

North Carolina Department of Revenue

Pat McCrory Lyons Gray Governor Secretary
August 21, 2014
Account ID: FEIN:
Attention:
Re: Private Letter Ruling Request
Dear Mr.
We have the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, and your letter dated January 17, 2014. You have inquired as to service offerings " to customers in this State.
infrastructure services to customers in the form of web services. The services allow customers to access computing power and storage capacity without significant information technology capital investment Specifically, companies may access server capacity and storage capacity through the internet without having to spend capital on servers, information technology support staff, or real estate to house the servers."
is headquartered in the second with offices in the second and the second with offices in the second and the second with offices in the second and the second
The first web service, and a remote storage service, and a and a and a and a and a and a and a and a and a and a and a and a and a and a and a and a and a and a and a and a and a a
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Customers of the service retain ownership of their content uploaded to the service in network. "See merely provides a service to securely store digital content; customers do not receive access to or possession of the tangible property, including software and hardware, which service uses to store that content in connection with the service. The remote storage services are also scalable" Customers are not necessarily aware of the exact server that is hosting their data. "See makes available, free of charge, certain software development kits and a management console to aid customers in uploading and managing the data they are storing.
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The free tools are optional; customers may choose to

"Customers are charged both a base fee,

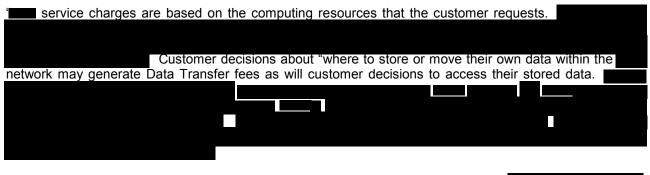
make use of without utilizing these free tools.

. The usage fee is called a 'Data Transfer' fee. . . .

The second web service offered is a virtual computing environment known as the **second** ("**second** ("**second**"). "Through **second**, customers can procure computing resources in order to perform a variety of activities, including, but not limited to, running applications, monitoring computers and computer usage, and hosting web domains – essentially anything computer equipment, especially a computer server, can do. The service's core benefit is that it allows customers to obtain remote access to computing capacity and control of their computing resources without a significant information technology investment. . . . In the technology industry, the **service** is commonly referred to as Infrastructure as a Service ('laaS')."



Any operating system software a customer chooses "only runs on servers within the network in order to provide the service. Customers do not receive a license to use the operating system (or any other) software, do not receive a physical copy of any software and they cannot electronically download the operating system software for their own use." Customers are "provided free help in the form of application programming interfaces and software development kits that help them to more easily utilize the computing power. These free tools are optional and are simply posted on web pages; customers may choose to make use of the without utilizing these free tools."



You have inquired whether **and**'s charges for the **and** service, **and** service with an **and**, service with a Third Party **and** and Data Transfer fees are subject to North Carolina sales and use tax.

N.C. Gen. Stat. § 105-164.4 provides for a sales tax on retail sales of tangible personal property; certain digital property; the gross receipts from the lease or rental of tangible personal property; service contracts to maintain or repair tangible personal property; admission charges to an entertainment activity; the gross receipts derived from the rental of an accommodation; and the receipts derived from the operation of laundries, dry cleaning plants, or similar businesses. Such transactions are subject to the 4.75% State rate and the applicable local and transit rates of tax unless specifically exempt by statute or taxed at lower rates.

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N.C. Gen. Stat. § 105-164.3(46) provides that the term "tangible personal property" means "[p]ersonal property that can 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. § 105-164.4(a)(6b) provides that the digital property subject to sales tax includes an audio work, an audiovisual work, a book, a magazine, a newspaper, a newsletter, a report, another publication, a photograph, or a greeting card. "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...."

N.C. Gen. Stat. § 105-164.6 provides for a use tax on the purchase of tangible personal property or digital property purchased, leased, or rented inside or outside North Carolina for storage, use, or consumption in this State, including property that becomes a part of a building or another structure. A product is subject to the use tax only if it subject to tax under N.C. Gen. Stat. § 105-164.4. N.C. Gen. Stat. § 105-164.3(49) provides that the term "use" means "[t]he exercise of any right, power, or dominion whatsoever over tangible personal property, digital property, or a service by the purchaser of the property or service. The term includes the withdrawal from storage, distribution, installation, affixation to real or personal property, and exhaustion or consumption of the property or service by the owner or purchaser. . . ." The rate of use tax due is equal to the rate of sales tax due on a product.

N.C. Gen. Stat. § 105-164.3(36) defines the term "sale or selling" as "[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property of the performance for consideration of a service. The transfer may be conditional or in any manner or by any means...."

Based on the information provided, the services provides, including the storage service, the virtual computing environment service (whether with an Open Source or with a Third Party and the Data Transfer fees, do not represent sales of tangible personal property, digital property, or taxable services and, therefore, 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 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 fact 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 reach me at the number listed below.

Very truly yours,

Administration Officer Sales and Use Tax Division

CC:

, Director of Sales and Use Tax Division