

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2011-05 ST
October 11, 2011

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ISSUES

Sales and Use Tax – Access to Online Database

A company ("Taxpayer") is seeking an opinion as to whether access to its online database is subject to Indiana sales and use tax.

Authority: [IC 6-2.5-1-11.3](#); [IC 6-2.5-1-16.2](#); [IC 6-2.5-1-16.3](#); [IC 6-2.5-1-16.4](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-1-28.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-16.4](#); Streamlined Sales and Use Tax Agreement (Sept. 20, 2009)

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer is engaged in the business of providing commercial information about the financial condition of businesses to its customers located throughout the United States and abroad. The information is provided through an online database. In particular, Taxpayer further provides:

For a subscription fee, [Taxpayer's] customers will be able to access business information about potential or existing customers and suppliers through [Taxpayer's database]. [Taxpayer's service] is an interactive, customizable web-based application that will offer users real-time access to [Taxpayer's] complete and up-to-date global database of... businesses for a subscription fee. [Taxpayer's] core service offering will allow customers to run searches and create customizable reports containing summary trade data, basic credit scores, legal filings, and general company information. For an additional fee, customers will be able to purchase upgraded data packages and workflow add-ons that provide additional data beyond that included with the base core service offering. The additional fees relating to the upgraded core service offering will not be separately invoiced if purchased simultaneously with [Taxpayer's] core service offering, but rather included in the total annual subscription fee as a premium package. This is in contrast to the workflow add-ons which will be separately invoiced.... The customer will have the option of purchasing the upgraded data packages at a later date, in which case they will receive a separate invoice for the upgraded data packages. These upgraded data packages will come in the form of additional data that will be added to customized user reports.

Taxpayer describes the upgraded data packages to include the following:

Enhanced Data Package

The Enhanced Data Package will include access to data in the form of corporate linkage, visual family tree, and public filing information. Corporate linkage will be additional data in a generated report that displays other related companies to the subject entity. The visual family tree will be a summary of the corporate linkage shown in the form of a graphic or chart. Public filing information will be provided in the form of a summary and history of public filings and financial statements for the subject entity.

Enhanced Analytics Package

The Enhanced Analytics Package will include access to data in the form of monitoring/alerts, credit limit recommendation, predictive scores, comprehensive credit scores, and fraud scores. Monitoring/alerts will be additional data which shows key company information that has changed since the last time the customer has viewed the report. The customer will have the ability to receive email notifications of these changes as part of this feature. Credit limit recommendation will be additional data displaying [Taxpayer's] recommendation of a conservative and aggressive credit limit based on [Taxpayer's] scoring methodology. Predictive scores will be

additional data measuring a company's likelihood for future success. Comprehensive credit scores will be additional data showing details supporting predictive scores. Fraud scores will be additional data which assesses the likelihood that the company making a request for credit is fraudulent.

Enhanced Trade Package

The Enhanced Trade Package will include... detailed payment data. [This data will include] the weighted average of past trade payments. Detailed payment data will provide historical payment data including the number of delinquent payments and average high credit. This will be displayed as a section of a generated report displaying trade data by industry and time period reported.

Small Business Risk Insight ("SBRI")

This will be additional data within [Taxpayer's core service offering] that will enable a customer to view data from participating financial institutions on small business lending performance across the banking, credit care, and leasing industries. SBRI will combine the financial performance data with [Taxpayer's] trade data to create decision-ready insight that can be used across the customer lifecycle for targeting, underwriting, and portfolio management/marketing. SBRI will be available to customers who participate in the SBRI program and purchase the Enhanced Trade Package.

International Data

Customers will be allocated an amount of data that they will be able to access for international entities as part of [Taxpayer's] core service offering. Once the allocated amount of international data has been exceeded, customers will be charged an additional fee for access to that data.

Unlimited Data Package

The Unlimited Data Package will allow customers to generate reports with a mix of the above data service options and will allow an unlimited quantity of inquiries into [Taxpayer's] system.

Taxpayer describes the workflow add-ons to include the following:

Decision Making Tool

This will be a customizable web-based tool within [Taxpayer's core service offering] that will enable a customer to establish rules and approval limits to automate credit decisions. The decision making tool will allow companies to make immediate credit decisions on new customers. It will provide access to Equifax bureau and will have the ability to input trade and bank references. The decision making tool will be hosted on [Taxpayer's] servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing [Taxpayer's core service offering].

Account Manager

This will be an automated feature that will manage the risk of a customer's entire customer base by blending the customer's credit policy, the customer's accounts receivable data, and the latest and most complete [of Taxpayer's] business information. A user will be able to load in a set of accounts and rules to trigger labeling for existing accounts (i.e., [if] a credit indicator drops below a certain level the account gets flagged for review). The Account Manager will be hosted on [Taxpayer's] servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing [Taxpayer's core service offering].

Collection Tool

The Collection Tool will be an on-demand tool to help manage overall risk exposure. The tool will enable a user to load in invoice level trade details. The Collection Tool will then provide workflow information related to collection activities. The Collection Tool will be hosted on a 3rd party server (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing [Taxpayer's core service offering].

Online Credit Application

The Online Credit Application will allow the user to create customizable credit application to meet their business needs. The application will be displayed on the internet through [Taxpayer's] servers. The data entered into the application will then be fed into [Taxpayer's core service offering] for the user to act on. [Taxpayer's core service offering] will provide internal automatic alerts when an application is submitted. The Online Credit Application will be sold as an optional add-on to someone purchasing [Taxpayer's core service offering].

Web Services

This will be a web-based tool within [Taxpayer's core service offering] that will allow for data, decisions, or other account information to be passed back and forth between [Taxpayer] and customer systems. Web Services will allow for the integration of the Decision making Tool and Account Manager. Web Services will be hosted on [Taxpayer's] servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing [Taxpayer's core service offering].

DISCUSSION

Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), a sales tax is imposed on retail transactions made in Indiana. Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. A retail transaction is defined at [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration.

Also included in the definition of a retail transaction are specified digital products. [IC 6-2.5-4-16.4\(b\)](#) provides:

A person is a retail merchant making a retail transaction when the person:

- (1) electronically transfers specified digital products to an end user; and
- (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser.

Specified digital products, as currently defined by [IC 6-2.5-1-26.5](#), [IC 6-2.5-1-16.2](#), [IC 6-2.5-1-16.3](#), and [IC 6-2.5-1-16.4](#), include only digital audio works (e.g., songs, spoken word recordings, ringtones), digital audiovisual works (e.g., movies), and digital books. Pursuant to [IC 6-2.5-4-16.4\(b\)](#), Indiana imposes sales and use tax only on specified digital products that are transferred electronically along with the right of permanent use that is not conditioned on continued payment by the purchaser. Products transferred electronically are defined at [IC 6-2.5-1-28.5](#) to mean products that are "obtained by a purchaser by means other than tangible storage media."

Pursuant to Section 333 ("Use of Specified Digital Products"—Effective January 1, 2010) of the Streamlined Sales and Use Tax Agreement ("SSUTA"—September 20, 2009), of which Indiana is a signatory, "A member state shall not include any product transferred electronically in its definition of 'tangible personal property.'" Pursuant to the same section of the SSUTA, "ancillary services", "computer software", and "telecommunication services" are excluded from the term "products transferred electronically."

In order to stay in conformity with the SSUTA, Indiana may not impose sales tax on a product transferred electronically by basing the product's taxability on inclusion of the product in the definition of tangible personal property. It is important to note that "ancillary services," "computer software," and "telecommunication services" are not restricted by the phrase "product transferred electronically." However, [IC 6-2.5-1-27.5\(c\)\(8\)](#) explicitly excludes ancillary services from the definition of telecommunication services, which are taxable under [IC 6-2.5-4-6](#). Accordingly, ancillary services are not subject to sales tax in Indiana.

Based on the foregoing, Indiana may impose sales tax on products transferred electronically only if the products meet the definition of specified digital products, pre-written computer software, or telecommunication services. It is sufficient for the purposes of this ruling to note that access to Taxpayer's online database, including the upgraded data packages (e.g., Enhanced Data Package, Enhanced Analytics Package, Enhanced Trade Package, SBRI, International Data, and Unlimited Data Package), does not appear to constitute a transfer of specified digital products, prewritten computer software (as defined by [IC 6-2.5-1-24](#)), or telecommunication services (as defined by [IC 6-2.5-1-27.5](#)). Rather, access to Taxpayer's online database, including the upgraded data packages, appears to represent a service on the part of Taxpayer. On that basis, Taxpayer's sales of access to its online database and its upgraded data packages via the Internet are not subject to Indiana sales and use tax.

However, Taxpayer's sales of workflow add-ons (including the Decision Making Tool, Account Manager,

Collection Tool, Online Credit Application, and Web Services) appear to be sales of prewritten computer software. Pursuant to [IC 6-2.5-1-14](#) (which provides the definition of the term "computer software") and [IC 6-2.5-1-24](#) (which provides the definition of the term "prewritten computer software"), the term prewritten computer software, in pertinent part, means a set of coded instructions not designed and developed by the author or other creator to the specifications of a specific purchaser that cause a computer or automatic data processing equipment to perform a task. It appears that when Taxpayer's customers access the workflow add-ons, the customers are purchasing access to prewritten computer software for which they, the customers, have a possessory interest. On that basis, Taxpayer's sales of access to its workflow add-ons to end-user customers via the Internet are subject to Indiana sales and use tax when provided to customers located in Indiana.

RULING

Taxpayer's sales of access to its online database and its upgraded data packages via the Internet are not subject to Indiana sales and use tax. However, Taxpayer's sales of access to its workflow add-ons to end-user customers via the Internet are subject to Indiana sales and use tax when provided to customers located in Indiana.

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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