

Jeffrey M. Epstein
Secretary

Attention: [REDACTED], Partner
[REDACTED]
[REDACTED]

Dear Mr. [REDACTED]

Overview

Phone (919) 814-1082 Fax (919) 715-0295
P.O. Box 871 Raleigh North Carolina 27602-0871
Website: www.dornco.com
An Equal Opportunity Employer

Re: [REDACTED], Inc

June 6, 2016

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- Educators can use [REDACTED] 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 [REDACTED] web store.
- The Content is not 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 [REDACTED] 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 [REDACTED]'s movies and quizzes 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 [REDACTED] product reside on the Company's server? Yes.
- Is the fee paid by customers a charge for access to the product? Yes."

Issue

Are the Content subscription fees that are paid by [REDACTED] 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."

Based on the information provided, the Content subscription fees [REDACTED] charges its customers, as discussed herein, do not represent sales of taxable tangible personal property, digital property, or services. Since [REDACTED] digital property is interactive, it could not be sold in a tangible medium and is not subject to sales and use tax. It is our understanding that [REDACTED] provides access to prewritten software that resides on [REDACTED] servers, and the

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fee paid by [REDACTED] 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,

[REDACTED]
Administration Officer
Sales and Use Tax Division

cc: [REDACTED], Director of Sales and Use Tax Division
[REDACTED], Assistant Director of Sales and Use Tax Division