

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2020-14ST
July 22, 2021

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ISSUES

Sales and Use Tax - Web-based platform

Authority: [IC 6-2.5-1-1](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-15](#); [IC 6-2.5-4-16.7](#); [45 IAC 2.2-4-2](#); Sales Tax Information Bulletin #8 (December 2019).

A taxpayer ("Company") is seeking an opinion as to whether its provision of web-based fleet management services are subject to Indiana sales and use tax.

STATEMENT OF FACTS

Company web-based fleet management service for handling the administration, management, and record-keeping of motor vehicle fleets. Company provides the following information pertaining to its request, reproduced exactly as submitted in its request for a ruling with certain details redacted:

[Company] provides its services via a "Software as a Service" ("SaaS") model. This SaaS model is a web-based software model that allows a consumer to access a vendor's software application that is running on a cloud-based infrastructure. Under this model, the software resides exclusively on the vendor's server and is accessed by the customer via the Internet. Customers generally cannot install, download, or transfer the application software to their own computers. The SaaS provider owns, operates, and maintains the software applications, as well as the servers that support the application software. Thus, the customer has no control over the network, servers, operating systems, storage, or application capabilities.

In 2016, [Company] developed an application which it provides to its customers for free. Customers have the option of downloading the application to a personal device, such as a phone, table[t], etc., which the customer can then use to more easily upload vehicle information necessary for fleet management. [Company] does not provide the customer with the personal device (i.e., tablet, cell phone, etc.) for use with the application; nor does it provide any other tangible personal property. In addition, [Company's] pricing did not change for the services performed after the application was made available to its customers.

For example, a truck driver typically uses the application on his/her cell phone to upload information regarding fuel purchases, such as fuel cost, fuel quantity, vehicle condition, or to keep track of mileage. Prior to the introduction of the application, a truck driver would keep a manual paper log of the same information and turn the log into the office at the end of a trip for manual entry into the fleet management system.

Historically, the user of the application could only upload information into the application when they were connected to the Internet. However, [Company] recently introduced a limited "opt-in" feature that allows the user to enter information specific to vehicle inspections into the application whether or not they are connected to the Internet, which can be uploaded at a later time. However, the majority of data and information related to fleet management entered into the application has to be performed while connected to the Internet.

It is important to note that the users of the application are typically the motor vehicle operators, who only have access to a portion of the platform for purposes of data entry. The individuals using the fleet management software solution for purposes of managing the vehicle fleet typically view the data through a web portal on their computers, but will also have the ability to view the information on the application as well. However, any data reporting and analysis is only possible via the online portal. In other words, the mobile application does not support any data reporting and analysis that is necessary for a customer to manage its fleet.

Finally, it is worth noting that the application does not have the capability of sending or receiving messages,

such as communications with a dispatcher, etc. The application is used solely for uploading data related to fleet management.

DISCUSSION

Based on the foregoing facts, Company requests a ruling as to whether it should assess sales tax on the web-based fleet services described above. Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), sales tax is imposed on retail transactions made in Indiana. A retail transaction is defined in [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration. [IC 6-2.5-4-1\(c\)](#) goes on to provide in pertinent part:

For purposes of determining what constitutes selling at retail, it does not matter whether:

. . .
(2) the property is transferred alone or in conjunction with other property or services . . .

Company's provision of fleet management services involves both a service component and tangible personal property. "Tangible personal property" is defined in [IC 6-2.5-1-27](#) as:

. . . personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and **prewritten computer software**.

(Emphasis added).

"Prewritten computer software" is defined in [IC 6-2.5-1-24](#) as follows:

Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

- (1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.
- (2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.
- (3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
- (4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. [45 IAC 2.2-4-2](#). When services are sold with tangible personal property, [IC 6-2.5-4-15](#) provides that selling tangible personal property as part of a bundled transaction is a taxable retail transaction. [IC 6-2.5-1-11.5](#) defines a "bundled transaction" as "a retail sale of two (2) or more products, except real property and services to real property, that are: (1) distinct; (2) identifiable; and (3) sold for one (1) nonitemized price." However, if none of the products within a transaction meeting this definition are subject to sales tax (e.g., the tangible personal property falls under a specified statutory exemption), then the transaction would not be a taxable bundled transaction.

[IC 6-2.5-4-16.7\(b\)](#) provides that prewritten computer software sold, rented, leased, or licensed for consideration that is remotely accessed over the Internet, over private or public networks, or through wireless media, is not considered an electronic transfer of computer software and is not considered a retail transaction. In other words, transactions for prewritten computer software remotely accessed from a hosted computer or server or through a pool of shared resources from multiple computers and servers, without having to download the software to the user's computer, are not considered retail transactions, and therefore the purchase, rental, lease, or license of that software is not subject to Indiana sales or use tax.

By using a SaaS model, Company's prewritten computer software resides exclusively on its servers and is

accessed by customers through the Internet. Company's customers cannot install, download, or transfer the proprietary software to their own computers. Company owns, operates, and maintains the software used to provide its fleet management services. Company's customers have no control over the network, servers, operating systems, storage, or software capabilities. As an individual transaction, Company's prewritten computer software would therefore not be subject to sales tax pursuant to [IC 6-2.5-4-16.7\(b\)](#).

Company's customers may also download a mobile application to their personal devices free of charge, which may be used to upload vehicle information to Company's fleet management system. The Department has stated in Sales Tax Information Bulletin #8 (Dec. 2019) that prewritten computer software delivered electronically includes "mobile apps;" however, the Department has also advised in the bulletin that "as many mobile apps are offered for free, those mobile apps where there is no charge for downloading the apps are not retail transactions and no sales tax would be collected from the customer." Because Company offers the mobile application to its customers free of charge, it therefore would not be subject to sales and use tax.

Individually, company's service component, remotely accessed software, and free mobile application would not be subject to sales tax. Although the service component and remotely accessed software are included in the same transaction, none of the items individually would be subject to sales tax, and therefore it would not constitute a taxable bundled transaction. In addition, Company's mobile application is provided to customers free of charge would also not be considered a taxable retail transaction pursuant to Sales Tax Information Bulletin #8. Further, it is not part of the transaction for fleet management services, so it does not impact the taxability of the fleet management services. Therefore, Company's provision of fleet management services via a SaaS model are not subject to Indiana sales and use tax, and any tangible personal property provided for free would not be subject to sales tax either.

RULING

Based on the information provided, Company's provision of fleet management services is not subject to Indiana sales and use tax. Further, Company's mobile application offered for free to its customer is not subject to Indiana sales and use tax either.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. 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 respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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