



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

April 29, 2021

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

Re: [REDACTED]
Private Letter Ruling Request
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 to the Department for consideration.

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. In accordance with the Department's Written Determinations and Letters of General Applicability Policy ("Policy"), a ruling is issued only for the one over-arching question posed by your request. The Policy is available on the Department's website. This written determination is applicable only to Taxpayer and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

Taxpayer "is a North Carolina based company that sells subscriptions to access information hosted in the cloud through a web portal. [Taxpayer] provide[s] industry and industry segment information to [its] clients.

"[Taxpayer] offers specific information on various industries that allows [its] clients' sales teams to gain new business and retain existing customers. Clients purchase a licensed subscription to access tailored research that allows users to specify the types of information and data that fits business needs. Information is viewed in a report format through a web portal, where the platform, data processing and information is all cloud-based. There are no tangible items received, and users do not download anything to their computers to facilitate the information viewing. Once the pertinent data is retrieved, users have the ability to print or create a PDF of the information. The license to access the information is not a transfer of title of the reports or content therein.

"[Taxpayer] partners with outside firms to augment the available content through survey data, strategic consulting, financial benchmarks, credit analyses, sales forecasting, real estate and local economies and relationship development. These partner firms contribute information that is used in the platform to provide the industry reports to users. [Taxpayer] also uses vendor services such as software development, video production and content licensing for [its] website, which enhances [its] platform and services offered through the cloud."

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In response to the Department's questions, you indicated that many of Taxpayer's customers are "[REDACTED] seeking industry reports as an educational tool to gain knowledge about various [REDACTED] industries." [REDACTED] can use the information from the reports to "cost-effectively arm their sales teams to gain new business accounts and retain existing customers." The information obtained from the reports is "specific to an industry, not a specific business or corporation. The same reports are available to all customers, not just customers of a specific industry."

Customers cannot change the content in the reports, but they can add their own content to specific sections of the report if they purchase a license to access all of the reports. [REDACTED]

The content added by the [REDACTED] is included in a [REDACTED] and is not part of the standard reports. The content added by an individual user within the [REDACTED] is part [REDACTED]. No video content is received by customers when they purchase an individual industry report.

Information received by Taxpayer for reports from its partners and other sources is "processed and incorporated into a new report by Taxpayer."

[REDACTED]

[REDACTED]

[REDACTED]

Issue

Is the sale of a subscription to provide a right and license to access and use Taxpayer's industry profile reports through Taxpayer's web portal subject to North Carolina sales and use tax?

Applicable Statutes and References

North Carolina imposes State, local, and transit rates of sales and use tax on a retailer engaged in business in the State on the retailer's net taxable sales of, or gross receipts derived from, tangible personal property, certain digital property, and taxable services. N.C. Gen. Stat. §§ 105-164.4, 105-164.6, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-537 and Chapter 1096 of the 1967 Session Laws.

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N.C. Gen. Stat. § 105-164.3(33) defines the term “certain digital property” as “[s]pecified digital products and additional digital goods. The term does not include an information service or an educational service.”

N.C. Gen. Stat. § 105-164.3(5) defines the term “additional digital goods” as “[a]ll of the following if transferred electronically:

- a. A magazine, a newspaper, a newsletter, a report, or another publication.
- b. A photograph.
- c. A greeting card.”

N.C. Gen. Stat. § 105-164.4(a)(1)b. provides, in part, “[t]he general rate of [State] tax applies to. . . [t]he sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments.”

Ruling

Based on the information furnished, a customer pays a subscription fee for a license to gain access to reports that are available to all subscribers through a web-based portal as identified and defined in the [Taxpayer] Customer Agreement. The reports are not customized to a specific customer or user and customers can add their own content to specific sections of a report if they purchase a license to access all of the reports.

The subscription allows a customer to gain access to web-based reports that are delivered or accessed electronically. The reports are “certain digital property” and, as such, the subscription fees 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 this ruling. 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