



FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

OFFICE OF TAX POLICY AND REGULATION

501 High Street, Station 1
Frankfort, Kentucky 40601-3462
Phone: (502) 564-3226
Fax: (502) 564-9565

Andy Beshear
GOVERNOR

Holly M. Johnson
SECRETARY

Thomas B. Miller
COMMISSIONER

Gary Morris
EXECUTIVE DIRECTOR

August 30, 2024

Sales Tax Helper, LLC
Aleksandr Tsatskin, Esq.
477 Madison Avenue, 6th Floor
New York, NY 10022
ATsatskin@SalesTaxHelper.com

RE: General Information Letter KY-GIL-24-02

This correspondence is in response to the general information request dated March 31, 2024, (the "Request Letter") regarding the application of Kentucky sales and use tax to the provision of online platform access services.

FACTS

The Company is an online seller which provides platform access for its customers to draft a self-drafted book. This process involves the Company's customers pre-paying for the right to use the platform and a specified number of book copies. The Company initiates an email notification to the intended recipient, explaining the details of the forthcoming life story book. The recipients are granted a 12-month window, which starts from the email sending date, to complete the writing of the recipient's life story book, which uses the company's self-service online platform. On the invoice, the customer's total charge for platform access is \$64.00 and the sale of the book is \$6.00.

The Company does not edit any of the recipient's content but serves as a platform to which the recipients can use it to draft their life story. By using the platform, the recipients can insert text and pictures, with no additional edits made by the Company. Upon completion of the draft text, the Company utilizes a third-party printing company, which binds and prints the text. The Company grants the recipient a license to use the platform for them to draft their content. Based on a walkthrough provided by the Company, the platform contains various sections, where recipients can add and answer questions regarding their lives, save their drafted stories and update, customize, and preview their cover page.

QUESTIONS PRESENTED

1. *Whether the Company is providing a service that is subject to tax or exempt under Kentucky Tax Law.*
2. *Whether the Company's platform falls into the definition of Software-as-a-Service (SaaS) or Platform-as-a-Service (PaaS).*

LAW

Pursuant to KRS 139.200, a tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

(1) Retail sales of:

(a) Tangible personal property, regardless of the method of delivery, made within this Commonwealth; and

(b) Digital property regardless of whether:

1. The purchaser has the right to permanently use the property;
2. The purchaser's right to access or retain the property is not permanent;
- or
3. The purchaser's right of use is conditioned upon continued payment; and

(2) The furnishing of the following services (in relevant part listed below):

(ax) Prewritten computer software access services.

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53487>

KRS 139.010(46) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses and includes natural, artificial, and mixed gas, electricity, water, steam, and prewritten computer software.

KRS 139.010(33) and (34) provides definitions for "prewritten computer software" and "prewritten computer software access services".

KRS 139.010(33) (a) "Prewritten computer software" means:

1. Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser;
2. 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 original purchaser; or
3. Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, unless there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement.

(b) When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made.

(c) The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software.

KRS 139.010 (34) "Prewritten computer software access services" means the right of access to prewritten computer software where the object of the transaction is to use the prewritten computer software while possession of the prewritten computer software is maintained by the seller or a third party, wherever located, regardless of whether the charge for the access or use is on a per use, per user, per license, subscription, or some other basis.

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53486>

CONCLUSION

The provision of PaaS is subject to Kentucky sales and use tax when the platform provides access to property or services subject to Kentucky sales and use tax. As described in the correspondence submitted, the Company's self-service on-line platform falls into the PaaS category. The platform provides access to prewritten computer software and constitutes prewritten computer software access services.

The customer's total charge for platform access (\$64.00 in the example provided) is subject to Kentucky sales and use tax as provided in KRS 139.200(2)(ax) and KRS 139.310(1).

Furthermore, the sale of the book (\$6.00 in the example provided) is subject to Kentucky sales and use tax as the retail sale of tangible personal property or digital property as provided in KRS 139.200(1) and KRS 139.310(1).

The above guidance is limited to the specific transactions in the Request Letter and is based on the circumstances and facts presented in your e-mail and upon current Kentucky laws and regulations. Any change in the tax laws or regulations could affect this opinion. Guidance does not constitute a final ruling, order, or determination of the Department. Therefore, Department guidance cannot be appealed to the 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.

Sales Tax Helper, LLC
Aleksandr Tsatskin, Esq.
August 30, 2024
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If you require further assistance, please contact me at the information listed below.

Sincerely,

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

Gary C. Morris
Executive Director
Office of Tax Policy and Regulation
Gary.Morris@ky.gov
502-564-0424