



Charges By Taxpayer For Software Provided As A Service

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Tax: Sales and Use Tax

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to charges by Taxpayer for software provided as a service.

Facts

Taxpayer provides software as a service, in which a user pays a monthly fee in exchange for use of a web application or website hosted on Taxpayer's computer systems.

This web application/website has been developed for many users and not to the specifications of a single client. Taxpayer has developed an online tool intended for non-commercial, educational or entertainment purposes that enables users to create puzzles (such as "word search" puzzles). The user provides input for the puzzles (including, for instance, which words should be included in the puzzles), and Taxpayer's service transforms the user's input into puzzles on Taxpayer's servers, and then provides the finished puzzles back to the user as one or more downloadable PDF files.

From a technical perspective, the tool Taxpayer has developed contains portions of code that are executed on Taxpayer's server, and portions that are executed on the client's computer through the web browser (e.g., via HTML and JavaScript).

Issue

Whether Taxpayer is required to collect Sales Tax on charges for software as a service.

Discussion

As the Division understands it, software as a service typically consist of the following:

- The seller fully owns and operates the software applications;
- The seller owns, operates and maintains the server that hosts the software;
- Customers access the software via the Internet. The software is not transferred to the customer, and the customer does not have the right to download, copy, or modify the software.

Web-hosted services in which software is only accessed by the user, but not delivered or transferred to the user, are not subject to Sales and Use Tax.

Conclusion

Sales and Use Tax is not due on Taxpayer's charge for software as a service so long as the software is only accessed by the user and there is no transfer or delivery of the software to the user.

A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.