



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 22, 2013

FEIN: [REDACTED]
Account ID: [REDACTED]

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

Re: Private Letter Ruling

Dear Mr. [REDACTED]:

We have completed our review of your company's letters dated January 3, 2012 and May 8, 2013 in which you requested a private letter ruling regarding the application of North Carolina sales and use tax on business transactions. We also received a copy of [REDACTED] Subscriber Agreement ("Agreement") executed with customers for [REDACTED] (" [REDACTED] ") streaming products which include [REDACTED] streaming High School License and [REDACTED] Streaming Middle/Elementary School License.

Additionally, at our request, your company provided the Department with a trial 30-day subscription to the following items in order for us to better understand the products at issue:

- [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Background

In conjunction with the streaming products, it is our understanding that [REDACTED] offers its customers "a limited, non-exclusive, terminable, non-transferable license to access a digital video based e-learning resource via the [REDACTED] website. School educators and students may view this educational content over a secured website link for bona fide educational and research purposes only. They may also download the content onto their desktop computers for noncommercial instructional use during the term of the license. Copies must be deleted or erased after use or expiration of the Term. The website and all of its content remain the property of [REDACTED] [REDACTED] Subscribers do not own the content, but use it under the terms of the license."

During our phone conversation on May 3, 2012 with you and [REDACTED], we determined that a single subscriber of the [REDACTED] streaming products listed above receives a twelve-month subscription. Additionally, multiple users for a single subscriber can access the [REDACTED] streaming products simultaneously. For instance, a single school's subscription to a [REDACTED] streaming product allows multiple teachers to access and utilize each [REDACTED] streaming product listed above, concurrently.

Based on our additional review of the [REDACTED] streaming products referenced above through the trial subscription, it is our further understanding that subscribers have access to resources via the [REDACTED] website to enable classroom teaching and learning by both teachers and students. Such [REDACTED] streaming products include access to videos, pictures, and interactive learning modules. The [REDACTED] streaming products subscriptions grant access to such tools as [REDACTED] and other resources. As an example of the interactive nature of the website, [REDACTED] allows educators to create customized assignments that students can access and complete through the [REDACTED] Streaming student center, and [REDACTED] allows educators to create quizzes that students can access online and receive results immediately via email.

In your letter of May 8, 2013, you state "[REDACTED]". (" [REDACTED] also grants users (teachers and students) of [REDACTED] with a limited, non-exclusive, terminable, non-transferable license to access the digital textbook platform known as [REDACTED] via the [REDACTED] website, or by any other means on which the parties may agree. The digital [REDACTED] resource tool is intended to be the core basal instructional tool for web-based learning. The fee for this service is [REDACTED] [REDACTED]. Subscribers do not own the content, but use it under the terms of the license."

Statutory References

N.C. Gen. Stat. §105-164.4(a)(1) provides that the general State rate of 4.75% "applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section." The sales price of tangible personal property subject to the general State rate of tax are subject to the applicable local sales and use tax rates.

N.C. Gen. Stat. §105-164.4(a)(6b) provides that the general State rate of 4.75% applies to certain digital property that is "delivered or accessed electronically, is not considered tangible personal property, and would be taxable . . . 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 [N.C. Gen. Stat. § 105-164.4(a)] or to an information service." Such digital property includes: an audio work; an audiovisual work; a book, a magazine, a newspaper, a newsletter, a report, or another publication; and a photograph or greeting card. The sales price of tangible personal property subject to the general State rate of tax are subject to the applicable local sales and use tax rates.

N.C. Gen. Stat. § 105-164.3(14a) defines "information service" as "[a] service that generates, acquires, stores, processes, or retrieves data and information and delivers it electronically to or allows electronic access by a consumer whose primary purpose for using the service is to obtain the processed data or information."

N.C. Gen. Stat. § 105-164.13 provides exemptions to the "sale at retail, and the use, storage, or consumption in this State of [specific] tangible personal property, digital property, and services. N.C. Gen. Stat. § 105-164.13(14) specifically provides an exemption for the sale at retail and the use, storage, or consumption in this State of "public school books on the adopted list, the selling price of which is fixed by State contract."

Questions

In your firm's letter of January 3, 2012, your firm asks if the payment by a school for a license for the [REDACTED] streaming [REDACTED] license is subject to the sales and use tax laws, notably N.C. Gen. Stat. § 105-164.4(a)(6b) or some other exempt service?

In your addendum letter of May 8, 2013, your firm asks if the payment by a school for [REDACTED] [REDACTED] on a license [REDACTED] is subject to the sales and use tax laws, notably N.C. Gen. Stat. § 105-164.4(a)(6b) or some other exempt service?

Analysis

While there appears to be elements of audio and audiovisual works incorporated into your website for the [REDACTED], based on the interactive nature of the website and due to a single license affording use by concurrent users at the same time, it is the Department's position that the license fees associated with such products are for access to information services. As such, the gross receipts derived from such transactions are not subject to the State and local sales and use tax. Accordingly, based on the information presented, your firm is not liable for collecting North Carolina sales and use tax on the gross receipts from consumers located in this State who subscribe to, and access, [REDACTED] items noted above.

Based on our review of the [REDACTED] products [REDACTED], constitute digital property subject to tax pursuant to G.S. 105-164.4(a)(6b). We were advised during our conference call on May 3, 2012, currently, none of the [REDACTED] products have been adopted by North Carolina. In the event such should happen and provided the current exemption is not repealed, the exemption afforded per N.C. Gen. Stat. § 105-164.13(14) would apply provided as long as the items constitute "public school books on the adopted list, the selling price of which is fixed by State contract."

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 the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the factual situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the 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.

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

Very truly yours,

[REDACTED]
Director - Sales and Use Tax Division