



Commonwealth of Kentucky
Finance and Administration Cabinet
DEPARTMENT OF REVENUE
OFFICE OF TAX POLICY AND REGULATION

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Commissioner

KY-PLR-21-01

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LEGEND

Application =

Core Functionality =

Customer Information =

Service =

System =

Taxpayer =

Taxpayer's Software =

This letter is in response to your request for a private letter ruling dated November 18, 2019, ("Request Letter") regarding the application of sales and use tax to sales of its Service provided via a software as a service ("SaaS") model.

FACTS

The substantial facts and details of Taxpayer's Service provided via a SaaS are contained in your Request Letter and are not repeated here.

LAW

Kentucky Revised Statutes KRS 139.010(29), 139.010(41), 139.200, and 139.215(2)(b) and (4)(e) establish the parameters for whether web-based services provided via a SaaS model are subject to Kentucky sales and use tax.

CONCLUSION

The Kentucky Department of Revenue ("Department") has reviewed the Request Letter and the following conclusions are made exclusively for the Taxpayer's Service provided via a SaaS.

The sale or lease of prewritten software and related software license fees and maintenance agreements are subject to Kentucky sales and use tax based on the Kentucky Revised Statutes. Prewritten computer software purchased via physical copy (e.g., disk, etc.) or downloaded to customer computers or servers in Kentucky is subject to Kentucky sales and use tax as a transfer and sale of tangible personal property. However, if customers access the prewritten computer software hosted online with no physical download or other transfer, the software access for the performance of certain services is not subject to Kentucky sales and use tax.

The Taxpayer provides its Service via a SaaS model. With this charge for access and use of the Taxpayer's Software, there is no transfer or sale of tangible personal property. The prewritten computer software is a web-based SaaS model with no download of the Core Functionality.

The question here is whether the Taxpayer's subsequent free offer of a downloadable Application, with limited functionality that enhanced the usefulness of the Taxpayer's Software, changes the original exempt nature of the SaaS product for Kentucky sales and use tax purposes. The downloadable application for optional use by customers to record and upload Customer Information into the System is prewritten computer software.

The Taxpayer's offering of an Application that is pre-written computer software as part of the Service, which remains accessible online under the SaaS model, does not create a transaction subject to Kentucky sales and use tax. Furthermore, this provision of a pre-written computer software component with the SaaS model does not constitute a bundled transaction since the free software application is a de Minimis component of the Taxpayer's overall product provided to its customers.

The above guidance is limited to the specific transactions in the Request Letter and is based solely upon the information presented by the Taxpayer as outlined herein. Additional facts or changes in the law could change some or all of our answers. Guidance does not constitute a final ruling, order, or determination of the Department. Therefore, Department guidance cannot

be appealed to the Kentucky Board of Tax Appeals. Also, a taxpayer may not file a protest based on the issuance of Department guidance. If a taxpayer disagrees with Department guidance, he or she may file a return contrary to the Department guidance and may either seek a refund for any overpayment and protest its denial, or may protest an assessment issued by the Department as a result of the filing pursuant to KRS 131.110.

If you have any questions, do not hesitate to contact me at (502) 564-0424 or Gary.Morris@ky.gov. Thank you for the opportunity to be of assistance to you.

Sincerely,

A handwritten signature in black ink that reads "Gary C. Morris". The signature is written in a cursive style with a large, prominent "G" and "M".

Gary C. Morris, Executive Director
Office of Tax Policy and Regulation