



North Carolina Department of Revenue

Roy Cooper  
Governor

Ronald G. Penny  
Secretary

April 22, 2021

[Redacted]

Re: [Redacted]  
Private Letter Ruling Request  
[Redacted]

Dear [Redacted]:

The Department has completed its review of your request for a written determination on behalf of your client, [Redacted] ("Taxpayer"). In making this written determination, the Department has considered the facts presented in your initial request as well as any supplemental information provided to the Department for consideration.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished by you on behalf of Taxpayer. This written determination is applicable only to Taxpayer addressed herein and as such has no precedential value except to Taxpayer.

**Overview and Relevant Facts**

Taxpayer "is a national provider of information management services to [Redacted] and other entities involved in the [Redacted] industry. . . . Currently, [Taxpayer] operates . . . service lines which provide independent service offerings for the unique needs of their respective clients. The basic operations of each of the lines of business are described below.

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April 22, 2021  
Page: 2

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April 22, 2021  
Page: 3

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**Issue**

Are the revenue streams described above subject to the North Carolina sales and use tax?

**Applicable Statutes and References**

North Carolina imposes State, local, and applicable transit sales and use tax on a retailer engaged in business in the State on the retailer’s net taxable sales of, or gross receipts derived from, tangible personal property, certain digital property, and taxable services. N.C. Gen. Stat. §§ 105-164.4, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, 105-537 and Chapter 1096 of the 1967 Session Laws.

N.C. Gen. Stat. § 105-164.4(a)(1)b. provides, in part, “[t]he general rate of [State] tax applies to . . . [t]he sales price of certain digital property. The tax applies regardless of whether the purchaser of the property has a right to use it permanently or to use it without making continued payments.”

N.C. Gen. Stat. § 105-164.6 provides, in part, that “[a]n excise tax at the applicable rate and maximum tax, if any, set in [N.C. Gen. Stat. §] 105-164.4 is imposed on . . . items if the item is

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 April 22, 2021

Page: 4

subject to tax under [N.C. Gen. Stat. §] 105-164.4 . . . . The tax imposed . . . is payable by the person who purchases, leases, or rents the items . . .”

N.C. Gen. Stat. § 105-164.3(261) defines, in part, the term “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 . . . prewritten computer software.”

N.C. Gen. Stat. § 105-164.3(33) defines the term “certain digital property” as “[s]pecified digital products and additional digital goods. The term does not include an information service or an educational service.”

N.C. Gen. Stat. § 105-164.3(103) 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.”

N.C. Gen. Stat. § 105-164.4(a) provides, in part, “[t]he sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general [State] rate of tax set in [N.C. Gen. Stat. §] 105-164.4 and is sourced in accordance with the sourcing principles in [N.C. Gen. Stat. §] 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with [N.C. Gen. Stat. §] 105-164.16. . . .”

N.C. Gen. Stat. § 105-164.3(245) defines the term “service contract,” in part, as “[a] contract where the obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services to certain digital property, tangible personal property, or real property for a period of time or some other defined measure. The term does not include a single service included in repair, maintenance, or installation services, but does include a contract where the obligor may provide a service included in the definition of repair, maintenance, and installation services as a condition of the contract . . . . Examples include . . . a maintenance agreement, a repair agreement, or a similar agreement or contract.”

### Ruling

Based on the information furnished, Taxpayer has two lines of business: ██████████

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In performing the ██████████, Taxpayer fulfills ██████████ records requests for clients and reviews and enters ██████████ data. Although clients can receive tangible paper copies of the ██████████ records, these paper copies are similar to receipts derived from data processing. ██████████ are information services. Therefore, these revenue streams are not subject to the general 4.75% State, applicable local (2.00% or 2.25%), and transit (0.50%) rates of sales and use taxes.

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██████████  
April 22, 2021

Page: 5

Taxpayer is liable for the sales and use taxes due on the purchases of tangible personal property, certain digital property, and taxable services for use in providing services to its clients through the ██████████.

In the Professional Services revenue stream Taxpayer provides clients with the “configuration of electronically delivered software.” In supporting documentation provided by Taxpayer, Taxpayer charges for providing third party software required to export document images for ██████████ records fulfillment, implementation of the software, and annual maintenance fees. The documentation provided shows taxpayer listed an itemized price for the three components of the transaction. The Professional Services include charges for the sale of tangible personal property, which includes prewritten computer software, repair, maintenance, installation services, or a service contract as defined in N.C. Gen. Stat. § 105-164.3(245). Therefore, receipts from the Professional Services revenue stream are subject to the 4.75% general State, applicable local (2% or 2.25%) and transit (0.50%) 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 Taxpayer may not rely on it. If Taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of Taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford 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.

Issued on behalf of the Secretary of Revenue  
By the Sales and Use Tax Division