

**FINAL PRIVATE LETTER RULING**

---

**REQUEST LETTER**

NUMBER

DATE

COMPANY  
ADDRESS 1  
CITY STATE ZIP

Hello:

COMPANY 1 will soon be starting operations in your state and would like to receive a determination of to what degree our services are subject to sales tax. Below is a general description of our business followed by a list of services and offerings that we may choose to provide. Please comment on the sales tax status for each offering noted and the partial extent (percentage of) it may be taxable in the case of a bundled offering that includes both taxable and exempt offerings. Please also provide any specific suggestions or instructions with respect to who to notify in your state or what forms to submit such that when our monthly tax payments are made our handling of them is on record.

Thank you for your assistance and please contact me with any questions or clarifications required.

Regards,

PETITIONER  
COMPANY 1  
ADDRESS  
CITY STATE ZIP  
EMAIL  
PHONE NUMBER

**Business Description:**

COMPANY 2 by COMPANY 1 operates equipment located in travel center (VEHICLE stop) parking lots. DRIVERS pull into parking spaces outfitted with our equipment. A heating, cooling and ventilation unit sits above each parking space. The unit is connected to a Service Delivery Module by means of a flexible hose. The Service Delivery Module attaches to the VEHICLE passenger window and is the delivery mechanism for the conditioned air as well as the power, communications and entertainment offerings.

**Specific offerings:**

**SERVICE 1:** For a single bundled hourly rate, the customer receives heat/air conditioning, the ability to watch a limited set of TV channels if they desire, the ability to plug into a powered electrical outlet, and the ability to access the Internet through a wired connection.

**SERVICE 2:** For a separate charge, customers may gain access to the Internet via our wireless network connection.

**SERVICE 3:** For a separate charge, customers may use an Ethernet connection to access the Internet through our Service Delivery Module.

**SERVICE 4:** For a separate charge, customers may gain access through our Service Delivery Module to additional TV channels not provided in the Basic Service Package.

**SERVICE 5:** For a separate charge, customers can purchase the ability to access and view movies through our Service Delivery Module.

**SERVICE 6:** For a separate charge, customers can purchase just the ability to access a powered electrical outlet through our Service Delivery Module

**SERVICE 7:** For a separate charge, customers may purchase a plastic window adapter that enables the Service Delivery Module to attach to the customer's VEHICLE. The customer typically retains the adapter for future use of our services. The custom adapter has no other use or value.

**RESPONSE LETTER**

DATE

Mr. PETITIONER  
COMPANY 1  
ADDRESS  
CITY STATE ZIP

RE: Private Letter Ruling Request–Sales Tax Treatment of Services Provided to DRIVERS

Dear PETITIONER:

You have requested a ruling on services offered by your COMPANY 1 .You explained that “COMPANY 2 by COMPANY 1” operates specialized equipment at travel centers/VEHICLE stop parking lots. The equipment consists of heating, cooling, and ventilation units installed above individual parking spaces, with each unit connected by a flexible hose to a Service Delivery Module. A VEHICLE driver can pull into a parking space outfitted with this equipment and use a plastic window adapter to attach the Service Delivery Module to his passenger side window. Through this module, the driver can receive conditioned air, power, communications, and entertainment offerings.

You have asked the Commission to rule on the sales tax treatment of seven specific offerings relating to the Service Delivery Modules. We will address each of these offerings separately, after the Applicable Law section below. Additionally, you have asked who to contact for reporting and remittance purposes.

I. Applicable Law

Utah Code § 59-12-103(1) states in part:

A tax is imposed on the purchaser . . . for amounts paid or charged for the following transactions:

- (a) retail sales of tangible personal property made within the state;
- (b) amounts paid for:
  - (i) SERVICE, other than mobile SERVICE, that originates and terminates within the boundaries of this state;
  - . . . .
- (c) sales of the following for commercial use:
  - . . . .
  - (ii) electricity;
  - (iii) heat;
  - . . . .

(d) sales of the following for residential use:

.....

(ii) electricity;

(iii) heat;

.....

(f) . . . amounts paid or charged as admission or user fees for . . . movies, . . . shows of any type or nature, . . . or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

.....

“[T]elecommunications service,” taxable under § 59-12-103(1)(b), is further clarified by Utah Code § 59-12-102(116):

(c) "SERVICE" does not include:

.....

(vi) Internet access service;

.....

(Emphasis added.)

“[C]ommercial use,” in which is taxable under § 59-12-103(1)(c), is defined under Utah Code § 59-12-102:

(21) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (48) or residential use under Subsection (94).

.....

(48) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility,

....

(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(d) by a scrap recycler . . .

(e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a cogeneration facility as defined in Section 54-2-1.

.....

(94) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

For “user fees” found in § 59-12-103(1)(f), Utah Admin. Code R865-19S-108A. provides the following additional guidance:

For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

Utah Code Ann. § 59-12-102(16)(a) defines the term "bundled transaction" in part, as follows:

"Bundled transaction" means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

- (i) distinct and identifiable; and
- (ii) sold for one nonitemized price.

Utah Code Ann. § 59-12-103(2)(d) provides how bundled transactions are taxed. Subsection (2)(d)(i) concerns food items and does not apply for this letter. The remaining subsections are as follows:

- (ii) Subject to Subsection (2)(d)(iii), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i):
  - (A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:
    - (I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or
    - (II) state or federal law provides otherwise; or
  - (B) [Not applicable for this private letter ruling.]
- (iii) For purposes of Subsection (2)(d)(ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

## II. Analysis

We will now analyze each of your seven specific offerings or products.

- 1. SERVICE 1:** For a single bundled hourly rate, the customer receives heat/air conditioning, the ability to watch a limited set of TV channels if they desire, the ability to plug into a powered electrical outlet, and the ability to access the Internet through a wired connection.*

Your first scenario involves the sale of four items: heat/air conditioning, electricity, access to a limited set of TV channels, and access to the Internet through a wired connection. We will first discuss how each of these items is taxed if sold separately.

Sales of heating and air conditioning alone to a VEHICLE driver are taxable under § 59-12-103(1)(c)(iii), as the sale of heat for commercial use. The VEHICLE driver's use is defined as commercial under § 59-12-102(21) because the use is not industrial or residential. The use is not industrial because it is not one of those listed in § 59-12-102(48), and the use is not residential because a VEHICLE cab is not "a home, apartment building, sleeping quarters, [or] similar facilities or accommodations" for § 59-12-102(94).<sup>1</sup>

Sales of electricity alone to a VEHICLE driver are taxable under § 59-12-103(1)(c)(ii), as sales of electricity for commercial use.

Sales of access to a limited set of TV channels alone to a VEHICLE driver are taxable under § 59-12-103(1)(f), as user fees paid or charged for movies, shows, etc. R865-19S-108 clarifies that § 59-12-103(1)(f) covers "television program[s]" if a person accesses the programs "at any location other than the individual's residence." The location of a VEHICLE at a travel center is not the driver's residence; the location of the VEHICLE is temporary, unlike a residence.

Sales of Internet access alone through a wired or other connection are not taxable. Internet access service is not one of the limited services specifically listed in and taxed under § 59-12-103(1). Furthermore, Internet access service is specifically excluded from the definition of SERVICE in § 59-12-102(116)(c)(vi), and is therefore not taxable as such.

Because your first product includes all four services sold for one nonitemized price, your scenario involves a bundled transaction, as defined in § 59-12-102(16)(a). A bundled transaction is "the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are: (i) distinct and identifiable; and (ii) sold for one nonitemized price." You have four distinct services, as discussed above, sold for one price. Your bundled transaction is taxable according to § 59-12-103(2)(d)(A), with "the entire bundled transaction . . . subject to taxation" unless you, the seller, are "able to identify . . . the . . . service that is not subject to taxation [the Internet access service] . . . from the [your] books and records." These records must be kept in your "regular course of business," according to § 59-12-

---

<sup>1</sup> Even if a VEHICLE cab were a sleeping quarter or similar facility, the heating and air conditioning would still be taxable, under § 59-12-103(1)(d)(iii) as sales of such items for residential use.

103(2)(d)(iii). Thus for your situation, the entire transaction for the first scenario is subject to tax unless you as the seller can identify from your books and records the value of the Internet access service that is not subject to tax.

2. **SERVICE 1:** *For a separate charge, customers may gain access to the Internet via our wireless network connection.*

and

3. **SERVICE 2:** *For a separate charge, customers may use an Ethernet connection to access the Internet through our Service Delivery Module.*

As explained previously, a separate charge for Internet access service is not taxable. This result is true regardless of whether access is provided through a wireless or Ethernet connection.

4. **SERVICE 3:** *for a separate charge, customers may gain access through our Service Delivery Module to additional TV channels not provided in the SERVICE.*

As explained previously, a separate charge for TV access is taxable. This is true regardless of whether regular or expanded TV access is provided.

5. **SERVICE 4:** *For a separate charge, customers can purchase the ability to access and view movies through our Service Delivery Module.*

Similar to charges for TV access, a separate charge for movies on demand is taxable under § 59-12-103(1)(f) and R865-19S-108. R865-19S-108 is not limited to television programs; it also specifically includes videos and cable or satellite broadcasts.

6. **SERVICE 5:** *For a separate charge, customers can purchase just the ability to access a powered electrical outlet through our Service Delivery Module*

As explained previously, a separate charge for electricity is taxable.

7. **SERVICE 6:** *For a separate charge, customers may purchase a plastic window adapter that enables the Service Delivery Module to attach to the customer's VEHICLE. The customer typically retains the adapter for future use of our services. The custom adapter has no other use or value.*

The sale of a plastic window adapter is taxable under § 59-12-103(1)(a) as a retail sale of tangible personal property made within the state. This conclusion does not change even if the custom adapter has no other use or value other than with the Service Delivery Module.

### III. Direction on Reporting and Remittance

For information about reporting and remitting tax, you may contact the Taxpayer Services Division at NUMBER or access the COMPANY 3 website at WEBSITE ADDRESS 1 or WEBSITE ADDRESS 2. If your company is collecting payments from VEHICLE drivers, your company should apply for a sales tax account by completing the “Online Business Registration” available at WEBSITE ADDRESS.

#### IV. Conclusions

The sales tax treatments of your specific offerings are as provided below:

##### **Taxable**

- The combined sale of heat/air conditioning, electricity, access to a limited set of TV channels, and access to the Internet through a wired connection. This sale is a bundled transaction, and as such, the entire transaction is subject to taxation unless you, the seller, can separately identify from your books and records the value of the Internet access services that are not subject to tax.
- The separate charge for expanded TV access is taxable.
- The separate charge for movies on demand is taxable.
- The separate charge for electricity is taxable.
- The sale of a plastic window adapter is taxable.

##### **Nontaxable**

- The separate charge for Internet access service, whether through a wireless or an Ethernet connection, is not taxable.

For information on sales and use tax registration and on reporting or remitting, you may contact the Taxpayer Services Division at NUMBER or access the WEBSITE ADDRESS 1.

This ruling is based on current law and could be changed by subsequent legislative action or judicial interpretation. Also, our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, you are welcome to contact the TITLE.

For the TITLE,

RESPONDENT 1  
TITLE