

**FINAL PRIVATE LETTER RULING**

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**REQUEST LETTER**

12-009

September 27, 2012

Mr. Marc B. Johnson  
Commissioner  
Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, UT 84134

**Re: Taxpayer Request for a Private Letter Ruling**

Dear Mr. Johnson:

Pursuant to Utah Admin. R. R861-1A-34, COMPANY (“COMPANY”) submits this Request for a Private Letter Ruling on behalf of its client, respectfully asking whether certain entities have a Utah sales and use tax registration and collection requirement and a Utah corporate income tax filing requirement. On December 15, 2008, COMPANY submitted a Request for a Private Letter Ruling (attached hereto as Attachment 1) for the same client involving substantially similar facts to those described below. On May 4, 2009, the Utah State Tax Commission (the “Commission”) responded by issuing a Private Letter Ruling (attached hereto as Attachment 2) consistent with the ruling requested by COMPANY. As a result of a change in Utah law regarding sales and use tax registration and collection requirements effective July 1, 2012, COMPANY’s respectfully requests confirmation that the new law does not change its client’s Utah sales and use tax registration and collection obligation. This request also asks for reconfirmation that the entities do not have a Utah corporate income tax filing requirement.

**I. Facts**

Entertainment Company (“Entertainment”) is an out-of-state corporation. It is part of an affiliated group of companies. Entertainment provides services that relate to movies and television, including access to industry information and industry advertising. Entertainment also maintains two divisions - one division provides remote/online registration services for filmmakers and film festivals and the other division provides online entertainment industry reporting services.

Entertainment has sent some of its employees to attend the annual FESTIVAL Film Festival (“FESTIVAL”) in CITY, Utah since 2009. The employees typically stay at FESTIVAL for 10 days – the full length of the festival. The employees attend FESTIVAL for the purpose of

promoting Entertainment's businesses, building relationships, networking and meeting potential customers. While in Utah, the employees do not negotiate the sale or provision of any of Entertainment's business services nor do they execute any contracts for the provision of services. All sales of services and the performance of any services occur outside of Utah. Entertainment does not have any tangible or real property in Utah and it does not have any employees in the state.

Entertainment is also affiliated with other entities, including Retailers, Internet sellers of tangible property and digital goods to customers around the world, including customers in Utah. Retailers are located outside of Utah. Retailers do not operate any retail stores, own or lease any property, or have employees in Utah, and are not registered as retail merchants in Utah. Retailers' sales of tangible personal property to customers located in Utah are delivered from outside the state by common carrier. Retailers' business and legal entity names are not similar to Entertainment's name.

One or more Retailers may also have employees attend one trade show per year in Utah. Employees attending a trade show will be in Utah for less than two weeks. Retailers' employees will attend trade shows for the purpose of promoting Retailers' businesses, building relationships, networking and meeting potential customers. While in Utah, the employees will not negotiate the sale of any of Retailers' products nor will they execute any contracts for the sale of products.

## **II. Issues**

### **A. Sales Tax**

1. Would Entertainment be required to register to collect and remit Utah sales and use tax based on its annual presence at FESTIVAL?
2. Would Retailers be required to register to collect and remit Utah sales and use tax based on their annual presence at a Utah trade show?
3. Would Retailers be required to register to collect and remit Utah sales and use tax based on the presence of Entertainment in the state to attend FESTIVAL?

### **B. Income Tax**

1. Would Entertainment be required to file a Utah corporate income tax return based on its annual presence at FESTIVAL?
2. Would a Retailer be required to file a Utah corporate income tax return based on its presence at a trade show in Utah?

### **III. Legal Framework for Analysis**

#### **A. Sales Tax**

##### **1. Registration and Collection Requirement**

Utah imposes a sales tax on sellers meeting certain statutory requirements. Utah Code § 59-12-107. A “seller” is a person that makes a sale, lease or rental of tangible personal property, a product transferred electronically or a service. Utah Code § 59-12-102(110). Sellers are required to register to collect and remit sales and use tax if the seller has or utilizes:

- (a) an office;
- (b) distribution house;
- (c) sales house;
- (d) warehouse;
- (e) service enterprise; or
- (f) place of business.

Utah Code § 59-12-107(2)(a)(i).

In addition, a seller is required to register to collect and remit sales and use tax if the seller engages in any the following activities:

- (a) Maintains a stock of goods within the state;
- (b) Regularly solicits orders in the state, unless the seller’s only activity is:
  - (i) advertising or solicitation by:
    - (aa) direct mail;
    - (bb) electronic mail;
    - (cc) the internet;
    - (dd) telecommunications service; or
    - (ee) or another similar means;
- (c) Regularly engages in the delivery of property in the state by means other than common carrier or U.S. Mail; or

- (d) Regularly engages in an activity directly related to the leasing or servicing of property located within the state.

Utah Code § 59-12-107(2)(a)(ii)-(v).

**a. Affiliate Nexus**

Effective July 1, 2012, Utah tax law requires that a seller register to collect and remit sales and use tax if the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and either:

- (1) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; *or*
- (2) the place of business described in Subsection (2)(a)(i) of section 59-12-107 of the related seller or an in state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.

Utah Code § 59-12-107(2)(b). Under the new law, “related seller” is defined as a seller that:

- (1) has a place of business described in Subsection (2)(a)(i) of section 59-12-107; *and*
- (2) delivers tangible personal property, a service, or a product transferred electronically that is sold by a seller that does not have place of business in the Utah and to a purchaser in Utah.

Utah Code § 59-12-107(2)(b) (collectively provisions are referenced as “Affiliate Nexus Statute”). Further, “ownership” means direct ownership or indirect ownership through a parent, subsidiary, or affiliate. Utah Code § 59-12-107(1)(a). “Substantial ownership interest” means an ownership interest in a business entity if that ownership interest is greater than the degree of ownership of equity interest specified in 15 U.S.C. Sec. 78p,<sup>1</sup> with respect to a person other than a director or an officer.

**b. Tradeshow**

While the aforementioned provisions set forth the statutory standard, the Commission has consistently held that a physical presence in the state for certain purposes will not create a sales and use tax registration and collection requirement. For example, the Commission has indicated that it is their policy not to consider participants who are in the state for less than two weeks to attend a trade show to create a sales and use tax registration and collection requirement unless the participants have some other nexus creating contact with Utah or their trade show presence in Utah is regular or systematic. Advisory Opinion 98-021, Utah State Tax Commission, March 20, 1998.

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<sup>1</sup> The ownership of equity interest specified in 15 U.S.C. Sec. 78p is 10 percent of any class of any equity security.

## **B. Income Tax**

### **1. Filing Requirement**

Utah tax law imposes an income tax on all taxpayers doing business in Utah. Utah Code § 59-7-104. “Doing business” is defined as any transaction in the course of its business by a domestic or foreign corporation qualified to do or doing intrastate business. Utah Code § 59-7-101(12)(a). Doing business includes the right to do business through incorporation or qualification; the owning, renting, or leasing of real or personal property within the state; and the participation in joint ventures, working agreements and operating agreements when the performance of those ventures and agreements takes place in the state. Utah Code § 59-7-101(12). Utah regulations also provide further guidance on the types of activities that constitute doing business, including, but not limited to making delivery from stocks of goods in the state, performing the necessary duties to fulfill contracts or subcontracts in the state and deriving income from revenue producing properties located in the state or moving through Utah or from services performed by personnel in the state. Utah Admin. R. R865-6F-6.

The Commission has also indicated, as described above, that it is their policy not to consider participants who are in the state for less than two weeks for purposes of attending a trade show in Utah to have income tax nexus in the state. Advisory Opinion 98-021, Utah State Tax Commission, March 20, 1998.

## **IV. Legal Analysis of Questions Presented**

### **A. Sales Tax**

#### **1. Entertainment is Not Required to Register to Collect and Remit Utah Sales and Use Tax**

Entertainment is not required to register to collect and remit Utah sales and use tax because it would not meet the statutory requirements to be considered doing business in Utah. Entertainment will not maintain an office, distribution house, sales house, warehouse, service enterprise or place of business in Utah. Entertainment’s only presence in Utah is the 10-day annual attendance of FESTIVAL. Entertainment’s presence in Utah at FESTIVAL is limited to establishing and furthering client relationships, observing industry trends and businesses, and attending film screenings and events. In addition, Entertainment will also post reports of the events on their website. These “blogs” are prepared and posted during the event. Entertainment’s website and servers are operated and maintained outside Utah. It also does not maintain a stock of goods in the state, nor does it solicit orders while in the state. Any contracts for business services and the provision of any services are conducted outside Utah. Thus, Entertainment does not meet any of the statutory requirements for registration and collection of Utah sales and use tax and therefore, does not have a Utah sales and use tax registration requirement.

Utah’s guidance regarding participants at trade shows in the state provides further support for the conclusion that Entertainment does not have a Utah sales and use tax registration

requirement. The Commission has ruled that attendance at a trade show in Utah for less than two weeks, without other regular presence in the state, will not create a Utah sales and use tax registration and collection requirement. Advisory Opinion 98-021, Utah State Tax Commission, March 20, 1998. Film and entertainment industry persons attend FESTIVAL for the purpose of seeing new films and interacting and building business relationships, similar to the way businesses attend trade shows to review new products and meet vendors. The Commission acknowledged in the Private Letter Ruling issued to Entertainment on May 4, 2009 by stating that the “principles of PLR 98-021 . . . apply to attendance of the Festival. Annual attendance at the ten-day festival, alone, is not sufficiently “regular” and “systematic” to create nexus.” Thus, Entertainment’s continued annual attendance at FESTIVAL for 10 days should continue to be afforded the same treatment as attending a trade show and should not lead to a Utah sales and use tax registration and collection requirement.

## **2. Retailers are Not Required to Register to Collect and Remit Utah Sales and Use Tax**

Retailers are not required to register to collect and remit Utah sales and use tax because they do not meet the statutory requirements to be considered doing business in Utah. Retailers do not maintain an office, distribution house, sales house, warehouse, service enterprise or place of business in Utah. In addition, Retailers do not maintain a stock of goods in the state, regularly solicit orders in the state, other than by the Internet, regularly engage in the delivery of property in the state by other than common carrier or regularly engage in an activity related to the leasing or servicing of property located in the state. Retailers’ only presence in Utah will be the annual attendance of a trade show for less than two weeks, which the Commission has indicated does not create a sales and use tax registration requirement. Retailers’ presence at a Utah trade show is limited to building relationships, networking and meeting potential customers. Thus, Retailers will not meet any of the statutory requirements for registration and collection of Utah sales and use tax and therefore do not have a Utah sales and use tax registration requirement.

## **3. Retailers Do Not Have a Utah Sales and Use Tax Registration or Collection Requirement Based on the Presence of Entertainment in the State to Attend FESTIVAL**

Retailers do not have a Utah sales and use tax registration and collection obligation based on Entertainment’s presence in the state. Utah’s Affiliate Nexus Statute requires the in-state entity and the out-of-state entity be “related sellers” (which definition has several components) and additionally meet one of two statutory tests - (1) the out-of-state seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; *or* (2) the related seller’s place of business or its in-state employee is used to advertise, promote or facilitate sales for the out-of-state seller to purchasers.

With respect to the requirement to be “related sellers,” Retailers and Entertainment are related entities and their relationship meets the definition of “ownership” and “substantial ownership interest” as set forth under Utah’s Affiliate Nexus Statute. However, Entertainment does not meet the definition of “related seller” because it does not have a place of business in Utah nor does it deliver tangible personal property, a service, or a product transferred

electronically by Retailers to a purchaser in Utah. Regardless, even if Entertainment did meet the definition of “related seller,” Retailers would still not have a Utah sales and use tax registration and collection obligation because Entertainment does not have a name that is similar to any of the Retailers nor will it advertise, promote, or facilitate sales to Retailers’ purchasers through its employees or an in-state place of business. In fact, Entertainment does not maintain a place of business in Utah. As a result, Entertainment’s presence in the state to attend FESTIVAL or another similar tradeshow will not trigger Utah’s Affiliate Nexus Statute and will not create a Utah sales and use tax registration and collection requirement for Retailers.

## **B. Income Tax**

### **1. Entertainment Does Not Have a Utah Corporate Income Tax Filing Requirement**

Entertainment does not have a corporate income tax filing requirement in Utah because it is not doing business in Utah. In order to be considered “doing business” for Utah corporate income tax purposes, Entertainment must be incorporated or qualified in the state; own, rent, or lease real or personal property within the state; participate in joint ventures, working agreements and operating agreements if the performance of those ventures and agreements takes place in the state; delivering stock of goods in the state or deriving revenue from services performed by personnel in the state. Entertainment is not qualified or incorporated in Utah nor does it own, rent, or lease any real or personal property in Utah. In addition, Entertainment does not participate in any joint ventures or agreements that take place in Utah. Entertainment does not sell tangible property maintained or delivered in the state and it does not have employees that are performing services in the state. Entertainment’s presence in Utah will continue to be limited to the attendance of FESTIVAL for 10 days for the purpose of networking with industry professionals and building relationships – similar to attendance at a tradeshow which the Commission has indicated would not create corporate income tax nexus. Entertainment’s business is located outside of Utah and all of the services it provides are performed outside of Utah. Therefore, Entertainment would not have a corporate income tax filing requirement in Utah. The Commission has agreed with this conclusion, as reflected in the May 4, 2009 Private Letter Ruling issued by the Commission to Entertainment.

### **2. Retailers Do Not Have a Utah Corporate Income Tax Filing Requirement Based on Utah Statutory Provisions**

Similar to Entertainment, Retailers will also not have a corporate income tax filing requirement in Utah because they are not doing business in Utah. Retailers are not qualified or incorporated in Utah and do not own, rent, or lease any real or personal property in Utah. Retailers do not participate in any joint ventures or agreements that take place in Utah. Further, Retailers do not make deliveries from stocks of goods in the state and they do not have employees that are performing services in the state. Retailers’ presence in Utah is limited to the attendance of a trade show for less than two weeks for the purpose of networking with industry professionals and building relationships. Therefore, Retailers do not have a corporate income tax filing requirement in Utah.

**V. Conclusions**

Entertainment and Retailers seek confirmation of the Commissioner’s agreement with the following conclusions, which result from application of Utah’s statutory and judicial guidance.

**Sales Tax**

- 1. Because Entertainment does not maintain a place of business in Utah and it is not doing business in Utah, it is not considered a seller and is not required to register to collect or remit Utah sales and tax.
- 2. Because Retailers do not maintain a place of business in Utah and they are not considered to be doing business in Utah, they are not considered sellers and are not required to register to collect or remit Utah sales and tax.
- 3. Because Retailers affiliate, Entertainment, is not a “related seller” and the statutory requirements to trigger Utah’s Affiliate Nexus Statute are not triggered, Retailers do not have a Utah sales and use tax registration and collection requirement.

**Income Tax**

- 1. Because Entertainment is not doing business in Utah for corporate income tax purposes, it does not have a corporate income tax filing requirement in Utah.
- 2. Because Retailers are not doing business in Utah for corporate income tax purposes, they do not have a corporate income tax filing requirement in Utah.

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In advance of the issuance of a response to this request for a ruling, we respectfully request that the Commission contact us to discuss any facts or questions that may potentially result in an adverse ruling.

Please feel free to contact NAME 1 at PHONE 1 or NAME 2 at PHONE 2 if you have any questions.

Very truly yours,

NAME 1

NAME 2

cc: Mr. Bruce Johnson, Commissioner, Utah State Tax Commission

## RESPONSE LETTER

February 8, 2013

NAME 1 and  
NAME 2  
COMPANY  
ADDRESS

Re: Private Letter Ruling Request—Sales Nexus and Corporate Franchise Tax Nexus  
Analysis for Out-of-State Companies Attending Festival and Tradeshow in Utah

Dear NAME 1 and NAME 2:

You have again requested a ruling as to whether a company (“Entertainment”) that sends some of its employees to the FESTIVAL Film Festival (“Festival”) will cause Entertainment and other affiliates (“Retailers”) to acquire nexus within the State of Utah. Previously, we had answered your questions through Private Letter Ruling (“PLR”) 08-013 issued on May 4, 2009, available online at <http://tax.utah.gov/commission/ruling/08-013.pdf>. However, you now seek additional guidance because some of the law applied in PLR 08-013 has changed.

### **I. Facts**

You stated that you request this PLR for the same client under substantially similar facts as your prior PLR request. In PLR 08-013 we summarized the facts as follows:

Entertainment Company (“Entertainment”) is an out-of-state corporation. It is part of an affiliated group of companies. Entertainment provides services that relate to movies and television, including access to industry information and industry advertising. Entertainment also maintains two divisions – one division provides remote/online registration services for filmmakers and film festivals and the other division provides online entertainment industry reporting services.

Entertainment would like to have some of its employees attend the FESTIVAL Film Festival (“FESTIVAL”) in CITY, Utah in January 2009. The employees would stay at FESTIVAL for 10 days – the full length of the festival. They would also attend FESTIVAL in ensuing years. The employees would attend FESTIVAL for the purpose of promoting Entertainment’s businesses, building relationships, networking and meeting potential customers. The employees would not negotiate the sale or provision of any of Entertainment’s business services while in Utah nor would any contracts for the provision of services be executed. All sales of services and the performance of any services would occur outside of Utah.

Entertainment does not have any tangible or real property in Utah and it does not have any employees in the state. Entertainment is also affiliated with other entities, including Retailers, Internet sellers of tangible property and digital goods to customers around the world, including customers in Utah.

Retailers are located outside of Utah. Retailers do not operate any retail stores, own or lease any property, or have employees in Utah, and are not registered as a retail merchants in Utah.

Furthermore, for this PLR you provided the following additional facts:

Retailers' sales of tangible personal property to customers located in Utah are delivered from outside the state by common carrier. Retailers' business and legal entity names are not similar to Entertainment's name.

One or more Retailers may also have employees attend one trade show per year in Utah. Employees attending a trade show will be in Utah for less than two weeks. Retailers' employees will attend trade shows for the purpose of promoting Retailers' businesses, building relationships, networking and meeting potential customers. While in Utah, the employees will not negotiate the sale of any of Retailers' products nor will they execute any contracts for the sale of products

## **II. Issues**

For this PLR, you asked the following five questions:

1. Would Entertainment be required to register to collect and remit Utah sales and use tax based on its annual presence at Festival?
2. Would Retailers be required to register to collect and remit Utah sales and use tax based on their annual presence at a Utah tradeshow?
3. Would Retailers be required to register to collect and remit Utah sales and use tax based on the presence of Entertainment in the state to attend Festival?
4. Would Entertainment be required to file a Utah corporate income tax return based on its annual presence at Festival?
5. Would a Retailer be required to file a Utah corporate income tax return based on its presence at a tradeshow in Utah?

In PLR 08-013, we previously answered questions 1, 3, and 4; but not 2 and 5.

### III. Applicable Law

Much of the applicable law used in PLR 08-013 is the same. Below are noted the statutory and administrative law changes that occurred after PLR 08-013 was issued.

#### A. Sales Tax

Utah Code § 59-12-107 was amended, significantly revising the subsections relating to an area of the Utah Code that you refer to as the Affiliate Nexus Statute. Section 59-12-107 states in part:

- (1) As used in this section:
  - (a) "Ownership" means direct ownership or indirect ownership through a parent, subsidiary, or affiliate.
  - (b) "Related seller" means a seller that:
    - (i) meets one or more of the criteria described in Subsection (2)(a)(i); and
    - (ii) delivers tangible personal property, a service, or a product transferred electronically that is sold:
      - (A) by a seller that does not meet one or more of the criteria described in Subsection (2)(a)(i); and
      - (B) to a purchaser in the state.
  - (c) "Substantial ownership interest" means an ownership interest in a business entity if that ownership interest is greater than the degree of ownership of equity interest specified in 15 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.
- (2) (a) . . . . each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:
  - (i) has or utilizes:
    - (A) an office;
    - (B) a distribution house;
    - (C) a sales house;
    - (D) a warehouse;
    - (E) a service enterprise; or
    - (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);
  - . . . .
  - (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is:
    - (A) advertising; or
    - (B) solicitation by:
      - (I) direct mail;
      - (II) electronic mail;
      - (III) the Internet;
      - (IV) telecommunications service; or

(V) a means similar to Subsection (12)(a)(iii)(A) or (B);

.....

- (b) A seller is considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state, and shall pay or collect and remit the sales and use taxes imposed by this chapter if:
  - (i) the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and
  - (ii) (A) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; or  
(B) the place of business described in Subsection (2)(a)(i) of the related seller or an in state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.

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The Utah State Tax Commission revised Publication 37, available at <http://tax.utah.gov/forms/pubs/pub-37.pdf>, to reflect the changes in § 59-12-107.

#### **B. Income Tax**

Utah Admin. Code R865-6F-6 (“Rule 6”) was amended to renumber its subsections, with the subsections referenced in PLR 08-013 renumbered as follows:

- Rule 6.A.2. became Rule 6(1)(b)
- Rule 6.A.4. became Rule 6(1)(d)
- Rule 6.C. became Rule 6(3)
- Rule 6.J. became Rule 6(10)
- Rule 6.J.1. became Rule 6(10)(a)
- Rule 6.J.2. became Rule 6(10)(b)
- Rule 6.K. became Rule 6(11)
- Rule 6.L. became Rule 6(12)

Rule 6 was also amended to remove the subsection K.20. of Rule 6 (2009). However, that revision does not affect the analysis of this PLR.

#### **IV. Application**

Answers to your five questions are below. The first three answers are found under “Sales Tax” and the last two are under “Income Tax.” Your questions deal with Utah nexus only.

##### **A. Sales Tax**

Please note that your request does not ask for a determination about the taxability of Entertainment’s services in general, nor have you provided enough detailed information to make

such a determination. If Entertainment's services/products are not subject to Utah sales and use tax, then there would be no sales tax collection or reporting requirement and the question of sales tax nexus would be moot.

***Question 1: Would Entertainment be required to register to collect and remit Utah sales and use tax based on its annual presence at Festival?***

Entertainment would not be required to register to collect and remit Utah sales tax under § 59-12-107(2)(a) (prior version at § 59-12-107(1)(a)) based on its presence at the Festival. There was no substantive change to the applicable law currently found in § 59-12-107(2)(a). The answer to this question is the same as it was for PLR 08-013. For the details on the analysis, please review PLR 08-013.

***Question 2: Would Retailers be required to register to collect and remit Utah sales and use tax based on their annual presence at a Utah tradeshow?***

Retailers would not be required to register to collect and remit Utah sales tax under § 59-12-107(2)(a) based on their annual presence at a Utah tradeshow. Retailers do not have an office, warehouse, etc. in Utah; they do not regularly deliver property into Utah by means other than common carrier or U.S. mail; and they do not engage in activities related to leasing or servicing property in Utah. For purposes of this ruling, we assume Retailers do not maintain a stock of goods in Utah or *regularly* solicit orders in Utah by means other than advertising or solicitation by direct mail, email, Internet, telecommunications services, or similar means. PLR 98-021, available at <http://tax.utah.gov/commission/ruling/98-021.htm>, provides that attendance at one tradeshow in Utah for less than two weeks, without some other contact with Utah, does not equate to a regular or systematic presence in Utah and likewise does not create sales tax nexus. Similarly, § 59-12-107(2)(a)(iii) imposes a sales tax collection and remittance requirement on a seller that “**regularly** solicits orders. . .” (emphasis added). Based on the facts presented, Retailers’ annual presence in Utah for less than two weeks to attend one tradeshow per year in Utah is not sufficiently “regular” and “systematic” to create nexus or to impose a sales tax collection or remittance requirement. The analysis for this question is quite similar to that for Question 1.

***Question 3: Would Retailers be required to register to collect and remit Utah sales and use tax based on the presence of Entertainment in the state to attend Festival?***

Retailers would not be required to register to collect and remit Utah sales and use tax based on the presence of Entertainment in the state to attend the Festival. Section 59-12-107 was recently amended, and under the revised § 59-12-107(2)(b), Retailers can only be required to register, collect, and remit Utah sales and use tax based on Entertainment's presence if Entertainment is a related seller. Section 59-12-107(1)(b) defines a related seller, in part, as a seller that “meets one or more of the criteria described in Subsection (2)(a)(i) . . .” As explained previously under Question 1, Entertainment does not meet the criteria found in § 59-12-107(2)(a). Thus, Entertainment cannot be a related seller and Retailers can not have a registration, collection, and remittance requirement based on Entertainment's presence in Utah to

attend the Festival. **The analysis for this question changed from the prior analysis found in PLR 08-013.**

**B. Income Tax**

***Question 4: Would Entertainment be required to file a Utah corporate income tax return based on its annual presence at Festival?***

Entertainment would not be required to file a Utah corporate income tax return *based on* its annual presence at the Festival. The substantive law for this area did not change. The answer to this question is the same as it was for PLR 08-013. For the details on the analysis, please review PLR 08-013.

***Question 5: Would a Retailer be required to file a Utah corporate income tax return based on its presence at a tradeshow in Utah?***

Retailers would not be required to file a Utah corporate income tax return *based on* their annual presence of less than two weeks at one tradeshow in Utah. Under § 59-7-104, Utah imposes income tax on all corporations doing business in Utah. Under § 59-7-101(12)(a), “[d]oing business’ includes any transaction in the course of its business by . . . a foreign corporation . . . doing interstate business in this state.” We note that, under subsection (10)(a) of Rule 6, companies selling services are not protected by Rule 6 or by P.L. 86-272. However, similar to our ruling in PLR 98-021, we find for your situation that Retailers do not have nexus for sales tax or income tax purposes when their only connection with Utah is attendance of one tradeshow. The analysis for this question is quite similar to that for Question 4.

**V. Conclusion**

To summarize, the Commission finds:

1. Entertainment would not be required to register to collect and remit Utah sales tax under § 59-12-107(2)(a) based on its presence at the Festival.
2. Retailers would not be required to register to collect and remit Utah sales tax under § 59-12-107(2)(a) based on their presence at the tradeshow.
3. Retailers would not be required to register to collect and remit Utah sales and use tax based on the presence of Entertainment in the state to attend the Festival.
4. Entertainment would not be required to file a Utah corporate income tax return based on its annual presence at the Festival.
5. Retailers would not be required to file a Utah corporate income tax return based on their annual presence at the tradeshow.

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,

R. Bruce Johnson  
Commissioner

RBJ/aln  
12-009