NCDOR | NORTH CAROLINA DEPARTMENT OF REVENUE

Josh Stein
Governor

McKinley Wooten, Jr.
Secretary

August 3, 2026

[redacted]

Re: [redacted]
Private Letter Ruing

Dear [redacted]

The Department has completed its review of your request for a private letter ruling for your firm, [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 G.S. § 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 advised that Taxpayer works "as a remote, independent contractor with no physical presence in North Carolina — no office, employees, agents, inventory, or property located in the state." Taxpayer describes the work as "both strategic and marketing and creative design services." According to Taxpayer, the work results in "unique digital assets and intangible strategies." All work is "custom-developed exclusively to [Client's] specifications, delivered via secure cloud platform (Microsoft OneDrive) or by email. . . . No physical goods are created or shipped by the taxpayer."

Taxpayer provided an agreement between Taxpayer and client. The agreement states Taxpayer is to provide "ongoing, full-time marketing, graphic design, and brand development services to [Client] under a retainer-based service agreement." [redacted]

[redacted]

[redacted]

Issue

Are the gross receipts from Taxpayer's specific services and resulting digital property subject to North Carolina 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. G.S. §§ 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.

G.S. § 105-164.3(33) defines, in part, 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."

G.S. § 105-164.3(253) defines the term, "specified digital products," as "[d]igital audio works, digital audiovisual works, and digital books."

G.S. § 105-164.3(59) defines the term "digital audiovisual work," as "[a] series of related images, that when shown in succession, impart an impression of motion, together with accompanying sounds, if any, and that is transferred electronically."

G.S. § 105-164.3(271) defines the term "transferred electronically" as "[o]btained by the purchaser by means other than tangible storage media and includes delivered or accessed electronically."

G.S. § 105-164.4(a) imposes the general rate of tax on the 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.

G.S. § 105-164.8(b)(9), provides, in part, that "[a]retailer who makes a remote sale is engaged in business in this State and is subject to the tax levied under this Article if . . . the following [condition] is met: [t]he retailer makes gross sales in excess of one hundred thousand dollars ($100,000) from remote sales sourced to this State, including sales as a marketplace seller, for the previous or the current calendar year."

[redacted]
August 3, 2026
Page 3

Published for the purpose of presenting the administrative interpretation and application of the North Carolina Sales and Use Tax Law, the Department's administrative rules are considered "prima facie correct." G.S. § 105-264 (further providing that it "is the duty of the Secretary [of Revenue] to interpret all laws administrated by the Secretary through the adoption of a rule or publication of a bulletin).

17 NCAC 07B.0901 "Advertising and Advertising Agencies," provides, in part,
"(a) Professional Services to Produce Advertising. -- Advertising agencies are engaged in the business of rendering professional services when they produce advertising, such as radio and television spots or newspaper, magazine, or billboard advertising, and contract on their own behalf with radio and television stations, newspaper or magazine publishers, outdoor advertising companies, or other media for time or space to televise, broadcast, publish, or otherwise display their advertising. For purposes of G.S.[§]105-164.4, charges by advertising agencies for furnishing such professional services are not subject to sales or use tax if the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale. For purposes of this Rule, a professional service by an advertising agency is one that meets the following criteria:

(1) The agency selects or advises the client on the different kinds of advertising to be used.
(2) The agency is primarily responsible for developing the concept or design of the advertising.
(3) The agency produces or arranges for the production of the advertising.
(4) The agency places or arranges for the placement of the advertising on radio or television stations or in newspapers, magazines, or other media and the agency purchases time or space in the media to display the advertising instead of delivering it to the client for placement or distribution.

. . .

(c) Retail Sales. -- Advertising agencies are retailers when they produce, cause to be produced, fabricate, purchase, or otherwise acquire items, as the term item is defined in G.S. [§] 105-164.3, that they sell at retail for any use or purpose other than for resale. Items sold by advertising agencies include: . . . certain digital property, or taxable services. Advertising agencies making retail sales of items shall collect, report, and remit sales and use tax on the sales price of such items, pursuant to G.S. [§] 105-164.4.
The sales price to which the tax applies is the total amount for which the item is sold including all charges for services rendered in the production, fabrication, manufacture, or delivery of the item, such as charges for creative time, commissions, supervision, research, transportation, installation, postage, telephone and electronic messages, copy, models' fees, stage props, printing, printing plates, film, positives, negatives, transparencies and color separations, even though the agency may separately state the charges on the invoice or similar billing document given to the purchaser at the time of sale.
(d) Retainer and Consultation Fees.

(1) Retainer. -- A retainer is generally collected in advance for future services to be rendered. Charges by advertising agencies to their clients for a retainer that is directly related to the purchase, acquisition, fabrication, or production and retail sale of taxable items are part of the sales price and are subject to sales and use tax, pursuant to G.S. [§] 105-164.4, whether the retainer is separately stated on the customer's invoice or not. For purposes of G.S. [§] 105-164.4, a retainer charged to clients is not subject to sales and use tax when it is solely in connection with the performance of professional services."

Ruling

Based on the information furnished, Taxpayer provides certain services and electronically transfers certain "digital assets" to client. The "digital assets" are transferred to client through a secured cloud platform or an email. Taxpayer states no physical goods are created or shipped by Taxpayer.

Taxpayer appears to best be described as providing the services of an advertising agency. Pursuant to 17 NCAC 07B.0901(b) an advertising agency must collect tax when it sells certain digital property and performs taxable services. Professional services "are not subject to sales or use tax if the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale."

Here, portions of the products delivered to client meet the definition of certain digital property pursuant to G.S. § 105-164.3(33) because they include digital audiovisual works. In addition, some services may meet the definition of repair, maintenance, and installation services to certain digital property. Therefore, sales price of the resulting items are subject to North Carolina sales and use tax. Taxpayer has not separately stated their charges for professional services. As a result, the charges do not fit within the exception found in 17 NCAC 07B.0901(a).

Finally, you stated in your letter that you are "a remote, independent contractor with *no physical presence in North Carolina*." Therefore, you are a remote seller engaged in business in North Carolina as provided in G.S. § 105-164.8(b)(9). When your gross sales from selling these certain digital products exceeds $100,000.00, you will be required to register, collect, and remit 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 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