North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

June 12, 2012

Account ID: [redacted]
FID: [redacted]

[redacted]

Attention: [redacted], Tax Manager

Dear Mr. [redacted]

We have your June 6, 2011 letter in which you request a determination concerning whether your company is required to collect and remit North Carolina sales or use tax on informational presentations designed to help [redacted] explain procedures using streaming video.

You state your firm sells "the [redacted] line of informational DVD presentations used to help a dentist explain" [redacted] procedures "[redacted]. [redacted] is coming out with a new product line for which the presentations will be hosted by [redacted] as a cloud based streaming video service." Your firm will charge the [redacted] "based on the number of simultaneous connections allowed. The [redacted] will view the presentation at the [redacted] office. The [redacted] will not be able "to save or copy the presentation; they will only be able to be viewed as streaming video."

G.S. 105-164.4(a)(6b) provides "[t]he general rate [of tax] applies to the digital property 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.

G.S. 105-164.3(1g) defines audiovisual work as "[a] series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession." Your firm's sales of the streaming video come within the definition of an audiovisual work. When your firm provides [redacted] access to streaming video and charges them based on the number of connections, the total charges are subject to the State and applicable local rates of tax. G.S. 105-164.4B provides the sourcing principles for digital property and G.S. 105-164.4B(f) specifically states that "[a] purchaser receives digital property when the purchaser takes possession of the property or makes first use of the property, whichever comes first."

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.

If you have any questions, you may reach me at the number listed below.

Very truly yours,

[redacted]
Administration Officer
Sales and Use Tax Division

[redacted]

cc: [redacted], Director – Sales and Use Tax Division
[redacted], Assistant Director – Sales and Use Tax Division