

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 21-01**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.**

**SUBJECT**

The application of Tennessee sales and use tax to data analytics services.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[TAXPAYER] (the "Taxpayer"), is a [TYPE] data analytics company headquartered in [CITY, STATE]. The Taxpayer provides web-based data analytics services to its customers, which primarily consist of [ENTITIES] located across the country, including in Tennessee. The Taxpayer's data analytics services are geared towards achieving efficiency and effectiveness in its customers' strategic planning initiatives. To that end, the Taxpayer takes in its customers' [REDACTED] data for processing, geocodes

the data, and aggregates the customer data with data obtained from third parties, such as [REDACTED]. The Taxpayer uses these information streams to create a comprehensive data set, which is stored on servers leased by the Taxpayer and further processed in a variety of ways to provide the range of data analytics services offered to its customers.

### Digital Reports

The Taxpayer offers several types of digital reports that are prepared using its customer and third-party data, including the following (collectively, the “Digital Report Services”): (1) [REDACTED] reports, which provide an overall measure of client performance and an evaluation of the health and growth potential of the client’s competition; and (2) [REDACTED], which are high-level reports that include key strategic insights and customized visualizations of the client and third-party data to facilitate the analysis of market trends. All of the digital report types produced by the Taxpayer are either accessed by its customers online or transmitted to the customer using other digital means. The Taxpayer’s Digital Report Services are never delivered in a printed or otherwise tangible format.

### Web-Based Data Analytics Dashboard

The Taxpayer also offers a web-based data analytics dashboard, which consists of [NUMBER] components (collectively, the “Dashboard Components”): (1) [REDACTED], which permits the Taxpayer’s data to be searched or queried; (2) [REDACTED], which contains several standard and custom electronic reports that customers can generate automatically; and (3) [REDACTED], which allows generated reports to be distributed efficiently and securely. All of the Taxpayer’s Dashboard Components are accessed by the customer online or are otherwise digitally transmitted.

In addition to the web-based Dashboard Components, the Taxpayer also offers its customers access to [REDACTED] and [REDACTED], which are essentially more refined versions of the Dashboard Components that generate standard reports and unique visualizations of customer and third-party data.

### [CONSULTING SERVICES]

The Taxpayer also offers consultant-type services in addition to the Digital Report Services and Dashboard Components described above. The Taxpayer’s [REDACTED] service is an on-demand offering that allows its customers to supplement their internal analytics efforts with assistance from the Taxpayer’s employees, who may be engaged to perform specific projects for a particular customer.

Additionally, the Taxpayer offers [REDACTED], which consist of in-person meetings with Taxpayer personnel to assist the customer in developing competitive strategic initiatives. Both the [REDACTED] on-demand offering and the [REDACTED] (collectively, the “Consulting Services”) rely heavily on the Taxpayer’s provision of analysis of the customer and third-party data, essentially comprising a further extension of the data analytics services provided in connection with its other report and web-based offerings. Any reports or unique visualizations of customer and third-party data arising out of the Taxpayer’s Consulting Services are only accessible online or through other digital means.

## Pricing

The Taxpayer offers different pricing models for its data analytics services. Some customers prefer to pay a single, all-inclusive charge based on the amount of data processed and analyzed, the length of time the Taxpayer will provide data analytics services to the customers, and the particular electronic reports and services requested. Other customers prefer to pay on an itemized basis for each of the particular data analytics services provided by the Taxpayer. In all cases, and no matter how the services are invoiced, the Taxpayer has represented that its customers specifically want to obtain the data analytics services that it provides.

### RULING

Are the Taxpayer's data analytics services subject to the Tennessee sales and use tax?

Ruling: No, the Taxpayer's data analytics services are not subject to Tennessee sales and use tax.

### ANALYSIS

Under the Retailers' Sales Tax Act (the "Act"),<sup>1</sup> retail sales of tangible personal property and specifically enumerated services are subject to sales tax. While all Tennessee sales of tangible personal property are subject to tax unless an exemption applies, only specifically enumerated services are subject to tax under the Act.

Computer software is subject to tax on a stand-alone basis and under the definition of "tangible personal property," which includes "prewritten software."<sup>2</sup> In 2015, the Tennessee General Assembly amended TENN. CODE ANN. § 67-6-231 to include a new subdivision (b), which states in pertinent part that:

[f]or purposes of subdivision (a), "use of computer software" includes the access and use of software that remains in the possession of the dealer who provides the software or in the possession of a third party on behalf of such dealer. If the customer accesses the software from a location in this state as indicated by the residential street address or the primary business address of the customer, such access shall be deemed equivalent to the sale of licensing of the software and electronic delivery of the software for use in the state.<sup>3</sup>

As a result, effective for all billing periods beginning on or after July 1, 2015, the access and use of computer software in this state, which has generally been subject to tax since 1977,<sup>4</sup> remains subject

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<sup>1</sup> Tennessee Retailers' Sales Tax Act, Ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts Ch. 22, §§ 2254 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2018 & Supp. 2020)).

<sup>2</sup> TENN. CODE ANN. §§ 67-6-231(2018) and 67-6-102(95) (Supp. 2020).

<sup>3</sup> 2015 Tenn. Pub. Acts Ch. 514, § 22 (codified at TENN. CODE ANN. § 67-6-231(b) (2018)).

<sup>4</sup> The General Assembly amended the definition of "tangible personal property" in 1977 to specifically include computer software in response to the Tennessee Supreme Court's holding to the contrary in *Commerce Union Bank*, 538 S.W.2d 405, 408. 1977 Tenn. Pub. Acts Ch. 42 (defining "tangible personal property" to include computer software); see also *Univ. Computing Co.*

to sales and use tax regardless of a customer's chosen method of use. However, TENN. CODE ANN. § 67-6-231(b) clarifies that the application of the sales and use tax to remotely accessed software does not make otherwise nontaxable services subject to tax. TENN. CODE ANN. § 67-6-231(b) specifically states that:

Nothing in this subsection (b) shall be construed to impose a tax on any services that are not currently subject to tax under this chapter, such as, but not limited to, information or data processing services, including the capability of the customer to analyze such information or data provided by the dealer; payment or transaction processing services; payroll processing services; billing and collection services; internet access; the storage of data, digital codes, or computer software; or the service of converting, managing, and distributing digital products.

The Taxpayer has explained the nature of its services outlined above as follows:

None of the customers simply want access to [the Taxpayer's] web-based data analytics dashboard or other similar platforms because that access would be useless and of no value to the customer unless the customer obtained [its] data analytics and related data storage and information and data processing services. In fact, the whole purpose of the web-based data analytics dashboard and other similar platforms is to permit the customer to obtain [the Taxpayer's] services.<sup>5</sup>

The Taxpayer asserts that the dashboards or platforms, which are potentially taxable as remotely accessed software, are of no value to the customer on a stand-alone basis. This suggests that although the Taxpayer has different pricing options, the dashboards and platforms described above are not a separate product apart from its data analytics services.<sup>6</sup> Furthermore, regardless of how the product is invoiced, the Taxpayer claims to be selling a nontaxable service, as opposed to taxable remotely accessed software.<sup>7</sup>

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*v. Olsen*, 677 S.W.2d 445, 447 (Tenn. 1984) (detailing the General Assembly's actions taken to subject computer software to sales and use tax).

<sup>5</sup> Letter to Commissioner Gerregano, [DATE], pg. [NUMBER].

<sup>6</sup> However, if the Taxpayer offers a software product for sale that allows its customer to upload, store, and manage data without the services of [TAXPAYER], then such software product would be subject to tax under TENN. CODE ANN. § 67-6-205(c)(6).

<sup>7</sup> To the extent these facts are inaccurate the Ruling contained herein may not apply to some products.

When a transaction involves taxable and nontaxable components and the transaction's true object or a crucial,<sup>8</sup> "essential,"<sup>9</sup> "necessary,"<sup>10</sup> "consequential,"<sup>11</sup> or "integral"<sup>12</sup> element of the transaction is subject to tax, the entire transaction is subject to sales tax.<sup>13</sup> Only if the true object of the transaction is not independently subject to sales tax and the items that would be subject to sales tax are "merely incidental" to the true object of the transaction will the transaction not be subject to sales tax.<sup>14</sup>

Based on the facts presented, customers do business with the Taxpayer in order to benefit from its expertise in analyzing, managing and organizing data. The Taxpayer uses its software to collect raw data from its customers, geocodes that data, and aggregates it with data from third parties such as [REDACTED] to create a comprehensive data set. Although the Taxpayer's customers own their raw data, the Taxpayer's services add context to that raw data, allowing customers to better organize, understand, and use their own data and, if desired, to make comparisons with competitors by accessing other data provided to the Taxpayer from third parties. The Taxpayer uses software to perform these services.

In order to utilize the Taxpayer's Digital Report Services and Consulting Services, the Taxpayer's customers must send the Taxpayer their data for processing and analysis. Customers are able to view the digital reports online. Although software<sup>15</sup> is used to give customers access to these reports, which may be accessed from locations within Tennessee, this method of delivering the results of the Taxpayer's services is merely incidental to the data analytics services. Accordingly, the data analytics service is the true object of the Taxpayer's Digital Report Services and Consulting Services.

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<sup>8</sup> See, e.g., *Thomas Nelson, Inc. v. Olsen*, 723 S.W.2d 621, 624 (Tenn. 1987) (holding that a transaction involving the sale of non-taxable intangible advertising concepts was nevertheless subject to sales tax on the entire amount of the transaction because advertising models, which were tangible personal property, were an "essential," "crucial," and "necessary" element of the transaction).

<sup>9</sup> *Id.*; see also *AT&T Corp. v. Johnson*, No. M2000-01407-COA-R3-CV, 2002 WL 31247083, at \*9 (Tenn. Ct. App. Oct. 8, 2002) (holding that a transaction involving the sale of engineering services along with separately itemized tangible telecommunications systems was subject to sales tax on the entire amount of the contract because "equipment, engineering, and installation combine in this instance to produce BellSouth's desired result: a functioning item of tangible personal property assembled on the customer's premises," and further describing the engineering services as "essential" and "integral" to the sale of tangible personal property).

<sup>10</sup> See *supra* note 8.

<sup>11</sup> See *Rivergate Toyota, Inc. v. Huddleston*, No. 01A01-9602-CH-00053, 1998 WL 83720, at \*4 (Tenn. Ct. App. Feb. 27, 1998) (holding that a transaction involving the commission and distribution of advertising brochures was subject to sales tax on the "entire cost of the transaction" because, although the transaction involved a number of services, the brochures themselves "were not inconsequential elements of the transaction but, in fact, were the sole purpose of the contract").

<sup>12</sup> See *AT&T Corp. v. Johnson*, 2002 WL 31247083, at \*8.

<sup>13</sup> See generally Tenn. Dept. of Rev. Ltr. Rul. 14-10 (Oct. 14, 2014) (discussing Tennessee law regarding bundling and the "true object" test), available at <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/sales/14-10.pdf> (last visited December 3, 2020).

<sup>14</sup> See generally *id.*

<sup>15</sup> See TENN. CODE ANN. § 67-6-102(18).

Similarly, the Taxpayer may provide customers with access to a web-based dashboard that allows customers to use data to generate specialized reports. Although the Dashboard Components constitute computer software for Tennessee sales and use tax purposes,<sup>16</sup> the storage of the customer's data and capability of the Taxpayer's customers to access and analyze its historical data via the dashboard from locations within Tennessee, are merely incidental to the Taxpayer's data analytics services. Stated another way, the Dashboard Components are simply a means to view the end results of the data analytics services that customers purchase from the Taxpayer.

It is the expressed intent of Tennessee law to tax software regardless of how it is delivered. However, Tennessee law also clearly states the legislature's intent not to tax an otherwise nontaxable service merely because it is enhanced by the seller's use of software to deliver the service. One of the nontaxable services listed in the statute as an example of this distinction is "information or data processing services, including the capability of the customer to analyze such information or data provided by the dealer."<sup>17</sup>

### Conclusion

The Taxpayer's data analytics services, which consist of Digital Report Services, Dashboard Components, and Consulting Services, are not specifically enumerated in TENN. CODE ANN. § 67-6-205 and are not subject to tax under TENN. CODE ANN. § 67-6-231. This conclusion is premised on the facts as described indicating that crucial to the Taxpayer's data analytics services are the expertise of and actions taken by the Taxpayer's employees on behalf of its customers. To the extent the Taxpayer licenses software to customers who use the software's functionality with no additional services provided by the Taxpayer, the sale is a taxable sale of remotely accessed software.<sup>18</sup>

APPROVED: David Gerregano  
Commissioner of Revenue

DATE: 1/8/2021

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<sup>16</sup> *Id.*

<sup>17</sup> TENN. CODE ANN. § 67-6-231(b).

<sup>18</sup> TENN. CODE ANN. § 67-6-231(a). The Taxpayer's website includes an offering of [REDACTED]. These software products are not the subject of this ruling.