



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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

SC PRIVATE LETTER RULING #20-4

SUBJECT: Online Software Subscription Service and Training
(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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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.

QUESTIONS

1. Are charges by XYZ, Inc. to customers for its online software subscription service, as described in the facts, subject to the sales and use tax?
2. Are charges by XYZ, Inc. to customers for training, as described in the facts, subject to the sales and use tax?

CONCLUSIONS

1. Charges by XYZ, Inc. 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).

2. Charges by XYZ, Inc. for training, as described in the facts, that are made in conjunction with, or as part of the sale of, its online software subscription service are includable in “gross proceeds of sales” or “sales price” and, therefore, subject to the tax. Charges by XYZ, Inc. for training, as described in the facts, that are not made in conjunction with, or as part of the sale of, its online software subscription service are not includable in “gross proceeds of sales” or “sales price” and, therefore, not subject to the tax.

FACTS

XYZ, Inc. is a provider of enterprise cloud computing solutions that define, structure, manage, and automate services across a global enterprise. Its service includes a suite of software applications built on a single proprietary platform that automates workflow and provides integration between related business processes.

XYZ offers software applications for information technology, security, human resources, and customer service. These applications allow employees to collaborate on projects, to submit intracompany requests, to prioritize tasks, and to automate routine tasks.

All of XYZ’s software applications are delivered to customers via the Internet. XYZ’s customers enter data into the software applications and use the applications to manipulate their own data. XYZ provides its customers access and use of software online, but does not manipulate its customers’ data.

XYZ’s various software applications are hosted on XYZ’s servers. No software must be loaded or downloaded onto a customer’s computers in order to run XYZ’s software service, and no components of XYZ’s software must reside on a customer’s computer equipment. The software in question is accessed through the Internet on servers owned or leased by XYZ.¹

XYZ provides its software by subscription. XYZ enters into a contract with each customer and charges a subscription fee for the license to access and use the software. For an increased subscription fee, customers may access the software on dedicated hardware in XYZ’s data centers.

XYZ also offers an optional training service for a fee where customers receive instruction from a trainer on the use of software applications. Training may take place at the customer’s location, at XYZ’s location outside of South Carolina, or through a live video conference call. Customers may purchase training in conjunction with the software subscription service or at a later date that is not in conjunction with the sale of a software subscription service.

¹ For one South Carolina customer, XYZ allows that customer to download its software for security purposes. Downloaded software is not subject to sales and use tax. See SC Revenue Ruling #03-5.

LAW AND DISCUSSION

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

A sales tax, equal to [six]² 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.

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]³ percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

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.)

² Code Section 12-36-1110 increased the state sales tax rate from 5% to 6% beginning June 2007.

³ Code Section 12-36-1110 increased the state use tax rate from 5% to 6% beginning June 2007.

SC Revenue Ruling #03-5 defines an Application Service Provider⁴ 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 XYZ's software subscription service are charges for access and use of software via an Application Service Provider. Accordingly, charges for XYZ's software subscription service, as described in the facts, are subject to the sales and use tax.⁵

Having established that the charges by XYZ to its customers for its online software subscription service are subject to the sales and use tax, we must next examine whether charges for training associated with the access to XYZ's online software subscription service are taxable.

As noted above, the sales tax is imposed upon a retailer's "gross proceeds of sales" which is defined at Code Section 12-36-90, in part, as:

...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[.]

The use tax is based upon the "sales price" of tangible personal property. The term "sales price" is defined at Code Section 12-36-130, in part, as:

...the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

(a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise[.]

In *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920, 923 (1985), the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

...But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

⁴ The providing of software by an application service provider, as defined above, is also referred to as software as a service ("SaaS").

⁵ Since, as noted in the facts, XYZ does not manipulate customer data, the exclusion under Code Section 12-36-910(C) for data processing does not apply.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.

Based on the above, charges by XYZ for training, as described in the facts, that are made in conjunction with, or as part of the sale of, its online software subscription service are includable in “gross proceeds of sales” or “sales price” and, therefore, subject to the tax. Charges by XYZ for training, as described in the facts, that are not made in conjunction with, or as part of the sale of, its online software subscription service are not includable in “gross proceeds of sales” or “sales price” and, therefore, not subject to the tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

May 18, 2020, 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.