

FINAL PRIVATE LETTER RULING

REQUEST LETTER

10-012

COMPANY 1
ADDRESS 1
ADDRESS 2
CITY, STATE ZIP CODE 1

August 16, 2010

Utah State Tax Commission
ATTN: Technical Research
210 North 1950 West
Salt Lake City, UT 84134

**Re: Utah State Tax Commission Private Letter Ruling Request
COMPANY 2 (FEIN: XX-XXXXXXX)**

To Whom It May Concern:

On behalf of our client COMPANY 2 (“COMPANY 2” or the “Company”), we are formally requesting that the Commissioner of the Utah State Tax Commission (the “Commission”) issue a private letter ruling regarding the applicability of Utah sales and use tax on COMPANY 2’s new PROFESSIONAL REPORT service offering. No audit or litigation is currently pending with the Commission relating to the taxability of COMPANY 2’s new PROFESSIONAL REPORT service offering. To the best of the knowledge of COMPANY 2 and to the undersigned, the Commission has not previously issued a private letter ruling on the same or similar issue for COMPANY 2 or any predecessor. This request is for COMPANY 2’s new PROFESSIONAL REPORT service offering and no taxes have accrued or will accrue prior to the issuance of the ruling with respect to the transactions, events, or facts contained in the request. COMPANY 2 and the undersigned request that the Company’s name, location, and Company specific information relating to its distribution and/or use of the aggregate materials be redacted from the publicly disseminated version of the private letter ruling. The following is a summary of facts surrounding our request.

Facts

COMPANY 2 is a STATE 2 corporation registered to do business in the State of Utah. COMPANY 2 possesses a permit to collect Utah sales and use tax for goods sold. COMPANY 2’s corporate headquarters and principal executive offices are located at ADDRESS 3, STATE 3 ZIP CODE 3. COMPANY 2 is engaged in the business of providing commercial information

about the financial condition of businesses to its customers located throughout the US and abroad. This information is provided through COMPANY 2's Risk Management Solutions database. This database enables customers to access select firmographic and 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 COMPANY 2 locations in either STATE 3 or STATE 4.

Core Service Offerings

For a subscription fee, COMPANY 2 customers will be able to access business information about potential or existing customers and suppliers through COMPANY 2's PROFESSIONAL REPORT service offering. PROFESSIONAL REPORT is an interactive, customizable web-based application that will offer users real-time access to COMPANY 2's complete and up-to-date global database of more than NUMBER AMOUNT businesses for a subscription fee. PROFESSIONAL REPORT'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 data packages will not be separately invoiced if purchased simultaneously with the PROFESSIONAL REPORT 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 and discussed in further detail below. 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. These upgraded data packages will include the following:

Upgraded Data Packages

PACKAGE 1

The PACKAGE 1 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.

PACKAGE 2

The PACKAGE 2 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 has [sic] the ability to receive email notifications of these changes as part of this feature. Credit limit recommendation will be additional data displaying COMPANY 2's recommendation of a

conservative and aggressive credit limit based on COMPANY 2'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.

PACKAGE 3

The PACKAGE 3 will include COMPANY 2 NUMERICAL SCORE, and detailed payment data. COMPANY 2 NUMERICAL SCORE will be additional data which will provide 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.

PACKAGE 4 ("DATA REPOSITORY")

This will be additional data within PROFESSIONAL REPORT that will enable a customer to view data from participating financial institutions on small business lending performance across the banking, credit card, and leasing industries. DATA REPOSITORY will combine the financial performance data with COMPANY 2's trade data to create decision-ready insight that can be used across the customer lifecycle for targeting, underwriting, and portfolio management/marketing. DATA REPOSITORY will be available to customers who participate in the DATA REPOSITORY program and purchase the PACKAGE 3.

PACKAGE 5

Customers will be allocated an amount of data that they will be able to access for international entities as part of the PROFESSIONAL REPORT 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.

PACKAGE 6

The PACKAGE 6 will allow customers to generate reports with a mix of the above data service options and will allow an unlimited quantity of inquiries into the PROFESSIONAL REPORT system.

Workflow Add-ons

In addition to upgraded data packages, users will be able to add to their PROFESSIONAL REPORT service offering by purchasing workflow add-ons for an additional fee. Workflow add-ons will be separately invoiced from the PROFESSIONAL REPORT core service offering and upgraded data packages. Workflow add-ons will include the following:

Decision Making Tool

This will be a customizable web-based tool within PROFESSIONAL REPORT 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 CREDIT REPORT COMPANY and will have the ability to input trade and bank references. The decision making tool will be hosted on the PROFESSIONAL REPORT servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing PROFESSIONAL REPORT.

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 COMPANY 2 business information. A user will be able to load in a set of accounts and rules to trigger labeling for existing accounts (i.e., a credit indicator drops below a certain level the account gets flagged for review). The Account Manager will be hosted on the PROFESSIONAL REPORT servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing PROFESSIONAL REPORT.

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 PROFESSIONAL REPORT.

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 COMPANY 2's servers. The data entered into the application will then be fed into PROFESSIONAL REPORT for the user to act on. PROFESSIONAL REPORT 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 PROFESSIONAL REPORT.

Web Services

This will be a web-based tool within PROFESSIONAL REPORT that will allow for data, decisions, or other account information to be passed back and forth between COMPANY 2 and customer systems. Web Services will allow for the integration of the Decision Making Tool and Account Manager. Web Services will be hosted on the PROFESSIONAL REPORT servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing PROFESSIONAL REPORT core service offering.

Statement of Authorities

Utah statutes provide that sales and use tax is imposed on retail sales of *tangible personal property* and certain enumerated services.¹ Unlike sales of tangible personal property which are generally presumed taxable, sales of services are exempt unless specifically listed as taxable.² Electronic information services are not specifically listed as a taxable service.³

Tangible personal property includes electricity, water, gas, steam, or prewritten computer software.⁴ Computer software is defined as, “a set of coded instructions designed to cause a computer to perform a task; or automatic data processing equipment to perform a task.”⁵ Prewritten computer software is defined as, “computer software that is not designed and developed by the author or other creator of the computer software and to the specifications of a specific purchaser.”⁶

Prewritten computer software is subject to sales and use tax, regardless of whether the software is delivered electronically or by use of tangible storage media.”⁷

COMPANY 2 believes that there are no authorities contrary to the above statutes, regulations and administrative decisions.

Ruling Requested

Please respond to the following questions:

1. Will COMPANY 2’s PROFESSIONAL REPORT core service offering and upgraded data packages be considered electronic information services and therefore exempt from Utah sales and use tax, or will they be considered prewritten computer software and therefore subject to Utah sales and use tax?
2. Will COMPANY 2’s Decision Making Tool, which will be an add-on to PROFESSIONAL REPORT’s core service offering, be considered electronic information services and therefore exempt from Utah sales and use tax, or will it be considered prewritten computer software and therefore subject to Utah sales and use tax?
3. Will COMPANY 2’s Account Manager, which will be an add-on to PROFESSIONAL REPORT’s core service offering, be considered electronic information services and therefore exempt from Utah sales and use tax, or will it be considered prewritten computer software and therefore subject to Utah sales and use tax?

¹ Utah Code Ann. § 59-12-103

² Id.

³ Id.

⁴ Utah Code Ann. § 59-12-102

⁵ Id.

⁶ Id.

⁷ Id.

4. Will COMPANY 2's Collection Tool, which will be an add-on to PROFESSIONAL REPORT's core service offering, be considered electronic information services and therefore exempt from Utah sales and use tax, or will it be considered prewritten computer software and therefore subject to Utah sales and use tax?
5. Will COMPANY 2's DATA REPOSITORY, which will be an add-on to PROFESSIONAL REPORT's core service offering when purchased with the PACKAGE 3, be considered electronic information services and therefore exempt from Utah sales and use tax, or will it be considered prewritten computer software and therefore subject to Utah sales and use tax?
6. Will COMPANY 2's Online Credit Application, which will be an add-on to PROFESSIONAL REPORT's core service offering, be considered electronic information services and therefore exempt from Utah sales and use tax, or will it be considered prewritten computer software and therefore subject to Utah sales and use tax?
7. Will COMPANY 2's Web Services, which will be an add-on to PROFESSIONAL REPORT's core service offering, be considered electronic information services and therefore exempt from Utah sales and use tax, or will it be considered prewritten computer software and therefore subject to Utah sales and use tax?

COMPANY 2's Interpretation of the Law

Question 1

COMPANY 2 believes the PROFESSIONAL REPORT core service offering and upgraded data packages will be considered electronic information services and therefore exempt from Utah sales and use tax.⁸ The PROFESSIONAL REPORT core service offering and upgraded data packages will provide business and financial information through a database accessed through the internet. The PROFESSIONAL REPORT core service offering and upgraded data packages will not fall within the definitions of tangible personal property or prewritten computer software.⁹ COMPANY 2 does not believe that tangible personal property will be transferred to COMPANY 2's customers as part of the PROFESSIONAL REPORT core service offering or upgraded data packages. Due to the fact that Utah does not impose sales and use tax on electronic information services and the PROFESSIONAL REPORT core service offering and upgraded data packages will not fall within the definitions of tangible personal property or prewritten computer software, COMPANY 2 believes these offerings will not be subject to Utah sales and use tax.¹⁰

Question 2

⁸ Utah Code Ann. § 59-12-103

⁹ Utah Code Ann. § 59-12-102

¹⁰ Utah Code Ann. § 59-12-103

COMPANY 2 believes the Decision Making Tool, which will be an add-on to PROFESSIONAL REPORT's core service offering, will be considered an electronic information service and therefore not subject to Utah sales and use tax.¹¹ The Decision Making Tool will not fall within the definitions of tangible personal property or prewritten computer software.¹² The Decision Making Tool will be a web-based add-on within PROFESSIONAL REPORT that will enable a customer to set rules and approval limits to automate credit decisions. The Decision Making Tool will remain on COMPANY 2's server and will not be transferred to customers' computers. Based on the above, COMPANY 2 believes the Decision Making Tool will be considered an electronic information service and therefore not subject to Utah sales and use tax.¹³

Question 3

COMPANY 2 believes the Account Manager, which will be an add-on to PROFESSIONAL REPORT's core service offering, will be considered an electronic information service and therefore not subject to Utah sales and use tax.¹⁴ The Account Manager will not fall within the definitions of tangible personal property or prewritten computer software.¹⁵ The Account Manager will be a web-based add-on within PROFESSIONAL REPORT that will manage the risk of a customer's accounts receivable data, and the latest and most complete COMPANY 2 business information. Customers will load in a set of accounts and rules to trigger labeling for existing accounts. The Account Manager will remain on COMPANY 2's server and will not be transferred to customers' computers. Based on the above, COMPANY 2 believes the Account Manager will be considered an electronic information service and therefore not subject to Utah sales and use tax.¹⁶

Question 4

COMPANY 2 believes the Collection Tool, which will be an add-on to PROFESSIONAL REPORT's core service offering, will be considered an electronic information service and therefore not subject to Utah sales and use tax.¹⁷ The Collection Tool will not fall within the definitions of tangible personal property or prewritten computer software.¹⁸ The Collection Tool will be a web-based add-on within PROFESSIONAL REPORT that will enable a customer to load in invoice level trade details. The Collection Tool will then provide workflow information related to collection activities. The Collection Tool will not be transferred to customers' computers. Based on the above, COMPANY 2 believes the Collection Tool will be considered an electronic information service and therefore not subject to Utah sales and use tax.¹⁹

¹¹ Id.

¹² Utah Code Ann. § 59-12-102

¹³ Utah Code Ann. § 59-12-103

¹⁴ Id.

¹⁵ Utah Code Ann. § 59-12-102

¹⁶ Utah Code Ann. § 59-12-103

¹⁷ Id.

¹⁸ Utah Code Ann. § 59-12-102

¹⁹ Utah Code Ann. § 59-12-103

Question 5

COMPANY 2 believes DATA REPOSITORY, which will be additional data within PROFESSIONAL REPORT when purchased with the PACKAGE 3, will be considered an electronic information service and therefore not subject to Utah sales and use tax.²⁰ DATA REPOSITORY will not fall within the definitions of tangible personal property or prewritten computer software.²¹ DATA REPOSITORY will combine the financial performance data with COMPANY 2's trade data to create decision-ready insight. DATA REPOSITORY will remain on COMPANY 2's server and will not be transferred to customers' computers. Based on the above, COMPANY 2 believes DATA REPOSITORY will be considered an electronic information service and therefore not subject to Utah sales and use tax.²²

Question 6

COMPANY 2 believes the Online Credit Application, which will be an add-on to PROFESSIONAL REPORT's core service offering, will be considered an electronic information service and therefore not subject to Utah sales and use tax.²³ The Online Credit Application will not fall within the definition of tangible personal property or prewritten computer software.²⁴ The Online Credit Application will be a web-based add-on within PROFESSIONAL REPORT that will enable customers to create customizable credit applications to meet their business needs. The data entered into the application will then be fed into PROFESSIONAL REPORT for the customer to act on. The Collection Tool will remain on COMPANY 2's server and will not be transferred to customers' computers. Based on the above, COMPANY 2 believes the Online Credit Application will be considered an electronic information service and therefore not subject to Utah sales and use tax.²⁵

Question 7

COMPANY 2 believes Web Services, which will be an add-on to PROFESSIONAL REPORT's core service offering, will be considered an electronic information service and therefore not subject to Utah sales and use tax.²⁶ Web Services will not fall within the definition of tangible personal property or prewritten computer software.²⁷ Web Services will be a web-based tool within PROFESSIONAL REPORT that will allow for data, decisions, or other account information to be passed back and forth between COMPANY 2 and customer systems. Web Services will allow for the integration of the Decision Making Tool and Account Manager. Web Services will remain on COMPANY 2's server and will not be transferred to customers'

²⁰ Id.

²¹ Utah Code Ann. § 59-12-102

²² Utah Code Ann. § 59-12-103

²³ Id.

²⁴ Utah Code Ann. § 59-12-102

²⁵ Utah Code Ann. § 59-12-103

²⁶ Id.

²⁷ Utah Code Ann. § 59-12-102

computers. Based on the above, COMPANY 2 believes Web Services will be considered an electronic information service and therefore not subject to Utah sales and use tax.²⁸

Thank you in advance for your cooperation and consideration of this request. Should you or your staff have any questions or concerns, please do not hesitate to contact NAME 2 or myself. Our contact information is as follows:

NAME 1
PHONE NUMBER 1
E-MAIL 1

NAME 2
PHONE NUMBER 2
E-MAIL 2

Respectfully submitted,

NAME 1, TITLE 1, COMPANY 1 LLC

Enclosures

Copy to: NAME 3, COMPANY 2

²⁸ Utah Code Ann. § 59-12-103

RESPONSE LETTER

December 7, 2012

NAME 1, TITLE 1
COMPANY 1 LLC
ADDRESS 1
ADDRESS 2
CITY, STATE ZIP CODE 1

RE: Private Letter Ruling Request–Sales Tax Treatment of Web-Based Database Services

Dear NAME 1:

You have requested a ruling on behalf of your client, COMPANY 2 (“COMPANY 2”) on the Utah sales and use tax treatment of COMPANY 2’s new PROFESSIONAL REPORT services.

You explained that for subscription fees, customers can purchase the PROFESSIONAL REPORT services, allowing access through the internet to COMPANY 2’s web-based application and its Risk Management Solutions database. With the PROFESSIONAL REPORT services, customers can run searches and generate customized reports. The subscription fees vary when upgraded data packages and/or workflow add-ons are purchased in addition to the PROFESSIONAL REPORT core services.

You described several upgraded data packages, including the PACKAGE 1, PACKAGE 2, the PACKAGE 3, the PACKAGE 4 (“DATA REPOSITORY ”), International Data, and the PACKAGE 6. Overall, these packages allow customers to access COMPANY 2’s additional data, predictions, recommendations, and alerts. COMPANY 2 may or may not separately invoice the upgraded data packages from the PROFESSIONAL REPORT core service.

You have also described several workflow add-ons, including the Decision Making Tool, the Account Manager, the Collection Tool, the Online Credit Application, and Web Services. With these add-ons, customers can generate reports and forms and receive recommendations and notifications based not only on data from the COMPANY 2’s database but also on data supplied by the customers. COMPANY 2 separately invoices the add-ons.

Based on the information you presented, it appears that for all offerings customers do not install on their servers any software from COMPANY 2. Instead, COMPANY 2’s database, web-based application, and workflow add-ons are all installed on either COMPANY 2’s or third parties’ servers.

After the Applicable Law section below, we provide our ruling on the sales tax treatment of the PROFESSIONAL REPORT core service, upgraded data packages, and workflow add-ons.

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;

....

Utah Code § 59-12-102(104) defines sale as follows in part:

- (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

- (b) "Sale" includes:

....

- (v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

Utah Code § 59-12-102(118), which was recently amended, defines tangible personal property and states in part:

....

- (b) "Tangible personal property" includes:

....

- (v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

Utah Code § 59-12-102(88) defines prewritten computer software as follows in part:

- (a) "prewritten computer software" means computer software that is not designed and developed:

- (i) by the author or other creator of the computer software; and
- (ii) to the specifications of a specific purchaser.

....

Utah Code § 59-12-102(27) defines computer software as follows:

"Computer software" means a set of coded instructions designed to cause:

- (a) a computer to perform a task; or
- (b) automatic data processing equipment to perform a task.

Utah Code § 59-12-211(12), which was recently amended, provides the location of certain sales of the use of computer software as follows:

- (a) Notwithstanding any other provision of this section and except as provided in Subsection (12)(b), if a purchaser uses computer software and there is not a transfer of a copy of that software to the purchaser, the location of the transaction is determined in accordance with Subsections (4) and (5).
- (b) If a purchaser uses computer software described in Subsection (12)(a) at more than one location, the location of the transaction shall be determined in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Subsections (4) and (5) state:

- (4) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), if Subsection (2) or (3) does not apply, the location of the transaction is the location indicated by an address for or other information on the purchaser if:
 - (a) the address or other information is available from the seller's business records; and
 - (b) use of the address or other information from the seller's records does not constitute bad faith.
- (5) (a) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), if Subsection (2), (3), or (4) does not apply, the location of the transaction is the location indicated by an address for the purchaser if:
 - (i) the address is obtained during the consummation of the transaction; and
 - (ii) use of the address described in Subsection (5)(a)(i) does not constitute bad faith.
- (b) An address used under Subsection (5)(a) includes the address of a purchaser's payment instrument if no other address is available.

Under Subsections (4), (5), and (12) of § 59-12-211, sales involving a purchaser's use of computer software without the transfer of the software are generally located at the purchaser's address. The other subsections referenced in those subsections do not change this fact.¹ For

¹Subsections (2) and (3) of § 59-12-211 involve situations in which purchasers takes receipt of property; these subsections do not apply to the situation at hand, where there is not a transfer of computer software. Subsection (10) instructs how the location of a transaction is determined using ZIP Codes, and Subsection (7) provides specific instruction for shared ZIP Code situations. These subsections do not directly apply to the issue presented of whether the PROFESSIONAL REPORT services are subject to Utah sales tax. Subsections (8), (9), and (11), involve direct payment permits, direct mail purchases, and florists and do not appear to apply to the situation at hand. Subsection (14) provides specific direction for sales of certain telecommunications services, vehicles, and homes; for leases or rentals of tangible personal property; for use tax paid; and for certain sales by sellers receiving orders in this state;

more direction on the application of § 59-12-211 to COMPANY 2's situation, you may contact the Taxpayer Services Division, Technical Research Unit by phone at 801-297-7705, by email at taxmaster@utah.gov or by mail at 210 N 1950 W, Salt Lake City UT 84134.

II. Analysis

In considering your request, we first note that your reference to the term "services" may not actually characterize the nature of the products or transactions. For our analysis, we consider each item's overall characteristics when determining whether the item is a non-taxable service or a taxable sale of either tangible personal property or another taxable item.

Based on our analysis, explained in the sections below, we conclude that sales of the PROFESSIONAL REPORT core services and the upgraded data packages are not subject to Utah sales tax, but the sales of the workflow add-ons to customers located in Utah are subject to Utah sales tax under § 59-12-103(1) subsection (1)(a), as "retail sales of tangible personal property made within the state." Below are separate analyses for PROFESSIONAL REPORT core services, upgraded data packages, and workflow add-ons.

A. PROFESSIONAL REPORT Core Services

The PROFESSIONAL REPORT core services involve access to both computer software and a database, those being the COMPANY 2's web-based application software and the COMPANY 2's Risk Management Solutions database, respectively. The software and the database work closely together and are sold for one price; they are not distinct from each other. In this case, the object of the transaction is the use of the database.

The sale of use of the database is not taxable under § 59-12-103 because the use of the database is a service that is not specifically listed as taxable in § 59-12-103. Based on the language found in § 59-12-102(122)(c)(iv), providing access to the PROFESSIONAL REPORT database should be treated as a service, and, more specifically, as a data processing and information service rather than as a product transferred electronically or the use of tangible personal property. Utah Code § 59-12-102(122)(c)(iv) defines a data processing and information service as follows:

(c) "Telecommunications service" does not include:

.....

(iv) **a data processing and information service if:**

(A) the data processing and information service allows data to be:

- (I) (Aa) acquired;
- (Bb) generated;
- (Cc) processed;

Subsection (14) generally does not apply. However, for the lease or rental of tangible personal property, Subsection (14) may apply; it directs readers to § 59-12-214. Under § 59-12-214 some periodic payments that are required and recurring are located at the primary property location, as defined in the § 59-12-214(1), rather than simply at the purchaser's address according to § 59-12-211.

- (Dd) retrieved; or
 - (Ee) stored; and
 - (II) delivered by an electronic transmission to a purchaser; and
 - (B) the purchaser's primary purpose for the underlying transaction is the processed data or information;
-

(Emphasis added.)

Although the definition of a data processing and information service is not separately listed but is instead provided within the definition of “telecommunications service,” the existence of a data processing and information service is recognized in the Utah Code. Furthermore, the Utah Code does not later specifically list that service as taxable in § 59-12-103. Applying the definition found in § 59-12-102(122)(c)(iv), the PROFESSIONAL REPORT core services are data processing and information services. The PROFESSIONAL REPORT core services allow the customers to acquire through electronic transmissions the processed data retrieved from the PROFESSIONAL REPORT database and the customers’ primary purpose for the PROFESSIONAL REPORT core services is the processed data. In conclusion, the PROFESSIONAL REPORT core services are not taxable because they are data processing and information services, which are not listed as taxable in § 59-12-103, and also the PROFESSIONAL REPORT core services are not within the meanings of the other services that are listed as taxable in § 59-12-103.

B. Upgraded Data Packages

For the upgraded data packages, the object of the transaction is use of additional data. The sales of the upgraded data packages are not taxable under § 59-12-103 for the same reasons as the sales of the PROFESSIONAL REPORT core services are not taxable.

C. Workflow Add-ons

For sales of the workflow add-ons, the object of the transaction is use of prewritten computer software. The workflow add-ons instruct a computer on how to perform a task, thus they meet the definition of computer software found in § 59-12-102(27). Furthermore, because the software does not appear to be developed or modified by COMPANY 2 for specific customers, it is also prewritten computer software, as defined in § 59-12-102(88).

All prewritten computer software, including COMPANY 2’s, is tangible personal property, according to § 59-12-102(118)(b)(v). The Utah Legislature recently amended the statute to read: “‘Tangible personal property’ includes: . . . (v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.” Our previous private letter rulings that treated certain prewritten computer software as a product transferred electronically no longer apply because of the change to § 59-12-102(118)(b)(v).

Sales of workflow add-ons are sourced within this state when customers are located in Utah. Subsection (12) of § 59-12-211 applies to transactions involving computer software used

by, but not transferred to, a purchaser. Under subsection (12), sales are sourced based on the customers' addresses. Our previous private letter rulings which sourced the sales based on the locations of the sellers' servers are no longer applicable because of subsection (12).

III. Conclusion

As explained above, COMPANY 2's sales of the PROFESSIONAL REPORT core services and the upgraded data packages are not subject to Utah sales tax, but the sales of the workflow add-ons to customers located in Utah are subject to Utah sales tax under § 59-12-103(1) subsection (1)(a), as "retail sales of tangible personal property made within the state. Although you refer to the workflow add-ons as part of the services offered by COMPANY 2, the essence of the transaction for the workflow add-ons is for customers to use COMPANY 2's workflow add-ons software.

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 Commission.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
10-012