhancement is designed and developed to the specifications of a specific purchaser and the charges for the modification or enhancement are separately stated on the invoice or similar billing document given to the purchaser at the time of the sale."
- N.C. Gen. Stat. § 105-164.13(43a)a. provides an exemption from sales and use tax for the sale at retail and the use, storage, or consumption in this State of computer software "purchased to run on an enterprise server operating system" including "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."

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."

<sup>1</sup> 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.

Page 3 March 5, 2020

N.C. Gen. Stat. § 105-164.22 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."

## Ruling

Based on the documentation provided, fees charged by Taxpayer on the initial sale of the software to customize the software are exempt from North Carolina sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(43).

Fees charged by Taxpayer for the license to use that come within the provisions of N.C. Gen. Stat. § 105-164.13(43a)a. are exempt from North Carolina sales and use tax provided Taxpayer secures from its customers a properly completed Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or the required data elements. If Taxpayer's fees for license to use do not meet the provisions of N.C. Gen. Stat. § 105-164.13(43a)a. and/or Taxpayer's customers do not provide a properly completed Form E-595E or the required data elements, then such sales by Taxpayer would be subject to the general State, applicable local, and applicable transit rates of sales and use tax. As with any exemption claimed, Taxpayer must be able to support upon audit that its fees for license to use its website

Fees charged for the incidental use of the server on which runs are exempt from North Carolina sales and use tax pursuant to N.C. Gen. Stat. § 105-164.13(43a)a.

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.

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