

Declaratory Order 2023-02

Request for Ruling Regarding the Application of Sales Tax

Request for Ruling

The Taxpayer requested a ruling regarding the application of Rhode Island sales tax on Taxpayer's various offerings.

Facts

Unless otherwise noted, the facts set forth below are taken from the facts presented in the Ruling Request received by the Tax Division on December 1, 2022. Taxpayer develops online educational courses for communities, consumers, corporations, and schools. Taxpayer's customers include both for-profit and nonprofit organizations.

Taxpayer primarily provides online educational courses, furnishes in-person teaching support, and hosts networking and best practices sharing events. The courses span a variety of topics.

Taxpayer's online courses are stored on cloud servers. Students access these courses via the internet, and no software is downloaded onto students' or learners' equipment. Courses and individual topics normally consist of videos, interactive activities and games, animation, and individualized feedback. Students and learners are not able to control the flow of the course with the exception of start, stop, and restart functionality.

All of Taxpayer's online courses can be customized by customers (generally with Taxpayer's assistance) to add introductory videos, customer logos, headings, resources, and specific color schemes. In addition, Taxpayer's products provide the customer with certain administrative capabilities. Teachers that administer the courses can assign or block specific courses and receive standard reporting of testing results, but administrators are not able to customize these reports. The courses do not contain tools that would allow teachers to perform their own independent analyses of test results.

Organization administrators of some of the offered courses can perform certain functions including restricting access to courses, sending email notifications to learners to take certain trainings, assigning specific courses to certain learners, monitoring completion of the various courses, and receiving pre-programmed canned reports regarding courses assigned, taken, and completed. Additionally, organizations have the ability to insert additional information (such as their own corporate/institutional policies and procedures) as well as additional resources in certain courses, if desired. Organization administrators can also develop custom courses, insert content, and link the courses to social media, their own website, and to other websites that contain additional

resources on topics. Administrators also receive contact information regarding learners that accessed these courses.

Taxpayer's customer agreements generally require Taxpayer to bill its customers annually for each online course based on the type and number of courses provided. Taxpayer also may bill annually for a catalog of courses. Most customer agreements require Taxpayer to provide its online courses for multiple years.

Ruling Requested

The Ruling Request sets forth one specific question:

- 1) Whether Rhode Island's sales tax applies to Taxpayer's charges for its online courses.

Pertinent Statutory and Regulatory Law

Under the Rhode Island General Laws, "a tax is imposed upon sales at retail in this state, . . . at the rate of [seven percent (7%)] of the gross receipts of the retailer from the sales or rental charges" R.I. Gen. Laws §§ 44-18-4, 44-18-18. R.I. Gen. Laws § 44-18-20 imposes a complementary use tax on all tangible personal property that is stored, used, or otherwise consumed in Rhode Island. Tangible personal property is defined as "personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses." R.I. Gen. Laws § 44-18-16. Tangible personal property "includes . . . prewritten computer software." *Id.*

R.I. Gen. Laws § 44-18-8 defines "sale at retail" as "any sale, lease, or rentals of tangible personal property, prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten computer software, specified digital products, or services as defined in § 44-18-7.3 for any purpose other than resale, sublease, or subrent in the regular course of business."

Under R.I. Gen. Laws § 44-18-7(1), the term "sales" means and includes "[a]ny transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of tangible personal property for consideration. 'Transfer of possession,' 'lease,' or 'rental' includes transactions found by the tax administrator to be in lieu of a transfer of title, exchange, or barter." Per R.I. Gen. Laws § 44-18-7(14), the term "sales" also includes "[t]he sale, storage, use, or other consumption of prewritten computer software delivered electronically or by load and leave as defined in § 44-18-7.1(g)(v)." R.I. Gen. Laws § 44-18-7.1(v) states that "[l]oad and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser." Per R.I. Gen. Laws § 44-18-7(15), the term "sales" also includes "[t]he sale, storage, use, or other consumption of vendor-hosted prewritten computer software as defined in § 44-18-7.1(g)(vii)." R.I. Gen. Laws § 44-18-7.1(g)(vii) reads "[v]endor-hosted prewritten computer software" means prewritten computer software that is accessed through the internet and/or a vendor-hosted server regardless of whether the access is permanent or temporary and regardless of whether any downloading occurs." R.I. Gen. Laws § 44-18-7(9)(i) includes within the definition of "sales" "[t]he furnishing for

consideration of intrastate, interstate, and international telecommunications service sourced in this state in accordance with §§ 44-18.1-15 and 44-18.1-16 and all ancillary services, and any maintenance services of telecommunication equipment other than as provided for in § 44-18-12(b)(ii).”

R.I. Gen. Laws § 44-18-12(a) provides that the term “sales price”:

applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) The seller’s cost of the property sold;
- (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (iv) Delivery charges, as defined in § 44-18-7.1(i);
- (v) Credit for any trade-in, as determined by state law; or
- (vi) The amount charged for services, as defined in § 44-18-7.3.

Under R.I. Gen. Laws § 44-18-25, all gross receipts are presumed to be subject to sales and use tax “until the contrary is established to the satisfaction of the tax administrator. The burden of proving to the contrary is upon the person who makes the sale and the purchaser, unless the person who makes the sale takes from the purchaser a certificate to the effect that the purchase was for resale.”

Taxpayers claiming statutory tax benefits must demonstrate not only that a tax exemption or deduction exists but that they clearly and unequivocally come within the ambit of its provisions. *Cookson v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992); *R.I. Lithograph Corp. v. Clark*, 519 A.2d 589, 591 (R.I. 1987). Furthermore, statutes conferring such tax benefits must be strictly and narrowly construed, *Fleet Credit Corp. v. Frazier*, 726 A.2d 452, 454 (R.I. 1999); *Rice Mach. Co. v. Norberg*, 391 A.2d 66, 70 (R.I. 1978); *Red Fox Gingerale Co. v. Norberg*, 217 A.2d 466, 467 (R.I. 1966), with all doubts and ambiguities resolved against the taxpayer and in favor of the taxing authorities. *Roger Williams Gen. Hosp. v. Littler*, 566 A.2d 948, 950 (R.I. 1989); *Am. Hoescht Corp. v. Norberg*, 462 A.2d 369, 371 (R.I. 1983).

Discussion

Based on the facts provided, the computer courses that Taxpayer sells directly to its customers are “tangible personal property” subject to Rhode Island sales tax pursuant to R.I. Gen. Laws § 44-18-18. Infrastructure as a service (“IaaS”), platform as a service (“PaaS”), and software as a service (“SaaS”) are taxable as long as there is a charge to a Rhode Island customer for the

use of the virtual infrastructure, platform, or for software that is accessed through the internet or on a vendor-hosted server. To the extent Taxpayer charges Rhode Island customers to access its online courses and software services, those charges are taxable as IaaS, PaaS, SaaS, and as part of the sale and/or license of the software to the customer under R.I. Gen. Laws §§ 44-18-7(15), 44-18-8, 44-18-18 and 44-18-12(a).¹

Ruling

Based on the facts provided by Taxpayer, Taxpayer's charges for its online programs and computer software are subject to Rhode Island sales and use tax.

This response is limited to the facts stated therein and may be relied upon by Taxpayer and shall be valid unless (1) expressly revoked; (2) the applicable statutory provisions of law are amended in a manner that requires a different result; (3) the underlying facts described herein materially change; or (4) a decision on point has been issued by the Rhode Island or federal court.

Neena S. Savage
Tax Administrator
September 5, 2023

¹ Taxpayer asserts that the facts as stated in the Ruling Request are aligned with the facts presented in *Gorham, Inc. v. Clark*, No. A.A. 95-2 (R.I. Dist. Ct. May 6, 1996), where the Sixth Division District Court found that the plaintiff's independent artists' ideas of preliminary rendition of potential products were not the real object of the subject transactions and, thus, were not subject to the Rhode Island use tax as tangible personal property. Taxpayer's reliance on *Gorham* is misplaced in light of the facts presented in the Ruling Request. The real object of the transactions involved here is the purchase of Taxpayer's computer software, not Taxpayer's independent thought and analysis of preliminary renditions of incidental value to the real object of the transactions involved. Therefore, the online courses are subject to Rhode Island sales and use tax as tangible personal property.