

**FINAL PRIVATE LETTER RULING**

---

**REQUEST LETTER**

12-005

COMPANY 1  
NAME 1, TITLE 1  
ADDRESS 1  
CITY, STATE ZIP CODE 1  
FAX NUMBER 1  
HOME PHONE NUMBER 1  
E-MAIL 1

March 15, 2012

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

**SENT VIA EMAIL** [taxmaster@utah.gov](mailto:taxmaster@utah.gov)

To whom it may concern:

We are requesting a private letter ruling on behalf of an unnamed taxpayer (the “Company”) as to the receipts factor of income tax apportionment resulting from service income performed in Utah laboratories on behalf of non-Utah clients (“Clients”).

**Facts**

The Company performs laboratory testing services on behalf of Clients. In a typical transaction, the Client ships inanimate objects or SAMPLE 1 or SAMPLE 2 to the Company’s Utah laboratories to be tested. In most cases, the items or SAMPLE are not returned to the Client, but are simply analyzed, stored and eventually destroyed. As a result of the testing services, the Company conveys electronically the results of the testing services to the Client, and has support staff to discuss the results of the testing service with the Client, if requested.

The Company has sales offices throughout the United States through which it solicits services to Clients and prospective clients. In addition, the Company provides computers and peripheral equipment to Clients, in addition to containers, packing materials, etc. to facilitate the Client’s use of the Company’s services. These activities give the Company taxable nexus in most of its Client’s states.

## Issue

Over the past five years, about one-fourth of all states have revised their income tax apportionment rules to source services to the “market state”, rather than the rule traditionally followed by the most [sic] other states (where income producing activity takes place under UDITPA). Utah’s apportionment regulations follow the market state trend, but uses unique language from other “market” states. Because of the Utah’s [sic] unique language, it appears that the Company’s receipts will not be source to either the service provider state or the customers’ states, creating a windfall to the Company. The Company seeks confirmation of this conclusion by the Tax Commission before it implements this tax position.

Under Utah law, in which state does the purchaser receive the greater benefit of the service—in the state of the testing service (Utah) or in the Client’s state?

## Discussion of law

Utah Code Sec. 59-7-319. Circumstances under which a receipt, rent, royalty, or sale is considered to be in this state.

(3) (a) Subject to Subsection (3)(b), a receipt from the performance of a service is considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state.

**Utah Regulation R865-6F-8.** Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

(g) Receipts from the Performance of Services.

(i) Under Subsection 59-7-319(3), gross receipts from the performance of a service are considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state. In general, the “benefit of the service” approach under the statute reflects a market based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located.

\* \* \*

(iii) The benefit from performance of a service is in this state if any of the following conditions are met:

(A) The service relates to tangible personal property and is performed at a purchaser’s location in this state.

(B) The service relates to tangible personal property that the service provider delivers directly or indirectly to a purchaser in this state after the service is performed.

(C) The service is provided to an individual who is physically present in this state at the time the service is received.

(D) The service is provided to a purchaser exclusively engaged in a trade or business in this state and relates to that purchaser’s business in this state.

(E) The service is provided to a purchaser that is present in this state and the service relates to that purchaser's activities in this state.

Under the Utah regulation, it is somewhat unclear how the Utah Tax Commission would source the Utah based testing services to Utah. Under paragraph (A), the service DOES relate to tangible personal property BUT IS NOT performed at a purchaser's location in this state. Paragraph (B) only applies when the service provider delivers the property to Utah after the service is performed. Paragraph (C) applies only when a "person"—not a component of a person—is physically present in Utah. Paragraph (D) and (E) simply do not apply. Accordingly, it does not appear that the any gross receipts of the Company will be attributed to Utah under Utah Regulation R865-6F-8.

On the other hand, Wisconsin's regulations contain the standard language used by "market states": [Wisconsin Law 71.25 Situs of income; allocation and apportionment, para. 9(dh), emphasis added]

1. Gross receipts from services are in this state if the purchaser of the service received the benefit of the service in this state.
2. The benefit of a service is received in this state if any of the following applies:
  - a. The service relates to real property that is located in this state.
  - b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.
  - c. The service is provided to an individual who is physically present in this state at the time that the service is received.
  - d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

Under this provision, it would appear that the service would be sourced to the location of the tangible personal property being tested if the service related to tangible personal property. In the Company's case, that state would always be Utah. Of course, only Wisconsin, not the Utah Tax Commission, may confirm this legal conclusion.

### **Ruling Requested**

The Company respectfully requests that the Tax Commission confirms that none of the receipts will be sourced to Utah notwithstanding the fact that few, if any other states, are able (under their respective statutes and regulations) to source the receipts from testing services to the Client's states.

Yours very truly,

NAME 1

## RESPONSE LETTER

---

November 28, 2012

Mr. NAME 1, TITLE 1  
COMPANY 1  
ADDRESS 1  
CITY, STATE ZIP CODE 1

Re: Private Letter Ruling Request on the Application of Utah Code Title 59, Chapter 7, Part 3 and Utah Admin. Code R865-6F-8 to Laboratory Testing Services Performed in Utah for Out-of-State Customers

Dear NAME 1:

On behalf of an unnamed taxpayer (“Company”), you are requesting additional direction about the application of the sales factor found in Utah Code § 59-7-317 to the transactions you presented. This factor affects the Company’s apportionment of business income for Utah corporate franchise and income tax purposes. You have explained the transactions as follows:

The Company performs laboratory testing services [in Utah laboratories] on behalf of [non-Utah clients] (“Clients”). In a typical transaction, the Client ships inanimate objects or SAMPLE 1 or SAMPLE 2 to the Company’s Utah laboratories to be tested. In most cases, the items or SAMPLE are not returned to the Client, but are simply analyzed, stored and eventually destroyed. As a result of the testing services, the Company conveys electronically the results of the testing services to the Client, and has support staff to discuss the results of the testing service with the Client, if requested.

The Company has sales offices throughout the United States through which it solicits services to Clients and prospective clients. In addition, the Company provides computers and peripheral equipment to Clients, in addition to containers, packing materials, etc. to facilitate the Client’s use of the Company’s services. These activities give the Company taxable nexus in most of its Client’s states.

For your request, you ask, “Under Utah law, in which state does the purchaser receive the greater benefit of the service—in the state of the testing service (Utah) or in the Client’s state?” As explained further after the applicable law section below, based on the facts you presented, the purchaser receives the greater benefit of the laboratory testing services in the Client’s state, which is not Utah.

## I. Applicable Law

Utah Code § 59-7-317(1) defines the sales factor as follows:<sup>1</sup>

[T]he sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

For the calculation of the sales factor, Utah Code § 59-7-319(3) instructs when sales of services are in Utah, as follows:

- (a) Subject to Subsection (3)(b), a receipt from the performance of a service is considered to be in this state **if the purchaser of the service receives a greater benefit of the service in this state than in any other state.**
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule prescribe the circumstances under which a purchaser of a service receives a greater benefit of the service in this state than in any other state.

(Emphasis added.)

Furthermore, Subsection (10)(g) of Utah Admin. Code R865-6F-8 (“Rule 8”) explains when a purchaser of a service receives a greater benefit of a service in Utah, as follows:

Receipts from the Performance of Services.

- (i) Under Subsection 59-7-319(3), gross receipts from the performance of a service are considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state. In general, the “benefit of the service” approach under the statute reflects a market based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located.

....

- (iii) The benefit from performance of a service is in this state if any of the following conditions are met:
  - (A) The service relates to tangible personal property and is performed at a purchaser’s location in this state.
  - (B) The service relates to tangible personal property that the service provider delivers directly or indirectly to a purchaser in this state after the service is performed.
  - (C) The service is provided to an individual who is physically present in this state at the time the service is received.
  - (D) The service is provided to a purchaser exclusively engaged in a trade or business in this state and relates to that purchaser’s business in this state.

---

<sup>1</sup>The sales factor is part of the statutory provisions for the Uniform Division of Income for Tax Purposes Act (UDITPA).

(E) The service is provided to a purchaser that is present in this state and the service relates to that purchaser's activities in this state.

....

Under Utah Code § 59-7-320, if the other provisions of Part 3 do not lead to an equitable apportionment, the commission may require another method. Additionally, under Utah Code § 59-7-321, the Commission must construe Part 3 so "as to effectuate its [Part 3's] general purpose to make uniform the law of those states which enact it."

## II. Analysis

You are correct that the Company's non-Utah Clients receive the greater benefit of the laboratory testing services outside of Utah. As explained in Rule 8, the Utah statute follows "a market based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located." Under the facts you presented, both the markets for the services and the Clients' locations are outside of Utah.

You also correctly concluded that the Company's testing services sold to non-Utah Clients are not sourced to Utah under Rule 8(10)(g)(iii); the testing services do not meet any of the five conditions listed there.

Furthermore, sourcing the testing services outside of Utah does not lead to inequitable apportionment, so another method for apportionment is not required under § 59-7-320. Additionally, the interpretations in this ruling meet § 59-7-321.

Lastly, the Commission does not rely on the application of Wisconsin law to your situation. However, it seems that if the Clients are located in Wisconsin, the sales of testing services could potentially be sourced to Wisconsin under Wis. Stat. § 71.25(9)(dh)2.c., and 2.d., which you cited in your request letter.

## III. Conclusion

We find that for the laboratory testing services you presented, the non-Utah Clients receive the greater benefit of the services in the Clients' state(s), not in Utah. The Tax Commission's conclusions are based on the facts as you described them and the Utah law currently in effect. Should the facts be different or if the law were to change, 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, please feel free to contact the Commission.

For the Commission,

Marc B. Johnson  
Commissioner

MBJ/aln  
12-005