

Roy Cooper
Governor

Ronald G. Penny
Secretary

March 24, 2023



Re: [Redacted]
Private Letter Ruling
[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 is a "corporation headquartered in [Redacted] [Taxpayer] provides enhanced wireless data communications services via a hosted software platform through which its customers can deliver content to recipients through Short Message Service ('SMS'), Multimedia Message Service ('MMS'), and interactive voice response ('IVR') technologies.

"Specifically, [Taxpayer's] services consist of [Redacted] . . . that enable[s] customers to send text messages and/or voice broadcasts to designated recipients. Customers [Redacted] may record voice messages or draft SMS text messages to send to designated recipients. Customers may also create and send MMS messages [Redacted]. [Taxpayer] takes customer inputs [Redacted] and formats them to the short message peer-to-peer protocol (the SMPP Gateway). At the SMPP Gateway, [Taxpayer] transfers the messages to telecommunications carriers for transmission and delivery. [Taxpayer] transmits and receives text messages and voice broadcasts via third party telecommunications carriers. . . . [Taxpayer] charges customers through [Redacted]"

The Taxpayer's Terms of Use, [Redacted]
[Redacted]
[Redacted]



Issue

Are the services provided by Taxpayer an information service, as the term information service is defined in N.C. Gen. Stat. § 105-164.3(103), and therefore not 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. §§ 105-164.4, 105-164.6, 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)(4c) provides, in part, "[t]he combined general rate applies to the gross receipts derived from providing telecommunications service. . . . A person who provides telecommunications service . . . is considered a retailer under this Article. These services are taxed in accordance with [N.C. Gen. Stat. §] 105-164.4C."

N.C. Gen. Stat. § 105-164.3(37) defines the term "combined general rate" as "[t]he State's general rate of tax set in [N.C. Gen. Stat. §] 105-164.4(a) plus the sum of the rates of the local sales and use taxes authorized by Subchapter VIII of this Chapter for every county in this State." As of the date of this ruling, the combined general rate of sales and use tax is 7%.

N.C. Gen. Stat. § 105-164.3(269) defines "telecommunications service," in part, as "[t]he electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which a computer processing application is used to act on the form, code, or protocol of the content for purposes of the transmission, conveyance, or routing, regardless of whether it is referred to as voice-over Internet protocol or the Federal Communications Commission classifies it as enhanced or value added. The term does not include . . . [a]n information service."

N.C. Gen. Stat. § 105-164.3(103) defines an "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. § 105-164.4C(a) states, in part, "[t]elecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section."

Ruling

Based on the information furnished, Taxpayer utilizes a computer processing application to reformat customer inputs to the short message peer-to-peer protocol. Subsequently, Taxpayer transmits the messages to telecommunication carriers for delivery to designated recipients.

The services provided by Taxpayer meet the definition of a telecommunications service. Taxpayer electronically transmits, conveys, or routes messages and uses a computer processing application to act on the form of customer's input for the purpose of transmission. The services do not meet the definition of an information service because the primary purpose for using Taxpayer's services is to transmit the reformatted messages to designated recipients, not to obtain processed data or information.

In view of the above facts, the gross receipts derived from Taxpayer's telecommunications service, including Taxpayer's fixed fee or per message fee charges, are subject to the combined general rate of sales and use tax when sourced to this State.

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