North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

February 2, 2021

[redacted]

Re: [redacted]
Request for Written Determination
FEIN: [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 as well as any supplemental information provided to the Department.

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 Taxpayer and Taxpayer's representative on behalf of Taxpayer. This written determination is applicable only to Taxpayer addressed herein and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You advise "Taxpayer was incorporated in Delaware in [redacted] and its corporate headquarters are based in [redacted] and the Company has [redacted] employees in North Carolina working remotely. [Taxpayer] licenses a cloud-based software-as-a-service ('SaaS') platform for customer engagement and marketing. [Taxpayer] offers a [redacted]

[redacted]

Further, you advise, "[Taxpayer] provides access to its cloud-based application software via the internet and charges customers a subscription fee for the access based on the monthly activity of the platform users. The software is located on servers hosted and owned by a third party . . . and the servers are not located in North Carolina. [Taxpayer's] customers do not receive a tangible copy of or an electronic download of the software as part of the subscription fee. Customers do not have the right to download, copy, or modify the software. [Taxpayer] provides access to its cloud-based application software via the internet through a username and password."

Issue

Are subscription fees to access Taxpayer's platform subject to North Carolina sales and use 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, 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. §§ 105-164.4, 105-467, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

North Carolina Sales and Use Tax Bulletin 19-3 provides, in part, that "[g]enerally, software as a service is a computer software distribution model that involves a service provider's use of computer hardware infrastructure and computer software to allow a consumer electronic access to the service provider's computer software. The computer software is not downloaded to the consumer's computer, but is instead accessed electronically over a computer network, usually the Internet. North Carolina does not impose sales or use tax on charges for such services."

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, the subscription fees do not provide Taxpayer's customers the right to download, copy, or modify the software, and the software is not transferred to the customers. Therefore, Taxpayer's subscription fees charged for access to Taxpayer's platform are not subject to North Carolina 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 letter 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 letter ruling, the letter ruling will

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.

not afford Taxpayer. 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