



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 26, 2021

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

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

Dear [REDACTED]:

The Department has completed its review of your request for a private letter ruling on behalf of [REDACTED] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request.

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 Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You advise Taxpayer "provides managed internet security to various other businesses (no residential services). [Taxpayer] will configure then ship a firewall out to a customer's location; [customer] will call into [Taxpayer's] offices and a member of [Taxpayer's] Provisioning Team will walk the customer through plugging in and setting up the device on [the customer's] network. After the device is live and manageable . . . [Taxpayer monitors the device from its offices] and . . . work[s] with the customers to make any changes on the firewall, at their request."

The contract that you provided states "[e]ach Managed firewall service monitors external Internet threats at designated access points to the Customer's computer network, using the firewall appliance placed at Customer's site, managed by [Taxpayer]. . . . [Taxpayer] will configure each firewall with the Firewall Policy chosen by customer, to operate in accordance with that Firewall Policy and the manufacturer's specifications for the particular firewall appliance.

"[Taxpayer] retains all right, title, and interest in the firewall appliance and in any other of its property at Customer's premises. . . . Customer will promptly return the firewall in operable condition, reasonable wear and tear excepted, to [Taxpayer] as instructed following termination of this contract for any reason.

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Except for the firewall appliance itself, all items necessary for providing these connections are the responsibility of Customer, including among other things transceivers, hubs, bridges cables, racks, router, and any other communication or network devices.

“Customer agrees to pay the initial set-up fees and the monthly Service fees for the term of Service . . . [which] shall begin on the 1st day of the first full month that Service is in place (the ‘Beginning Date’) until the end of the initial term of Service . . . (the ‘Ending Date’), plus any initial partial month when Service is first installed and started. . . . This Agreement will automatically renew from year to year at [Taxpayer’s] standard pricing in effect at the time of renewal, unless Customer gives written notice at least 60 days prior to the Ending Date of this contract.” The initial set-up fees and the monthly service fees are separately stated on the copy of the proposal that you furnished.

Issue

Are Taxpayer’s charges for managed internet security subject to 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; 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 applicable State, applicable local, and applicable transit rates of sales and use tax.

N.C. Gen. Stat. § 105-164.4(a) provides “[a] privilege tax is imposed on a retailer engaged in business in this State.” N.C. Gen. Stat. §105-164.4(a)(2) states, in part, “[t]he applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property.”

N.C. Gen. Stat. § 105-164.3(229)(a) defines the term “retailer,” in part, as “[a] person engaged in business of making sales at retail . . . of items sourced to this State.”

N.C. Gen. Stat. § 105-164.3(227) defines the term “retail sale or sale at retail” as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

N.C. Gen. Stat. § 105-164.3(121) defines the term “lease or rental,” in part, as “[a] transfer of possession . . . of tangible personal property for a fixed or indeterminate term for consideration.”

N.C. Gen. Stat. § 105-164.3(261) defines the term “tangible personal property,” in part, 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.”

¹ Reference 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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N.C. Gen. Stat. § 105-164.4B provides the sourcing principles that apply in determining where to source the sale, lease, or rental of an item.

Ruling

Based on the information furnished, the Taxpayer's firewall appliance, which is shipped to a customer's location and then connected to the customer's network, enables the Taxpayer to provide managed internet security to its customers. Taxpayer's firewall appliance is tangible personal property as defined in N.C. Gen. Stat. § 105-164.3(261). In accordance with N.C. Gen. Stat. § 105-164.3(121), Taxpayer leases its firewall appliance to customers inasmuch as possession of the firewall appliance is transferred to Taxpayer's customer for an indeterminate term for consideration. Thus, the gross receipts derived from the lease of tangible personal property sourced to this State, including the initial set-up fees and monthly fees charged by Taxpayer, are subject to the general State, applicable local, and applicable transit rates of 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 Taxpayer may not rely on it. If Taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of Taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford 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