North Carolina Department of Revenue

Pat McCrory
Governor

Jeffrey M. Epstein
Secretary

May 4, 2016

Federal ID: [redacted]

[redacted]

Attention: [redacted]

Re: [redacted]
Private Letter Ruling

Dear Ms. [redacted]

We have the Form NC-PLR, Request for Private Letter Ruling, remittance of $5,000.00, your letter dated February 5, 2016, Power of Attorney, and additional documentation for your client, [redacted] LLC ("[redacted]"). Your have inquired as to the sales and use tax liability imposed on [redacted]'s sales of competitive price audits.

[redacted] A client purchasing a competitive price audit from [redacted] typically signs a contract, a sample copy of which you provided and refer to as "Exhibit A." These "[c]ompetitive price audits are the primary service provided by [redacted] and "involves the collection of the retail prices and other observable information on products sold at particular retail locations as requested by the client." The "[c]ompetitive price audits are customized to each client's requirements and specifications and come in two basic categories: (1) an 'undirected audit,' in which the client directs [redacted] to audit an entire store; and (2) a 'directed audit,' in which the client directs [redacted] to audit specified categories of products or items sold in a store. [redacted] You state "[o]nce the data is collected, data collectors transmit the pricing data electronically to [redacted]'s] [redacted] office, where such data is validated for accuracy, compiled into a spreadsheet, and delivered to the client in its requested delivery format." You further state "[redacted] delivers the Report electronically via email, file transfer (FTP/SFTP/AS2/etc.) or directly to the client's computer system."

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N.C. Gen. Stat. § 105-164.4(a)(6b) states, in part, "[t]he general rate of [sales or use tax] applies to the sales price of digital property that is sold at retail and . . . is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under [Article 5 of the North Carolina General statutes] 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 [N.C. Gen. Stat. § 105-164.4] or to an information service."

N.C. Gen. Stat. § 105-164.3(14a) defines the term "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."

Sales and Use Tax Technical Bulletin Section 24-1 A.3 provides, in part, the business of rendering professional services includes a person that contracts "to do market research, consulting, statistical analysis, or other services that result only in a report of their findings to the client."

Based on the information provided, [redacted]'s charges for competitive price audits as set out in items 3(a)(i) through 3(a)(iv) of Exhibit A, which are delivered electronically, are not subject to sales and use tax inasmuch as such charges are for an "information service" as defined in N.C. Gen. Stat. § 105-164.3(14a) and are therefore considered evidence of services rendered in lieu of a retail sale of digital property.

This ruling solely addresses [redacted]'s issue regarding its retail sales of competitive price audits as set out above and described in sections 3(a)(i) through 3(a)(iv) of Exhibit A, does not apply to "price databases" of the affiliate, does not address any "additional services" in section 3(b) of Exhibit A, is consistent with the Department's Private Letter Ruling Policy in regard to "per tax issue," and is based on the facts submitted to the Department of Revenue for consideration of the competitive price audits 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.

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