North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 16, 2015

FEIN: [redacted]

[redacted]

Attention: [redacted]

Dear Mr. [redacted]

We have the Form NC-PLR, Request for Private Letter Ruling, remittance of $5,000.00, your letter dated November 18, 2014, and additional information for your client, [redacted]. You have inquired as to the sales and use tax liability imposed on your client's sales of bundled products.

You advise that your client's messaging security software protects communications service provider networks and their subscribers against a wide range of messaging threats by allowing messaging environments to intercept and remove cyber-attacks. Your client sells prewritten computer software to customers and provides software-related services for a single price. The transactions include prewritten computer software that is sold and delivered electronically to customers, implementation and installation of the software, upgrades, updates, and technical support for the software.

N.C. Gen. Stat. § 105-164.4 imposes a sales tax on the retail sale of tangible personal property, certain digital property, and other specified transactions. N.C. Gen. Stat. § 105-164.6 imposes a complementary use tax on items in N.C. Gen. Stat. § 105-164.4 that are purchased inside or outside this State for storage, use, or consumption in this State. N.C. Gen. Stat. § 105-164.3(46) defines "[t]angible 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(29a) defines "[p]rewritten 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."

N.C. Gen. Stat. § 105-164.13(43a)(a) provides an exemption from tax on the sale at retail and the use, storage, or consumption in this State of computer software purchased to run on a enterprise server operating system and includes a purchase or license of computer software for high-volume, simultaneous use on multiple computers that is housed or maintained on an enterprise server.

N.C. Gen. Stat. § 105-164.4(a)(11) imposes the general rate of sales and use tax to the sales price of or gross receipts derived from a service contract. N.C. Gen. Stat. § 105-164.3(38b) defines "[s]ervice contract," in part, as "[a] contract where the obligor under the contract agrees to maintain or repair tangible personal property…." N.C. Gen. Stat. § 105-164.4I(b)(1) exempts from sales and use tax items specifically listed in N.C. Gen. Stat. § 105-164.13(43a)(a).

Pursuant to N.C. Gen. Stat. § 105-164.26, "all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records." N.C. Gen. Stat. § 105-164.22 further states, in part, "[f]ailure of a retailer [or wholesale merchant] to keep records that establish that a sale is exempt . . . subjects the retailer [or wholesale merchant] to liability for tax on the sale." As with any exemption claimed, your client must be able to support upon audit that its software sales and software-related services are properly exempt from sales and/or use tax.

It is our opinion that your client's sales of software and software-related services, coming within the provisions of N.C. Gen. Stat. § 105-164.13(43a)(a), would be exempt from sales and/or use tax, provided your client secures from its customers a properly completed Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or information as to the purchaser's name, address, type of business, and reason for exemption. If a paper certificate is provided, it must be signed by the purchaser. If your client's sales of prewritten software and software-related services do not meet the provisions of N.C. Gen. Stat. § 105-164.13, and/or your client's customers do not provide a properly completed Form E-595E or information such as the purchaser's name, address, type of business, and reason for exemption, then your client's sale would be subject to the general 4.75% State and applicable local and 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 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 telephone number listed at the bottom of the first page of this letter.

Very truly yours,

[redacted]
Sales and Use Tax Director

cc: [redacted] Administration Officer III