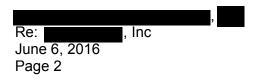


North Carolina Department of Revenue

Pat McCrory Governor Jeffrey M. Epstein Secretary

June 6, 2016

Attention: Partner,
Re: Private Letter Ruling Request Account ID: FEIN:
Dear Mr.
We received the Form NC-PLR, Request for Private Letter Ruling, remittance of \$500.00, your letter on behalf of, Inc. ('
<u>Overview</u>
It is our understanding that " Transmitted offers educational products, which are accessed via the internet, for children beginning at kindergarten through pre-teen ages. The online content covers a wide variety of subjects that assist students at home or in the classroom."
You indicate that provides the following products:
 "Example of provides online interactive educational quizzes, animated movies, game-play, and activities (collectively, the 'Content') to customers through an annual or monthly online subscription. The Company's online educational products include:
 In addition to the above products, record of learning accomplishments. The Content is mapped to standardized academic requirements.



- Educators can use **Education** tool, which includes specific features that help tailor an education program to meet individual student needs.
- Subscriptions can be purchased by individuals and schools through an end user license agreement or through web store.
- The Content is <u>not</u> downloaded. Students, parents, and educators access the Content directly through the internet without any downloading or installation.
- Customers can save their work on the Company's servers.
- Within website, there is a free online community for teachers and parents to share ideas and ways to enhance a student's learning experience.
- Subscribers can download a free app that allows the users to access and guizzes from an iPhone or similar device."

In an email response to the Department's questions dated May 31, 2016, your client provided the following information:

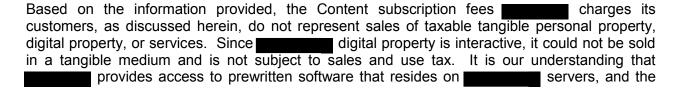
- "Does the product reside on the Company's server? Yes.
- Is the fee paid by customers a charge for access to the product? Yes."

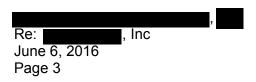
<u>Issue</u>

Are the Content subscription fees that are paid by customers subject to North Carolina sales and use tax?

Ruling

- 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. § 105-164.3(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(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." 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. § 105-164.6 imposes a complementary use tax on items subject to tax under N.C. Gen. Stat. § 105-164.4, in part, on "[t]angible personal property or digital property purchased inside or outside this State for storage, use, or consumption in this State."
- N.C. Gen. Stat. § 105-164.4(6b) imposes sales tax, in part, on "the sales price of digital property that is sold at retail...is delivered or accessed electronically, is not considered tangible personal property, and would be taxable under [Article 5 of Chapter 105 of the General Statutes] if sold in a tangible medium."





fee paid by customers is a fee to access the prewritten software. Currently, the State does not impose sales and use tax on remote access to prewritten computer software; therefore, the subscription fees are not subject to sales or 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 we may be of additional assistance, you may contact the Sales and Use Tax Division at the phone number listed on page one.

Very truly yours,

Administration Officer
Sales and Use Tax Division

cc: Director of Sales and Use Tax Division

Assistant Director of Sales and Use Tax Division