



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

July 27, 2022

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]
Private Letter Ruling
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of your request for a private letter ruling on behalf of [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.

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 and as such has no precedential value except to Taxpayer.

Overview and Relevant Facts

You advise Taxpayer "provides 'Information Technology as a Service' ('ITaaS') services to businesses and organizations under a [REDACTED] service level agreement (ITaaS Plan).

"[Taxpayer] houses, operates and maintains its physical technology assets at a [REDACTED] facility outside North Carolina.

"[Taxpayer's] ITaaS Plans enable customers to outsource all of their Information Technology needs to [Taxpayer] with [Taxpayer's] virtual, remotely accessed Information Technology Infrastructure.

"Customer's users receive access to [Taxpayer's] ITaaS via the Internet and/or private telecommunications lines. The customers do not receive single-tenant access to [Taxpayer's] servers or software and cannot download copies of [Taxpayer's] operating or application software.

"The ITaaS plans provide defined levels of data storage, processing speed, security and data protection, and 'Helpdesk' technical support, at a [REDACTED] fee which is based on the ITaaS plan

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selected by the customer. The Helpdesk support is an optional feature which is suggested but can be de-selected. If de-selected, customer receives a reduced price.

“Each ITaaS Plan provides [REDACTED] levels of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

“The Security and Data protection features of [Taxpayer’s] ITaaS plans are [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

“Customers provide their own end-user devices, such as laptops and tablets and provide their own on-premises network hardware (routers) which enable customer to connect to the Internet in order to access [Taxpayer’s] ITaaS services.

“A router, which is a piece of networking hardware, is always required at the customer’s premises. Typically, the customer provides the router. Occasionally, [Taxpayer] is [sic] sells or rents a router to the customer.

“‘Helpdesk’ services typically consist of assisting users via email and/or telephone to identify and resolve interruptions of service. At times, [Taxpayer’s] IT professionals may choose to remotely access the customer’s on-premises router to perform a routine ‘reset’ to the customer’s router, which commands the on-premises router to restart. The purpose of a routine reset is not to fix, maintain, or troubleshoot the on-premises router. Rather, the purpose of the reset is to temporarily sever the customer’s connection to [Taxpayer’s] network, which is often most expediently achieved by shutting down access to the Infrastructure at the point of on-premises router. Once the customer’s connection has been severed, [Taxpayer’s] networking infrastructure and networking software can then ‘clear out’ the digital networking frames and/or data packet signals which were in communication between [Taxpayer’s] servers and the customer’s on-premises router, which effectively restarts the ITaaS service.”

“[Taxpayer’s] Helpdesk feature is not intended to monitor, repair, or maintain customer’s routers or customer-owned devices. Rather, the purpose of the Helpdesk feature is to resolve service interruptions to [Taxpayer’s] ITaaS platform, which are sometimes achieved by shutting down access [to [Taxpayer’s] Infrastructure] and is often most expediently achieved by shutting down access at the point of the on-premises router.”

Issue

Are Taxpayer’s Helpdesk services subject to sales and use tax?

Applicable Statutes and References

North Carolina imposes State, local, and transit rates of sales and use tax on a retailer engaged in business in the State based 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-

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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)(11) provides, “[t]he general rate of tax applies to the sales price of or the gross receipts derived from a service contract. A service contract is taxed in accordance with G.S. 105-164.4I.”

N.C. Gen. Stat. § 105-164.3(245) defines the term “service contract” 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. The term includes a service contract for a pool, fish tank, or similar aquatic feature and a home warranty. Examples include a warranty agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair agreement, or a similar agreement or contract.”

N.C. Gen. Stat. § 105-164.3(225) defines the term “repair, maintenance, and installation services” as “[t]he term includes the activities listed in this subdivision and applies to tangible personal property, motor vehicles, certain digital property, and real property. The term does not include a service used to fulfill a real property contract taxed in accordance with G.S. 105-164.4H. The included activities are:

- a. To keep or attempt to keep property or a motor vehicle in working order to avoid breakdown and prevent deterioration or repairs. Examples include to clean, wash, or polish property.
- b. To calibrate, refinish, restore, or attempt to calibrate, refinish, or restore property or a motor vehicle to proper working order or good condition. This activity may include replacing or putting together what is torn or broken.
- c. To troubleshoot, identify, or attempt to identify the source of a problem for the purpose of determining what is needed to restore property or a motor vehicle to proper working order or good condition. The term includes activities that may lead to the issuance of an inspection report.
- d. To install, apply, connect, adjust, or set into position tangible personal property or certain digital property. The term includes floor refinishing and the installation of carpet, flooring, floor coverings, windows, doors, cabinets, countertops, and other installations where the item being installed may replace a similar existing item. The replacement of more than one of a like-kind item, such as replacing one or more windows, is repair, maintenance, and installation services. The term does not include an installation defined as a capital improvement under subdivision (31)d. of this section and substantiated as a capital improvement under G.S. 105-164.4H(a1).
- e. To inspect or monitor property or install, apply, or connect tangible personal property or certain digital property on a motor vehicle or adjust a motor vehicle.”

N.C. Gen. Stat. § 105-164.3(261) defines 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 electricity, water, gas, steam, and prewritten computer software.”

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Ruling

Based on the information provided by Taxpayer, Taxpayer's retail sales of Helpdesk services¹ are sales of service contracts and the sales price of or the gross receipts derived from such sales are subject to North Carolina sales and use tax.

North Carolina defines a service contract to include a contract where obligor under the contract agrees to maintain, monitor, inspect, repair, or provide another service included in the definition of repair, maintenance, and installation services. Here, Taxpayer offers optional Helpdesk technical support for a fee. Taxpayer's Helpdesk services, in part, obligate Taxpayer to troubleshoot its customer's network infrastructure. When troubleshooting network infrastructure, Taxpayer will power cycle its customer's on-premises router in order to reestablish network connectivity to Taxpayer's ITaaS services. The diagnostic procedure of power cycling in certain instances will reload a router's operating system and other software, clear the router's memory, reinitialize the router's configuration, and may resolve issues with dynamic IP address conflicts. Based on these and other facts submitted to the Department for consideration, the Helpdesk services obligate taxpayer to maintain, repair, monitor and perform other services included in the definition of repair maintenance and installation services. As a result, Taxpayer's retail sales of Helpdesk services are sales of service contracts. The sales price of or the gross receipts derived from such sales are subject to North Carolina sales and use tax when sourced to North Carolina.

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 the 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

¹ This ruling only rules on the taxability of Helpdesk services and does not rule on other services offered by Taxpayer including ITaaS Plans sold by Taxpayer.