

FINAL PRIVATE LETTER RULING

REQUEST LETTER

15-003

March 15, 2012 [sic]

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

SENT VIA EMAIL taxmaster@utah.gov

RE: REQUEST FOR LETTER RULING

To whom it may concern:

I am writing to request a private letter ruling from the Utah State Tax Commission regarding the proper apportionment factor methodology for a STATE1 based reseller of transportation services provided by unrelated third party common carriers. For purposes of this letter, the undisclosed party is referred to as "TAXPAYER." TAXPAYER will amend this letter request with its name and taxpayer identification number at a later date.

FACTS

TAXPAYER is engaged in the bulk acquisition and resale of transportation/shipping services performed by unrelated third party common carriers. The transportation/shipping services are resold directly to end users and to franchisees operating under the TAXPAYER's franchise and trade name, who resell the services to their customers. In this respect, TAXPAYER is considered a freight forwarder under the normal definition, even though TAXPAYER seldom handles goods in transits.

Per Wikipedia: A freight forwarder, forwarder, or forwarding agent, is a person or company that organizes shipments for individuals or corporations to get goods from the manufacturer or producer to a market, customer or final point of distribution. Forwarders contract with a carrier to move the goods. A forwarder does not move the goods but acts as an expert in supply chain management. A forwarder contracts with carriers to move cargo ranging from raw agricultural products to manufactured goods. Freight can be booked on a variety of shipping providers, including ships, airplanes, trucks, and railroads. It is not unusual for a single shipment to move on multiple carrier types. "International freight forwarders" typically handle international shipments. International freight forwarders have additional expertise in preparing and processing customs and

other documentation and performing activities pertaining to international shipments. (http://en.wikipedia.org/wiki/Freight_forwarder)

Per US CODE 49 U.S.C. § 13102(8): "Freight Forwarder—the term 'freight forwarder' means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business — (A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments; (B) assumes responsibility for the transportation from the place of receipt to the place of destination; and (C) uses for any part of the transportation a [surface carrier] carrier subject to jurisdiction [of the Department of Transportation] of under this subtitle."

The TAXPAYER simply contracts for, and arranges for shipping, pays the carrier, and invoices the customer or franchisee.

TAXPAYER has its corporate headquarters in STATE 1, but is considered having nexus broadly across the United States due to the presence of sales representatives, franchises and common carriers under contract.

Historically, TAXPAYER has used in good faith apportionment methodologies intended to apportion revenues based on traditional apportionment theories. However, TAXPAYER has been modifying its apportionment to reflect each state's preferred apportionment which tends to fall under one of the following:

1. Where the benefit of the service is received.
2. Where TAXPAYER performs its services. This stems from the traditional UDITPA/MTC model and looks at where the taxpayer's employees and facilities are located, and ignores the activities of independent contractors.
3. Where TAXPAYER 'franchisors' perform their services. This would be a reasonable method for allocating intangible income such as 'franchise fees' which exist but are not material.
4. Where the independent transportation carriers perform their services, typically based on instate miles versus total miles basis).
5. Under a simplified hybrid rule for 'freight forwarders' such as ½ to origination state and ½ to destination state.

ISSUES

1. What is the governing legal authorities for determining TAXPAYER's income tax apportionment for 2013 and beyond?
2. Assuming that R865-6F-8 Single Factor Market Based apportionment is correct, should TAXPAYER source receipts from the resale of transportation services to the buyer's billing address, to the point of origination or to the destination state?

DISCUSSION OF LAW

The apportionment model that appears to be mandated by Utah statute is Model 1 – Where the benefit of the services is received based on the transition rules of Utah Code Sec. 59-7-311 requiring single factor sales apportionment for years starting in 2013. In addition, modifications to R865-6F-8 mandating 'market' sourcing of the sales factor appears to attribute all revenues outside Utah except those directly related to Utah customers. This result will apply even though most activities related to the services take place in STATE 1 facilities by STATE 1 employees, other than sales, and the transportation services provided by unrelated third party carriers.

This result appears to take precedence over the special apportionment regulations for trucking companies (R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321). R865-6F-19 does not apply because TAXPAYER does not actually engage in trucking services and has no access to the logistical records of its contracted third party carriers.

For tax years beginning in 2013, TAXPAYER must apportion based solely on the sales factor: (Utah Code Sec. 59-7-311. Method of apportionment of business income.)

(3)(c) Subject to the other provisions of this part, for a taxable year that begins on or after January 1, 2013, a sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state as follows: (i) the numerator of the fraction is the sales factor as calculated under Section 59-7-317; and (ii) the denominator of the fraction is one.

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 attributes all receipts to the state where the purchaser receives a greater benefit of the service:

(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. ***

(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.

(iv) If the benefit of the service is received in more than one state, the gross receipts from the service are to be sourced using reasonable and consistent methods of analysis to determine in which state the greater benefit of the service is received. Such methods must be supported by the service provider's business records at the time the service was provided. If the benefit of a service is received in Utah and one or more other states and the state where the greater benefit of the service is received cannot otherwise be readily determined through the provisions of this rule, the following sourcing rules are applied in sequential order:

(A) The receipt is sourced to this state if the office from which the purchaser placed the order for the service is in this state.

(B) If the office from which the order was placed cannot be determined, the receipt is sourced to this state if the purchaser's billing address is in this state.***

Based on this language, it appears that the greatest benefit would be attributed to the state of the shipper. However, the examples suggest that in transportation services, the services are attributed to the destination state:

(H) A moving company performs a moving service for an individual that has been transferred from New Jersey to Utah. The charges for services in connection with the move and unpacking services are sourced to Utah because the greater benefit of the moving services is received by the purchaser in the state to which the property is moved. However, any charges for specific services such as storage or packing that are performed outside of Utah, and that are separately stated, are not sourced to Utah.

RULING

TAXPAYER respectfully requests that the Tax Commission:

1. confirms that single factor market based apportionment will apply; and
2. clarifies whether the resale of transportation services will be sourced to (as the market state) to the billing address, to the state of origination, or to the state of destination.

Yours very truly,

NAME 1

RESPONSE LETTER

PRIVATE LETTER RULING 15-003

April 22, 2015

NAME 1, TITLE 1
COMPANY 1
ADDRESS 1
CITY ZIP AND STATE

RE: Private Letter Ruling Request on the Proper Apportionment Methodology for a STATE 1 Based Freight Forwarder for Utah Corporate Franchise and Income Tax Purposes

Dear NAME 1,

You have asked the Commission about the correct apportionment fraction for your client, a STATE 1 based reseller of transportation services, e.g. a freight forwarder (“Taxpayer”). You think the correct apportionment fraction for the Taxpayer is the one found in § 59-7-311(3)(c), for a sales factor weighted taxpayer. For the sales factor, you have asked how the Taxpayer should source its sales of transportation services. You suggested that the language found in Utah Administrative Code R865-6F-8(10) best supports sourcing the sales to the “state of the shipper,” but you also noted that an example in R865-6F-8 suggests the destination state could be appropriate. This letter explains that the Taxpayer is not a sales factor weighted taxpayer, and the apportionment fraction found in § 59-7-311(3)(c) for a sales factor weighted taxpayer does not apply. Also, this letter explains that the Taxpayer’s sales of transportation services are sourced to the states of the Taxpayer’s direct customers.

I. Facts

You explained in your letter that the Taxpayer, a freight forwarder, has its corporate headquarters in STATE 1 and has employees in STATE 1 who are providing the freight forwarding services. You explained through a subsequent email that the Taxpayer uses NAICS Code 488510 on its federal tax returns.

You explained in your letter that the Taxpayer purchases the transportation services in bulk from unrelated third party common carriers. You explained through the email the Taxpayer purchases and resells the transportation services as a reseller-middleman, not as an agent, and the Taxpayer does not receive commissions. You also explained through the email the Taxpayer’s employees and equipment never actually touch the goods being shipped. You explained in your letter, “Taxpayer has no access to the logistical records of its contracted third

party carriers.” You further explained in a subsequent phone call the third party carriers are acting as subcontractors of the Taxpayer.

You explained in your letter the Taxpayer resells the transportation services to both the Taxpayer’s franchisees and “end users.” These are the Taxpayer’s direct customers. You explained through a subsequent phone call that the franchisees resell the transportation services purchased from the Taxpayer to customers who are small to medium sized shippers. The customers of the franchisees are not the Taxpayer’s direct customers. You explained the small to medium sized shippers are companies that might have approximately AMOUNT \$ per day of shipping. These small to medium sized shippers might ship items such as specialty lumber, appliances, or furniture through less than truckload (LTL) shipments. You explained in the phone call the Taxpayer invoices the franchisees, not the franchisees’ customers, for the Taxpayer’s transportation services and the franchisees collect payments from the franchisees’ customers. For the Taxpayer’s sales to “end users,” you explained in the phone call that the Taxpayer has its own offices or divisions through which the Taxpayer directly sells its transportation services to small to medium sized shippers. The Taxpayer’s offices or divisions are similar to those of the franchisees, but the Taxpayer’s offices or divisions are part of the Taxpayer’s company. You explained that both the Taxpayer’s offices/divisions and the franchisees use the Taxpayer’s computer system for arranging the transportation services and billing the small to medium sized shippers. You explained through an email that the Taxpayer always knows the destination states of the shipments, even the destination states of those shipments arranged by the Taxpayer’s franchisees. You summarized in your letter that “[t]he TAXPAYER simply contracts for, and arranges for shipping, pays the carrier, and invoices the customer or franchisee.”

II. Applicable Law

Utah Code § 59-7-104 and § 59-7-201 impose Utah corporate franchise and income taxes on corporations with Utah taxable income. Utah Code § 59-7-101(34)(a) defines “Utah taxable income” in part based on “Utah taxable income before net loss deduction.” Utah Code § 59-7-101(35) defines “Utah taxable income before net loss deduction” in part based on “apportioned income.” Utah Code § 59-7-101(4) defines “Apportioned income” as “apportionable income multiplied by the apportionment fraction as determined in Section 59-7-311.”

Utah Code § 59-7-311 provides the apportionment fraction as follows in part:

(2)

....

(b) Subject to the other provisions of this part, for a taxable year that begins on or after January 1, 2011, a taxpayer, except for a sales factor weighted taxpayer, shall elect to calculate the fraction for apportioning business income to this state under this section using:

- (i) the method described in Subsection (2)(c); or
- (ii) the method described in Subsection (2)(d).

- (c) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a) or (b) may elect to calculate the fraction for apportioning business income as follows:
 - (i) the numerator of the fraction is the sum of:
 - (A) the property factor as calculated under Section 59-7-312;
 - (B) the payroll factor as calculated under Section 59-7-315; and
 - (C) the sales factor as calculated under Section 59-7-317; and
 - (ii) the denominator of the fraction is three.

- (d) For purposes of Subsection (2)(a) or (b), a taxpayer described in Subsection (2)(a) or (b) may elect to calculate the fraction for apportioning business income as follows:
 - (i) the numerator of the fraction is the sum of:
 - (A) the property factor as calculated under Section 59-7-312;
 - (B) the payroll factor as calculated under Section 59-7-315; and
 - (C) the product of:
 - (I) the sales factor as calculated under Section 59-7-317; and
 - (II) two; and
 - (ii) the denominator of the fraction is four.

....

(3)

....

- (c) Subject to the other provisions of this part, for a taxable year that begins on or after January 1, 2013, a sales factor weighted taxpayer shall calculate the fraction for apportioning business income to this state as follows:
 - (i) the numerator of the fraction is the sales factor as calculated under Section 59-7-317; and
 - (ii) the denominator of the fraction is one.

....

For purposes of § 59-7-311(3)(c), a “sales factor weighted taxpayer” is defined in Utah Code § 59-7-302(1)(k) as follows, in part:

Subject to Subsection (2), "sales factor weighted taxpayer" means:

- (i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for:

....

(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;

....

- (ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for:

....

(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;

....

For purposes of § 59-7-311(2)(c)(i)(C) and § 59-7-311(2)(d)(i)(C)(I), Utah Code § 59-7-317 provides for the calculation of the sales factor as follows:

- (1) Except as provided in Subsection (2), the 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.
- (2) The total sales of an airline in this state during the tax period attributable to transportation revenues in this state during the tax period for purposes of the numerator of the fraction described in Subsection (1) shall be calculated by determining the product of:
 - (a) the total transportation revenues during the tax period of the airline; and
 - (b) a fraction, the numerator of which is the Utah revenue ton miles and the denominator of which is the airline revenue ton miles.

(Emphasis added.)

For purposes of § 59-7-317(1), Utah Code § 59-7-319 explains when a taxpayer's sale is "in this state," as follows in pertinent part:

- (2) The following are considered to be in this state:

....

 - (d) other income in connection with real property or tangible personal property if the real property or tangible personal property is 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.**
 - (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.)

Explaining further the sales factor, Utah Administrative Code R865-6F-8(10) states the following in pertinent part:

- (f) (i) Sales Other than Sales of Tangible Personal Property in this State.
- (ii) In general, Subsections 59-7-319(2) through (7) provide for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government).

- (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.

 - (ii) For businesses engaged in certain industries, specific sourcing rules and guidelines that address the attribution of gross receipts from the performance of a service have been adopted. See Subsection (11)(b).

 - (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.

 - (iv) If the benefit of the service is received in more than one state, the gross receipts from the service are to be sourced using reasonable and consistent methods of analysis to determine in which state the greater benefit of the service is received. Such methods must be supported by the service provider’s business records at the time the service was

provided. If the benefit of a service is received in Utah and one or more other states and the state where the greater benefit of the service is received cannot otherwise be readily determined through the provisions of this rule, the following sourcing rules are applied in sequential order:

- (A) The receipt is sourced to this state if the office from which the purchaser placed the order for the service is in this state.
- (B) If the office from which the order was placed cannot be determined, the receipt is sourced to this state if the purchaser's billing address is in this state.
- (C) If the state of the purchaser's billing address cannot be determined, the receipt shall be included in the sales factor in this state.

(v) The term, "gross receipt from the performance of a service" applies to each individual sales transaction, and each sales transaction is considered a discrete transaction for purposes of determining whether the purchaser of the service receives a greater benefit of the service in this state than in any other state.

(vi) In determining whether the greater benefit from the performance of a service is received in this state, the benefit of the service in this state must be compared to the benefit of the service received in each individual state in which any benefit of the service is received, i.e., the benefit of the service received in Utah is not compared to the benefit of the service received in all other states combined.

....

(viii) The following examples are provided to illustrate the application of Utah law in regard to receipts from the performance of a service:

....

(H) A moving company performs a moving service for an individual that has been transferred from New Jersey to Utah. The charges for services in connection with the move and unpacking services are sourced to Utah because the greater benefit of the moving services is received by the purchaser in the state to which the property is moved. However, any charges for specific services such as storage or packing that are performed outside of Utah, and that are separately stated, are not sourced to Utah.

....

Under Utah Code § 59-7-320, if the "apportionment provisions [found in Utah Code Title 59, Chapter 7, Part 3] do not fairly represent the extent of the taxpayer's business activity in this state, . . . the commission may require" the taxpayer to employ another apportionment method. Consistent with § 59-7-320, Utah Administrative Code R865-6F-8(11)(b) provides a list of industries for which "specific statutes, rules, and guidelines have been adopted." This list is found in R865-6F-8(11)(b) and includes: "(i) airlines see Sections 59-7-312, 59-7-315,

and 59-7-317; . . . (v) railroads see rule R865-6F-29; . . . [and] (viii) trucking companies see rule R865-6F-19.”

For airlines, Utah Code § 59-7-317(2) instructs airlines to apportion total transportation revenues based on the revenue ton miles traveled in Utah versus total revenue ton miles traveled.

For railroads, Utah Administrative Code R865-6F-29(6)(b)(ii) instructs railroads to apportion the income received from the interstate hauling of each shipment based on a ratio of the miles traveled in Utah by the shipment to the total miles traveled by the shipment.

For trucking companies, Utah Administrative Code R865-6F-19(6)(b)(ii) instructs trucking companies to apportion receipts from interstate shipments based on the mobile property miles traveled in Utah by the shipments versus the total mobile property miles traveled by the shipments. R865-6F-19(1)(g) defines “[t]rucking company” as “a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.”

III. Analysis

This section first discusses the application of § 59-7-311, which provides the apportionment fraction, and concludes that the Taxpayer is not a sales factor weighted taxpayer. This section next analyzes how sales of transportation services by the Taxpayer should be sourced for purposes of the sales factor.

A. The Taxpayer is Not a Sales Factor Weighted Taxpayer, so the Apportionment Fraction Found in § 59-7-311(3)(c) that Uses Only the Sales Factor Does Not Apply.

Section 59-7-311 provides the apportionment fraction taxpayers must use to apportion certain income. Under § 59-7-311(2), a taxpayer who is not a sales factor weighted taxpayer must use the apportionment fraction provided in either § 59-7-311(2)(c) or § 59-7-311(2)(d). These two calculations of the apportionment fraction include three factors: property, payroll, and sales, with the sales factor receiving a doubled weight in § 59-7-311(2)(d). Alternatively, if a taxpayer is a sales factor weighted taxpayer, that taxpayer must use the calculation of the apportionment fraction provided in § 59-7-311(3)(c). This calculation uses only the sales factor. You have described the apportionment found in § 59-7-311(3)(c) as “single factor market based apportionment.”

A sales factor weighted taxpayer is defined in § 59-7-302(1)(k), and its definition excludes taxpayers with economic activities classified in certain NAICS codes. Under § 59-7-302(1)(k)(i)(D) and (ii)(D), these NAICS codes include “a NAICS code within NAICS Sector 48-49, Transportation and Warehousing.” Because the Taxpayer’s NAICS Code is 488510, the Taxpayer is excluded from being a sales factor weighted taxpayer. Because the Taxpayer is not a sales factor weighted taxpayer, the Taxpayer may not use the apportionment fraction found in § 59-7-311(3)(c), which uses only the sales factor. Instead, the Taxpayer must

use either § 59-7-311(2)(c) or § 59-7-311(2)(d), which sections use the property, payroll, and sales factors for the apportionment fraction.

B. For Purposes of the Sales Factor, The Taxpayer's Sale of Transportation Services is Sourced to Utah if the Taxpayer's Direct Customer is Located in Utah.

As explained above, the Taxpayer must use the apportionment fraction found in § 59-7-311(2)(c) or § 59-7-311(2)(d). One of the factors for the apportionment fraction is the sales factor. Section 59-7-317(1) provides the calculation for the sales factor, stating “the numerator of [the sales factor] is the total sales of the taxpayer **in this state . . .**” (emphasis added). The phrase “in this state” is further explained by Section 59-7-319(3)(a), which section states, “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” (emphasis added).¹ For the “greater benefit of the service,” § 59-7-319(3)(b) explains “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.” Utah Administrative Code R865-6F-8(10)(g)(i) explains the following in part:

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.**²

(Emphasis added.)

Based on the law quoted above, Utah’s market based approach considers where the benefits of the Taxpayer’s services are received by the Taxpayer’s direct customers, and the sourcing of the Taxpayer’s services should be based on the locations of these direct customers. The purchasers of the Taxpayer’s services are the Taxpayer’s direct customers, who include both the Taxpayer’s franchisees and also the shippers who purchase directly from the Taxpayer. The purchasers of the Taxpayer’s services do not include the franchisees’ customers. The Taxpayer should source its sales of transportation services to the locations of the Taxpayer’s direct customers, not to the locations of the franchisees’ customers. Thus, the Taxpayer’s sales are sourced to the states of

¹ The phrase “in this state” is also further explained by § 59-7-319(2), which states in part: “The following are considered to be in this state: . . . (d) other income in connection with tangible personal property if the . . . tangible personal property is in this state.” The concept of income in connection with the tangible personal property being in this state when the tangible personal property is in this state seems consistent with how the statutes and rules apportion the income of airlines, railroads, and trucking companies for transportation services. See R865-6F-8(11)(b)(i), (v), and (viii) for more information on the applicable statutes and rules for these companies. For these companies, income from interstate transportation services occurs in this state when the tangible personal property is moved in, out, and/or through this state, based on the miles traveled.

² Subsections (10)(g)(iii)-(10)(g)(vi) of R865-6F-8 provide additional information relating to the sourcing of income from a service, such as in subsection (iv), which requires a business’s sourcing method to be “reasonable and consistent.”

the shippers when the shippers are the Taxpayer's direct customers but are sourced to the states of the franchisees when the franchisees are the Taxpayer's direct customers.

The moving company example found in R865-6F-8(10)(g)(viii)(H) does not change the conclusion explained above. This example does not apply to the Taxpayer because its facts are distinguishable from the Taxpayer's. In the example, the moving company sources its moving services to the state to which the purchaser was moving. In that situation, the purchaser was the moving company's direct customer. Thus in that example, the moving services are located "in the state in which the market for the [moving] service exists and where the purchaser is located," consistent with R865-6F-8(10)(g)(i). For this private letter ruling, the Taxpayer's direct customers are not necessarily located where the goods are being shipped. Therefore, using the destination state for sourcing the Taxpayer's sales could cause sales to be sourced to states "where the purchaser is [not] located," which is inconsistent with R865-6F-8(10)(g)(i). Thus, unlike the example, the Taxpayer's sales are not to be sourced based on the destination states.

The Utah State Tax Commission agrees the Taxpayer is not subject to R865-6F-19, which applies to trucking companies. The Taxpayer is arranging for the movement of goods but is not in the business of directly transporting the goods.

IV. Conclusion

As explained above, the Taxpayer is not a sales factor weighted taxpayer, so the apportionment fraction found in § 59-7-311(3)(c), which uses only the sales factor, does not apply. Instead, the Taxpayer must use either § 59-7-311(2)(c) or § 59-7-311(2)(d) for the Taxpayer's apportionment fraction. These sections use the property, payroll, and sales factors. For the sales factor, the Taxpayer's sales of transportation services are sourced to Utah when Utah is the location of the Taxpayer's direct customers.

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.

Additionally, you may also appeal the private letter ruling in the following two ways.

First, you may file a petition for declaratory order, which would serve to challenge the Commission's interpretation of statutory language or authority under a statute. This petition must be in written form, and submitted within thirty (30) days after the date of this private letter ruling. You may submit your petition by any of the means given below. Failure to submit your petition within the 30-day time frame could forfeit your appeal rights. Declaratory orders are discussed in Utah Administrative Code R861-1A-34 C.2., available online at <http://tax.utah.gov/commission/effective/r861-01a-034.pdf>, and in Utah Administrative Code R861-1A-31, available online at <http://tax.utah.gov/commission/effective/r861-01a-031.pdf>.

Second, you may file a petition for redetermination of agency action if your private letter ruling leads to an audit assessment, a denial of a claim, or some other agency action at a division level. This petition must be written and may use form TC-738, available online at <http://tax.utah.gov/forms/current/tc-738.pdf>. Your petition must be submitted by any of the means given below, within thirty (30) days, generally, of the date of the notice of agency action that describes the agency action you are challenging.

You may access general information about Tax Commission Appeals online at <http://tax.utah.gov/commission-office/appeals>. You may file an appeal through any of the means provided below:

- **Best way**—by email: taxappeals@utah.gov
- By mail: Tax Appeals
USTC
210 North 1950 West
Salt Lake City, UT 84134
- By fax: 801-297-3919

For the Commission,

D’Arcy Dixon Pignanelli
Commissioner

DDP/aln
15-003