



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214-0575

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SC PRIVATE LETTER RULING #20-1

**SUBJECT:** Online Software Subscription Service for Managing Durable Medical Equipment Inventory, Billing, and Claims  
(Sales and Use Tax)

**REFERENCES:** S.C. Code Ann. Section 12-36-910 (2014)  
S.C. Code Ann. Section 12-36-1310 (2014)  
S.C. Code Ann. Section 12-36-60 (2014)  
SC Regulation 117-329 (2012)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

**QUESTION**

Are charges by ABC, LLC, to customers for its online software subscription service, as described in the facts, subject to the sales and use tax?

**CONCLUSION**

Charges by ABC, LLC, to customers for its online software subscription service, as described in the facts, are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

## **FACTS**

ABC, LLC, (“ABC”) is a cloud-based business management software provider. ABC’s software is specifically curated to durable medical equipment suppliers. ABC’s software simplifies the billing and claim submission process through effective storage and sharing of customer data.

ABC’s software is a cloud-based platform that collects and stores customers’ billing and revenue data and provides inventory management and reporting analytics based on this stored data. The software also assists in electronic claim submission to Medicare, Medicaid and other commercial payers. The software is billed as a lump-sum monthly subscription fee. No transfer of tangible personal property or the software occurs.

ABC provides its customers access and use of software online, but does not manipulate the customer’s data. ABC’s customers enter data into the software applications and use the applications to manipulate their own data. ABC’s customers use the software to generate claims submissions and reporting analytics. All reports are self-generated by the customer and are not provided by ABC.

## **LAW AND DISCUSSION**

Code Section 12-36-910(A) imposes the sales tax and provides:

A sales tax, equal to [six]<sup>1</sup> percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

The basis or measure of the sales tax is “gross proceeds of sales.” Gross proceeds of sales means “the value proceeding or accruing from the sale, lease, or rental of tangible personal property” without any deduction for the cost of materials, labor or service, or any other expenses. Code Section 12-36-90(1)(b).

Code Section 12-36-1310(A) imposes a use tax and provides:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six]<sup>2</sup> percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

The basis or measure of the use tax is “sales price.” Sales price means “the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold,

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<sup>1</sup> Code Section 12-36-1110 increased the state sales tax rate from 5% to 6% beginning June 2007.

<sup>2</sup> Code Section 12-36-1110 increased the state use tax rate from 5% to 6% beginning June 2007.

the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.” Code Section 12-36-130.

Communications are by definition tangible personal property under Code Section 12-36-60. The sale or use of communications is subject to sales or use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the:

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. (Emphasis added.)

It is the Department’s longstanding position that charges for the ways or means of communication include charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages). SC Revenue Ruling #17-2 addresses the application of the sales and use tax to a wide variety of communication services. It provides that communication services such as telephone services, paging services, answering services, cable television services, streaming services, satellite programming services (including emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website are communication services subject to the sales and use tax pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

SC Regulation 117-329.4 lists examples of taxable communication services and includes:

(k) Database Access Transmission Services or On-Line Information Services, including, but not limited to, legal research services, credit reporting/research services, and charges to access an individual website (including Application Service Providers)[.] (Emphasis added.)

SC Revenue Ruling #03-5 defines an Application Service Provider (“ASP”)<sup>3</sup> as a company that provides customers access or use of software on the company’s website and concludes that charges by an Application Service Provider are subject to sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

Based on the discussion above, charges for ABC’s software subscription service are charges for access and use of software via an Application Service Provider. Accordingly, charges for

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<sup>3</sup> The providing of software by an application service provider, as defined above, is also referred to as software as a service (“SaaS”).

ABC's software subscription service, as described in the facts, are subject to the sales and use tax.<sup>4</sup>

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
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W. Hartley Powell, Director

January 16, 2020  
Columbia, South Carolina

**CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.**

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<sup>4</sup> Since, as noted in the facts, ABC does not manipulate customer data, the exclusion under Code Section 12-36-910(C) for data processing does not apply.