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## Letter Ruling 11-2: MA Sales/Use Tax; Sales of On-line Services

March 4, 2011

On behalf of your client \*\*\*\*\* (the "Company"), you have requested a letter ruling with respect to the Massachusetts sales and use tax as it applies to sales of \*\*\*\*\* 's new \*\*\*\*\* online services to Massachusetts customers. Specifically, you request a ruling on whether such services are subject to the sales tax imposed under G.L. c. 64H, § 2. The following is your representation of the facts upon which we base this ruling.

### I. FACTS

The Company is a Delaware corporation registered to do business in the Commonwealth of Massachusetts and registered to collect Massachusetts sales and use tax. The Company's corporate headquarters and principal executive offices are located at \*\*\*\*\* New Jersey 07078. The Company is engaged in the business of providing commercial information about the financial condition of businesses to its customers located throughout the U.S. and abroad. This information is provided through the Company's Risk Management Solutions database. This database enables customers to access select financial information to mitigate credit and supplier risk, increase cash flow and drive increased profitability. Information gathering, analysis, formatting/explanation, and dissemination are conducted at the Company's locations in either New Jersey or Pennsylvania. The Company's services include the following:

#### 1. Core Service Offering:

For a subscription fee, the Company's customers can access business information about potential or existing customers and suppliers through the \*\*\*\*\* service offering ("core service offering"). This "core service offering" is an interactive, customizable web-based application that offers users real-time access to the Company's complete and up-to-date global database of more than 110 million businesses. This database allows customers to run searches and create customizable reports containing summary trade data, basic credit scores, legal filings, and general company information.

#### 2. Upgraded Data Packages:

For an additional fee, customers can purchase upgraded data packages that provide access to additional data. The additional fees relating to the upgraded data packages are not separately

invoiced if purchased simultaneously with the Company's core service offering. They are included in the total annual subscription fee as a premium package. Customers who purchase upgraded data packages at a later date receive a separate invoice for the upgraded data packages purchased.

### 3. Workflow Add-ons:

In addition to upgraded data packages, customers can add to their core service offering by purchasing workflow add-ons for an additional fee which will be separately invoiced. These optional add-ons are offered to customers purchasing the "core service offering" and are hosted on the Company's server or on a 3<sup>rd</sup> party server; thus the customer does not receive any software to install on the customer's server. The Workflow add-ons include the following:

1. Decision Making Tool: This is a customizable web-based tool that enables customers to establish rules and approval limits to automate credit decisions. The decision making tool allows companies to make immediate credit decisions on new customers. It provides access to Equifax Bureau and has the ability to verify trade and bank references.

2. Account Manager: This feature manages 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 business information from the Company's databases. A user will be able to enter a set of accounts and rules to trigger labeling for those accounts (*i.e.*, a credit indicator drops below a certain level the account gets flagged for review).

3. Collection Tool: The Collection Tool is an on-demand tool to help manage overall risk exposure. The tool enables a customer to enter invoice level trade details. The Collection Tool provides workflow information related to collection activities.

4. Online Credit Application: The Online Credit Application allows the user to create a customizable credit application to meet their business needs. The application is displayed on the Internet through the Company's servers. The data entered into the application is analyzed by the Company's software and that analysis is made available for the user. The software provides internal automatic alerts when an application is submitted.

5. Web Services: This is a tool that allows for data, decisions, or other account information to be passed back and forth between the Company and customer systems. Web Services allows for integration of the Decision Making Tool and Account Manager.

## II. ISSUES

- 1) Whether Massachusetts customers' purchases of the core service offering and upgraded data packages from the Company are subject to the Massachusetts sales and use tax.
- 2) Whether separately stated charges for the products described as workflow add-ons are subject to the Massachusetts sales and use tax when sold to Massachusetts customers.

## III. RULINGS

- 1) Massachusetts customers' purchases of the core service offerings and updated data packages are not subject to the Massachusetts sales and use tax.
- 2) When sold to Massachusetts customers, the Company's workflow add-ons are subject to the Massachusetts sales and use tax as sales of a right to use prewritten software that is hosted by the Company's or a third party server. These charges are optional and separately stated from the core

service offering and upgraded database charges.

#### IV. LAW AND ANALYSIS

Massachusetts imposes a 6.25% sales tax on sales of tangible personal property and telecommunication services within the Commonwealth including sales of prewritten (also called "canned" or "standardized") software regardless of the method of delivery. The rules relating to tax on computer hardware and software are contained in the Computer Industry Services and Products Regulation, 830 CMR 64H.1.3. Section (3) provides the following:

##### (3) General Rules.

(a) Sales Tax. Sales in Massachusetts of computer hardware, computer equipment, and prewritten computer software, regardless of the method of delivery, and reports of standard information in tangible form are generally subject to the Massachusetts sales tax. Taxable transfers of prewritten software include sales affected in any of the following ways regardless of the method of delivery, including electronic delivery or load and leave: licenses and leases, transfers of rights to use software installed on a remote server, upgrades, and license upgrades. The vendor collects sales tax from the purchaser and pays the sales tax to the Commissioner.

Charges for prewritten software, whether it is electronically downloaded to the customer or accessed by the customer on the seller's server (including the Software as a Service business model) are generally taxable.

The Company provides information services to its customers based on data it gathers on the Web and other sources and then provides this information to its customers in various formats and levels of detail depending on which service options a customer chooses. The Company asserts that this is a nontaxable service. We agree that where the object of the transaction is simply to obtain information, the transaction is not subject to tax. The object of the customers' use of the Company's core service offering and updated data packages is to obtain database access including reports prepared by the Company, rather than the use of the software itself. Thus, the Company's core service offering and updated data packages are nontaxable database access services that allow customers to access information that the Company has gathered.

However, the Company describes the workflow add-ons as services that customers can add to their core service offering by purchasing them for an additional fee which is separately invoiced from the basic or upgraded database packages. These optional add-ons are hosted on the Company's server or on a 3<sup>rd</sup> party server. The sale of a license or right to use software on a server hosted by the taxpayer or a third party, as described in 830 CMR 64H.1.3(3)(a), are taxable under Massachusetts sales and use tax laws. See 830 CMR 64H.1.3(14)(a).

The workflow add-ons are customizable web-based tools that enable customers to establish rules and approval limits to automate credit decisions. Using this software, customers can also enter information concerning their existing accounts and rules to trigger labeling for such accounts (*i.e.*, a credit indicator drops below a certain level the account gets flagged for review). They can manage overall risk exposure of businesses and create a customizable credit application to meet their personal business needs. The data entered into the application is fed into that customer's database for the customer to use on an ongoing basis and without further direct involvement by the Company.

Since the workflow add-ons are optional and generally purchased at a later date and are separately invoiced, they are not included in the non-taxable core service offering and updated data packages. With regard to workflow add-ons, the customer itself is using the Company's software to acquire and manipulate various types of information it chooses with respect to businesses and the customer's accounts receivable. The object of the transaction is to access the Company's software for the

purpose of manipulating information that the customer inputs as well as information from the database to accommodate current business needs. Therefore, we rule that the workflow add-ons are subject to the Massachusetts sales and use tax.

Very truly yours,

/s/Navjeet K. Bal

Navjeet K. Bal  
Commissioner of Revenue

NKB:MTF:wm

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