



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

October 12, 2012

SSN: [REDACTED]

[REDACTED]

Dear Ms. [REDACTED]:

We have your June 4, 2011 letter in which you request a letter ruling concerning the application of North Carolina State and local sales tax to your charges for "[REDACTED] lessons and [REDACTED] games . . . downloaded and rented from [your] business which is located on website [REDACTED] on the internet. The downloaded [REDACTED] lessons and [REDACTED] games expire within 4 days and can no longer be used unless the lessons are downloaded and rented again. . . . The [REDACTED] lessons and [REDACTED] games were created using [REDACTED] and converted to executable files. [REDACTED]"

[REDACTED]

N.C. Gen. Stat. § 105-164.3(46) defines "tangible 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(4c) defines computer software as "[a] set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task." N.C. Gen. Stat. § 105-164.3(29a) defines 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."

The charges by your firm for math lessons and math games in which customers download and rent executable files by accessing [REDACTED] are sales of tangible personal property and subject to the general State and local sales and use tax. In addition, we reviewed your website, [REDACTED] and note that a flash drive must be purchased in order to receive a mail order. Your firm's sales of downloaded flash drives are also subject to the general State and local rates of tax.

You should register and collect and remit sales tax on your firm's taxable retail sales. You may register online through the Department's website or by submitting Form NC-BR, Business Registration Application for Income Tax Withholding, Sales and Use Tax, and Machinery and Equipment Tax

As of the date of this response, the general State and local sales and use tax rate applicable to the sales price of tangible personal property, certain digital products, and certain services is 6.75% in seventy-six counties, 7% in Alexander, Buncombe, Cabarrus, Catawba, Cumberland, Duplin, Durham, Halifax, Haywood, Hertford, Lee, Martin, Montgomery, New Hanover, Onslow, Orange, Pitt, Randolph, Robeson, Rowan, Sampson, Surry and Wilkes Counties and 7.25% in Mecklenburg County. The Department will publish notification if any additional counties adopt the additional 0.25% local levy pursuant to Article 46.

A retailer engaged in business in this State is required to collect county tax on all applicable transactions. For an over-the-counter sale, the retailer's business location is where the sale is made, and county tax must be collected for the county in which the retailer's business is located. If the property is delivered to the purchaser at a place other than the retailer's business location, county tax must be collected for the county to which the property is shipped or otherwise delivered, including electronic deliveries. Retailers that collect county tax for more than one county must complete Form E-536, Schedule of County Sales and Use Taxes, to properly report the county tax for each local jurisdiction. Form E-536 is available on the Department's website, www.dornnc.com, and through the online filing options.

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 we can be of further assistance, please advise.

Very truly yours,


Administration Officer
Sales and Use Tax Division


cc:  Director – Sales and Use Tax Division
 Assistant Director – Sales and Use Tax Division