

**FINAL - PRIVATE LETTER RULING**

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**REQUEST LETTER**

11-001

December 17, 2010

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

Re: Request for Private Letter Ruling – Sales/Use Tax on Digital Certificate and Authentication/Resolution Services

To whom it may concern:

On behalf of our client, (hereinafter "Taxpayer"), we are requesting a private letter ruling from the Utah State Tax Commission ("Tax Commission") regarding the sale of authentication and resolution services on a subscription basis through provision of a digital certificate.

**DESCRIPTION OF SERVICES**

The Taxpayer is a provider of authentication solutions for businesses and individuals seeking to perform secure electronic commerce and communications over the internet. One such solution is the provision of a digital certificate and authentication and resolution services on a subscription basis.

Digital certificates are commonly used to facilitate the secure transmissions between end user browsers and the Taxpayer's customers' ("customers") servers. A digital certificate allows an end user to recognize that they are, indeed, accessing the customers' server. For illustration purposes, assume "WEB ADDRESS" is a customer of the Taxpayer. An end user of "WEB ADDRESS" will access the website and know that they are accessing the real "WEB ADDRESS" site and not a fraudulent site, because a symbol will appear on the real "WEB ADDRESS" site, indicating that the website is authenticated by the Taxpayer. This symbol serves as the visible indication on the end user's screen that the customer's site is who it purports to be.

A digital certificate is provided through an online process, and the first step in this process is the customer's access of the Taxpayer's online portal to complete a registration form. As part of the customer's request of a certificate through registration, a private and public key pair is generated by the customer's web server. The private key is retained by the customer on its web server. The public key is part of the customer's information sent to the Taxpayer in the registration process.

The Taxpayer performs all due diligence necessary to authenticate the identity of the applicant, the related website and business, and the information presented by the customer during the registration process, including the public key. Once the Taxpayer authenticates the identity of the applicant, a digital certificate is electronically sent to the customer. A digital certificate is a flat file containing: the customer's public key, metadata that includes the certificate expiration date, the certificate owners' name, the name of the issuer (certification authority, i.e. the Taxpayer), serial number of the certificate, and an electronic signature of the issuer.<sup>1</sup> The flat file does not contain binary code.

The digital certificate is installed by the customer on a customer's web server. When end users connect to the customer's server through a web browser, the browser establishes the authenticity of the digital certificate (and thus the authenticity of the web site) by mathematically proving that the certificate presented by the customer's web server was digitally signed by the Taxpayer. The digital certificate also contains the aforementioned public key. It is described as a "public" key because the digital certificate (and key contained therein) is readily viewable by any browser.

The end user's web browser creates a session key that is used to encrypt the transmission between the customer's server and the end user's browser. However, the end user's browser must first use the public key to encrypt the session key and then transmit the session key to the web server. The web server will use the private key to decrypt the session key so that both the web server and browser can begin using the session key for the encrypted transmissions. After the initial handshake between the browser and web server, the session key is used for the encryption of the transmissions. The encryption strength of the transmission is directly related to the bit length of the session key. The encryption/decryption is performed by the cryptographic software built into the web browser and customer's server. This software is not provided by the Taxpayer.

In addition to authenticating the digital certificate and website, the end user's browser communicates with the Taxpayer's servers to verify that the digital certificate is valid and not revoked (resolution service). The charges for the authentication service, digital certificate, and resolution service are part of a lump sum subscription charge and must be renewed periodically.

## **ISSUE**

Whether the Taxpayer's sales of authentication services via provision of a digital certificate to the Taxpayer's customers for consideration are subject to the Utah sales/use tax when provided to customers located in Utah.

## **OUR POSITION**

Based on the available law, it appears that the Taxpayer's sales of authentication services via provision of a digital certificate to the Taxpayer's customers would not be subject to Utah sales

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<sup>1</sup> Note that the exact contents of a certificate adhere to certain established standards such as the "X509" standard that specifies what can or cannot be contained on a certificate.

and use tax as the transaction is entirely service-based and does not involve the transfer of software, tangible personal property, or other materials.

## **BASIS FOR OUR POSITION**

### **I. The digital certificates issued by the Taxpayer to its customers are not delivered via a tangible medium and are not computer software.**

Under Utah law, tax is imposed on the retail sales of tangible personal property.<sup>2</sup> Tangible personal property is defined as “personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses” and includes “electricity, water, gas, steam, or prewritten computer software.”<sup>3</sup> Prewritten computer software is subject to tax regardless of whether it is delivered in tangible form or electronically.<sup>4</sup> Utah defines computer software as “a set of coded instructions designed to cause a computer to perform a task; or automatic data processing equipment to perform a task.”<sup>5</sup>

Utah is an associate member state of the Streamlined Sales and Use Tax Agreement (“SSUTA”) and in its SSUTA taxability matrix notes that it imposes tax on products transferred electronically such as digital audio visual works, digital audio works, or digital books.<sup>6</sup> Utah imposes tax on products that are transferred electronically and would be subject to tax if the product was transferred in a manner other than electronically.<sup>7</sup>

The digital certificates provided by the Taxpayer do not constitute computer software as they do not provide a set of coded instructions designed to perform a task. Likewise, the digital certificates would not be subject to tax if they were transferred in a manner other than electronically. The certificate is a flat file containing only information (a public key, metadata with information such as certificate expiration date, the certificate owners name, name of the issuer, serial number, electronic signature, etc.). The flat file does not contain binary code and does not dictate statements, data or instructions that is used directly or indirectly to bring about a certain result. The digital certificates are akin to information conveyed digitally. The digital certificates do not fall within the definition of tangible personal property and as such, the transaction should not be subject to Utah sales and use tax.

### **II. The services associated with authenticating the digital certificate are not taxable services in the state.**

Utah does not impose tax on services unless specifically enumerated in its statute.<sup>8</sup> Included in these taxable services are certain telecommunications services;<sup>9</sup> however, Utah statute notes that

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<sup>2</sup> Utah Code Ann. § 59-12-103(1); Utah Admin. Code R865-19S-2(1).

<sup>3</sup> Utah Code Ann. § 59-12-102(111)(a) & (b).

<sup>4</sup> Utah Code Ann. § 59-12-103(1)(m).

<sup>5</sup> Utah Code Ann. § 59-12-102(25).

<sup>6</sup> Utah Streamlined Sales Tax Governing Board, Section 328 Taxability Matrix.

<sup>7</sup> Utah Code Ann. § 59-12-103(1)(m).

<sup>8</sup> Utah Code Ann. § 59-12-103(1); Utah Admin. Code R865-19S-2(1).

<sup>9</sup> Utah Code Ann. § 59-12-103(1)(b).

telecommunications services do not include “data processing or information services if the data processing and information service allows data to be acquired, generated, processed, retrieved, or stored and delivered by electronic transmission.”<sup>10</sup> Furthermore, the Tax Commission has held that the real object test should be used in determining the taxability of services. When the real object of a sale is a nontaxable service, the transaction is not subject to tax.<sup>11</sup>

As discussed herein, the Taxpayer provides no tangible personal property with its digital certificates. Similarly, there is no computer software transferred with the authentication services provided. Authentication services consist primarily of due diligence procedures to verify the identity of its customer (and the customer’s website). Once verified, the digital certificate is installed by the customer onto the customer’s server. All further encryption and decryption is performed entirely by software built into the web browser and the customer’s server. This is not software provided by the Taxpayer. As such, the authentication services provided by the Taxpayer do not constitute an enumerated taxable service.

**III. The resolution services provided by the Taxpayer to verify the digital certificate are not taxable services in the state.**

The resolution service is provided by the Taxpayer after the digital certificate is obtained. This service involves the communication of the end user’s browser with the Taxpayer’s server to verify that the digital certificate is, indeed, valid and not revoked. This resolution service is not taxable for the reasons stated in Part II. The service is not enumerated as taxable by Utah law, and does not involve any tangible media.

**Requested Action**

We respectfully request that the Utah State Tax Commission review the stated facts and issue a ruling that the Taxpayer’s digital certificate, authentication services and resolution services are not subject to Utah sales and use tax.

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If you have any questions, please contact me at NUMBER or NAME1 at NUMBER1.

Thank you,

NAME  
*Partner*

cc: NAME1, COMPANY – CITY

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<sup>10</sup> Utah Code Ann. § 59-12-102(116)(c).

<sup>11</sup> *Eaton Kenway, Inc. v. Auditing Division of the Utah State Tax Commission*, 906 P2d 882 (11/06/1995); Utah Advisory Opinion 96-154DJ (10/21/1996).

## RESPONSE LETTER

September 9, 2011

NAME, Partner  
COMPANY  
ADDRESS

RE: Private Letter Ruling Request—Sales Tax Treatment on Digital Certificate and Authentication/Resolution Services

Dear NAME:

You have asked the Commission to rule on whether your client's (the "Taxpayer's") sales of authentication and resolution services, using a digital certificate, are subject to the Utah sales and use tax when the customers are located in Utah.

According to your request letter, the Taxpayer performs authentication services for its customers, e.g. online retailers, ("Retailers"), some of which are located in Utah. After a Retailer makes an online request for authentication services, the Taxpayer authenticates the Retailer's identity, website, and other registration information and then provides the Retailer with a digital certificate. The digital certificate is a computer file containing limited information, such as the Retailer's name and public key, the certificate's serial number and expiration date, and the Taxpayer's name and electronic signature. The contents of the digital certificate must adhere to certain established standards such as the X509 standard. When a Retailer receives a digital certificate file, it installs that file on its server. The digital certificate file on the Retailer's server is accessed by both web servers and customers' internet browsers to authenticate the Retailer and facilitate secure transactions. When a customer connects to a Retailer's website, her internet browser interacts with a web server. The web server accesses the digital certificate file on the Retailer's server and verifies the Taxpayer's signature with a mathematical calculation. Additionally, the customer's internet browser communicates with the Taxpayer's server to verify that the Retailer's digital certificate is valid and not revoked. The Taxpayer provides resolution services when it responds to the internet browser requests. For the authentication and resolution services and the digital certificate, the Taxpayer charges the Retailer a lump sum subscription charge, which must be renewed periodically.

After the Applicable Law section below, we will analyze the sales tax treatment of the Taxpayer's services and digital certificate.

## I. Applicable Law

Utah Code § 59-12-103(1), enumerating the transactions that are subject to Utah sales and use tax, 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;

. . . .

(m) amounts paid or charged for a sale:

(i) (A) of a product transferred electronically . . .

. . . .

Utah Code § 59-12-102(83) defines a product transferred electronically and states in part:

(a) . . . "product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.

Utah Code § 59-12-102(16) defines a bundled transaction and states in part:

(a) "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.

## II. Analysis

The Taxpayer's authentication and resolution services and the digital certificates transferred in connection with those services are not subject to Utah sales and use tax. Sales of authentication and resolution services are not among the taxable transactions enumerated in Utah Code § 59-12-103(1).

The digital certificates are part of the non-taxable authentication services. The digital certificates are not distinct or separate from those services because the certificates cannot be provided separate from those services; the certificates essentially state that the services were performed. Based on these facts, the transfers of the digital certificates are not taxable sales of tangible personal property or products transferred electronically. Likewise, the transfers of the digital certificates are not part of bundled transactions because the digital certificates are not "distinct" from the services.<sup>1</sup>

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<sup>1</sup> Even if the certificates were considered to be distinct from the authentication service and considered tangible personal property, we would consider them incidental to the transaction and, therefore, not taxable.

### III. Conclusion

The Taxpayer's sales of authentication and resolution services and the transfers of the digital certificates are not subject to Utah sales and use tax. 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,

Michael J. Cragun  
Commissioner

MJC/aln  
11-001