

FINAL PRIVATE LETTER RULING

REQUEST LETTER

15-006

July 22, 2015

Office of the Commission
Utah State Tax Commission
210 N 1950 W
Salt Lake City UT 84134

Dear Office of the Commission,

COMPANY (the “Company”) respectfully requests a ruling concerning the applicability of sales tax to: a) labor costs in commercial equipment installation; and b) interest and fees paid on a capital lease used to finance the equipment and its installation. Utah sales tax publication 42 states that installation of real property is not subject to sales tax so long as installation charges are listed separately in the invoice. Utah publication 25 states that interest and financing charges on a lease are not included in the sale price if stated separately on an invoice.

A. STATEMENT OF FACTS

1) Taxpayer Information:

a) Name, Address, Phone Number, Employer Identification

COMPANY
ADDRESS-1
CITY-1, STATE-1 ZIP CODE
PHONE NUMBER

b) Formation

COMPANY is a corporation formed under the laws of the state of STATE-2 on DATE.

2) Facts relating to the request:

COMPANY, (the “Company”) uses debt capital from accredited investors to finance energy efficiency upgrades to commercial buildings (the “Business” of the Company). The Company pays a contractor (the “Contractor”) to obtain and install the energy efficiency equipment (the “Equipment”). The Company enters into a capital lease (the “Capital Lease”) with the recipient of the Equipment (the “Customer”) who makes lease payments to the Company in monthly installments that cover the cost of labor (the “Labor Cost”), the cost of the Equipment (the “Equipment Cost”) and fees and interest on the Equipment Cost and the Labor Cost (the “Interest/Fees”). The company itemizes these charges on the Customer’s invoice. The Customer has the option to purchase the Equipment for a nominal cost of \$1.00 at the conclusion of the Capital Lease.

B. RULING REQUESTED

The following rulings are respectfully requested:

- 1) That the Company be exempt from paying sales tax on the Labor Cost in accordance with Utah Sales Tax Guide, Publication 42.
- 2) That the Company be exempt from paying sales tax on the Interest/Fees in accordance with Utah Sales and Use Tax, Publication 25.
- 3) That the way in which the Company has the Equipment Cost, Labor Cost, and Interest/Fees, within their Capital Lease, as laid out in Table 1 (below), is sufficiently itemized for the purpose of exempting the Labor Cost and Interest/Fees from sales tax.

C. STATEMENT OF LAW

Utah tax code states that **charges for labor to install tangible personal property to real property are not subject to sales tax**. The exemption for installation charges only applies if the charges are listed separately on the invoice. (Utah Sales Tax Guide, Publication 42 - Sales and use - Taxability of persons or transactions - Construction - Tangible personal property attached to real property, Utah State Tax Commission (Jun. 1, 2009))

The Utah Sales and Use Tax Publication 25 states that **interest and financing charges are not included in the sale price**, so long as the interest and financing charges are stated separately in an invoice (Utah Sales and Use Tax, Publication 25 - Sales and use tax general information - Definitions - Delivery charges, Utah State Tax Commission (May 2015)). It follows that, if interest and financing charges are not included in the sale price, they would not be subject to sales tax.

It is the opinion of the Company that, pursuant to the aforementioned statutes, the Labor Cost and Interest/Fees involved in the Business of the Company be exempt from sales tax.

TABLE 1: EXAMPLE ITEMIZED CHARGES

Contract Element	Amount	Tax Status	Sales Tax to Collect and Remit
Equipment Cost	\$\$\$\$\$	6.85% rate	\$\$\$\$\$
Labor Cost	\$\$\$\$\$	Not Applicable	\$0.00
Interest/Fees	\$\$\$\$\$	Not Applicable	\$0.00
Total Financed Amount	\$\$\$\$\$		

RESPONSE LETTER
PRIVATE LETTER RULING 15-006

January 21, 2016

NAME-1
TITLE
COMPANY
ADDRESS-1
CITY-1, STATE-1 ZIP CODE

RE: Private Letter Ruling Request–Utah Sales and Use Tax Treatment of a Capital Lease for Energy Efficiency Upgrades to a Commercial Building

Dear NAME-1:

This letter is in response to your request for a private letter ruling on behalf of COMPANY (“Company”). The Company provides financing to customers (“Customer(s)”) for the Customers to acquire energy efficiency upgrades for their commercial buildings from building contractors (“Contractor(s)”). You have asked about the Utah sales and use tax treatment of the monthly payments from the Customers to the Company.

I. Facts

You provided the following facts through your letter, supporting materials, and conversations.

The Company enters into a contract with a Contractor to offer financing to the Contractor’s customer. The Contractor and the Contractor’s customer have a project that the customer would like financed. The project involves the Contractor furnishing and installing equipment such as **LED lighting, dimmer switches, locks, thermostats, heating and air conditioning units, etc. into commercial buildings.**

The Contractor sends the Company information about the project. The Contractor’s customer submits a financing application to the Company. The Company reviews the customer’s credit worthiness, information about the project, and the project’s pricing. If the Company agrees to finance the project, the Contractor’s customer signs an “Equipment Lease” with the Company and the customer becomes the Company’s Customer, as well.

The Equipment Lease includes an Exhibit A: Equipment Schedule, which has the following Table 1: Equipment List.

TABLE 1: EQUIPMENT LIST

Equipment	Quantity	Price	Total Cost
TYPE OF DEADBOLT	#####	\$\$\$\$\$	\$\$\$\$\$
TYPE OF THERMOSTAT	#####	\$\$\$\$\$	\$\$\$\$\$
TYPE OF Incandescent Scene Capable Dimmer with LED Locator - White/Ivory/Light Almond	#####	\$\$\$\$\$	\$\$\$\$\$
NAME Install Labor (Per Unit)	#####	\$\$\$\$\$	\$\$\$\$\$
TOTAL			\$\$\$\$\$

PROJECT COMPLETION: The project will be considered complete when all hardware is installed and operational.

PURCHASE PRICE: \$1.00

The Exhibit A: Equipment Schedule also includes Table 2: Contract Cost and Tax Treatment. This Table 2: Contract Cost and Tax Treatment includes information similar to and consistent with the Table 1: Example Itemized Charges, which you provided in your request letter and which is provided below:

TABLE 1: EXAMPLE ITEMIZED CHARGES

Contract Element	Amount	Tax Status	Sales Tax to Collect and Remit
Equipment Cost	\$\$\$\$\$	6.85% rate	\$\$\$\$\$
Labor Cost	\$\$\$\$\$	Not Applicable	\$ 0.00
Interest/Fees	\$\$\$\$\$	Not Applicable	\$ 0.00
Total Financed Amount	\$\$\$\$\$		

The Equipment Cost of \$\$\$\$\$ showing above in Table 1: Example Itemized Charges equals the sum of the prices charged by the Contractor for the equipment (\$\$\$\$\$ + \$\$\$\$\$+ \$\$\$\$\$) showing on Table 1: Equipment List, found in Exhibit A. The Labor Cost of \$\$\$\$\$ showing above in Table 1: Example Itemized Charges equals the Contractor’s installation labor showing on the Table 1: Equipment List, found in Exhibit A. You explained the Interest/Fees showing on Table 1: Example Itemized Charges are interest and fees charged by the Company to the Customer for

financing. The total of all monthly lease payments equals the Total Financed Amount of \$\$\$\$ showing in Table 1: Example Itemized Charges.

The Equipment Lease also includes an Exhibit C: Sample Purchase Agreement. Under the Sample Purchase Agreement, the Customer may purchase the equipment from the Company for the “End-of-Lease Purchase Price” of \$1 after the Customer makes all monthly payments.

After the Customer signs the Equipment Lease, the Company authorizes the Contractor to furnish and install the equipment. The Company might make an upfront payment to the Contractor; otherwise, the Company pays the Contractor the full contract price after the installation.

Next, the Contractor furnishes and installs the equipment. Then, the Contractor and the Customer sign an agreement indicating the Contractor has completed the project and the Customer has accepted it. Within 10 days of the Customer’s acceptance, the Company pays the Contractor the remaining contract price, and the Contractor passes title to the installed equipment to the Company.

Shortly thereafter, the Customer makes its first lease payment to the Company. Then, as provided in the Equipment Lease, the Customer makes the equal monthly lease payments for a set number of months, such as 24 months. If the Customer makes all monthly payments and pays the \$1 end-of-lease purchase price, the Company passes the title to the installed equipment to the Customer.

In the Equipment Lease, the Company and the Customer characterize the installed equipment purchased as “personal property,” with Section #. stating the following in part:

PARAGRAPH REMOVED

In the agreements between the Company and the Contractor and between the Company and the Customer, the parties agree to coordinate their efforts to get the best tax treatment, so sales tax is paid only once. The contract titled “[Company] Master Services Agreement” made between the Company and the Contractor states:

PARAGRAPHS REMOVED

You also provided a sample invoice that a Contractor might provide the Company. Information from that sample invoice includes the following:

INVOICE [Company]	[Contractor’s Name] [Invoice Date] [Invoice Number]			
Description	Quantity	Unit Price	Tax*	Amount USD

Kwikset Lock	#####	\$\$\$\$\$	None	\$\$\$\$\$
2gig Thermostat v1	#####	\$\$\$\$\$	None	\$\$\$\$\$
GE Light Switches	#####	\$\$\$\$\$	None	\$\$\$\$\$
Installation	#####	\$\$\$\$\$		\$\$\$\$\$
			Subtotal	

[. . .]

***No sales tax, per Resale Certificate provided by [Company]**

The sample invoice’s line items contained information consistent with the Table 1: Example Itemized Charges, which you presented in your request letter. The sample invoice’s line items include prices totaling \$\$\$\$\$ for locks, thermostats, and light switches and \$\$\$\$\$ for installation. Notably, the sample invoice shows no sales tax assessed but includes in bold “***No sales tax, per Resale Certificate provided by [Company].**”

On the subject of sales tax, through an email, you also explained the following:

[The Company] collect[s] [the sales tax] from the lessee/[C]ustomer along with the first lease payment if [the Customer] choose[s] to not finance it. In some cases [the Company] will include the sales tax as part of the principal, if the [C]ustomer would like [the Company] to finance the sales tax. In either case, the sales tax is paid to Utah for the equipment when it is due. [The Company] ha[s] a third party lease service provider . . . which manages the tax payment to each state where [the Company] do[es] business.

II. Issues

In your request letter, you have presented the following:

1. Whether the Company will be exempt from paying sales tax on the Labor Cost.
2. Whether the Company will be exempt from paying sales tax on the Interest/Fees.
3. Whether the way in which the Company has the Equipment Cost, Labor Cost, and Interest/Fees within the Company’s capital lease, as laid out in Table 1: Example Itemized Charges is sufficiently itemized for the purpose of exempting the Labor Cost and Interest/Fees from sales tax.

III. Applicable Law

Utah Code Ann. § 59-12-103(1) imposes Utah sales and use tax and states the following 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;
.....
 - (k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) otherwise consumed;
 - (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) consumed . . .
-

Utah Code Ann. § 59-12-102 defines multiple terms, including the following in part:

(30) "Construction materials" means any tangible personal property that will be converted into real property.

.....
(59) (a) "Lease" or "rental" means a transfer of possession or control of tangible personal property or a product transferred electronically for:

- (i) (A) a fixed term; or
- (B) an indeterminate term; and
- (ii) consideration.

.....
(c) "Lease" or "rental" does not include:
.....

- (ii) a transfer of possession or control of property under an agreement that requires the transfer of title:
 - (A) upon completion of required payments; and
 - (B) if the payment of an option price does not exceed the greater of:
 - (I) \$100; or
 - (II) 1% of the total required payments; or

.....
(124)(a) Except as provided in Subsection (124)(d) or (e), "tangible personal property" means personal property that:

- (i) may be:
 - (A) seen;
 - (B) weighed;
 - (C) measured;
 - (D) felt; or
 - (E) touched; or
- (ii) is in any manner perceptible to the senses.

.....

- (c) "Tangible personal property" includes the following regardless of whether the item is attached to real property:
 - (i) a dishwasher;
 - (ii) a dryer;
 - (iii) a freezer;
 - (iv) a microwave;
 - (v) a refrigerator;
 - (vi) a stove;
 - (vii) a washer; or
 - (viii) an item similar to Subsections (124)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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- (e) "Tangible personal property" does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (i) a hot water heater;
 - (ii) a water filtration system; or
 - (iii) a water softener system.

....

Utah Code Ann. § 59-12-104(25) includes the following exemption for a product purchased for resale:

a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

Utah Code Ann. § 59-12-104 contains exemptions relating to construction materials in subsections (2), (66), (67), and (73). Subsection (2) exempts certain sales of "construction materials purchased by the state" or "on behalf of institutions of the public education system." Subsections (66) and (67) exempt certain sales of "construction materials . . . purchased by, on behalf of, or for the benefit of" certain airports. Subsection (73) exempts certain sales of "construction materials used in the construction of a new or expanding life science research and development facility."

IV. Analysis.

This Analysis section will explain the following: (A) the transaction between the Company and the Customer is not a lease or rental of tangible personal property for Utah sales and use tax purposes and (B) the transaction involves the nontaxable sale of a real property

improvement.¹ Your three questions, which are listed in section II. Issues, are answered at the end of Subsection IV.B., below.

A. The Transaction between the Company and the Customer is Not a Lease or Rental Transaction for Utah Sales and Use Tax Purposes.

The Customer's monthly payments to the Company are not taxable under § 59-12-103(1)(k), as rental or lease payments made for tangible personal property. Assuming the installed equipment transferred from the Company to the Customer meets the definition of tangible personal property for Utah sales and use tax purposes, the Customer's payments to the Company would still not be lease or rental payments based on the definition of lease or rental found in § 59-12-102(59). Subsection (59)(c)(ii) excludes from the definition of "lease" or "rental" the following:

a transfer of possession or control of property under an agreement that requires the transfer of title: (A) upon completion of required payments; and (B) if the payment of an option price does not exceed the greater of: (I) \$100; or (II) 1% of the total required payments . . .

The Company's sales of installed equipment to a Customer falls within § 59-12-102(59)(c)(ii); the Company is required to transfer title to the Customer after the Customer makes all payments and pays the end-of-lease purchase price of \$1.

B. The Transaction between the Company and the Customer Involves the Sale of a Real Property Improvement.

In the previous paragraph, the assumption was made that the installed equipment meets the definition of tangible personal property when the Company sells such to the Customer. However, based on the facts you have provided, the items sold by the Company to the Customer are converted to real property and become a real property improvement. Your examples of the equipment installed then sold by the Company to the Customer(s) include LED lighting, dimmer switches, locks, thermostats, heating and air conditioning units. After these items are installed to real property for purposes of improving the real property, they become an essential part of the real property, converted to real property by the Contractor. Before the items are installed, they

¹ Sales of LED lighting, dimmer switches, locks, thermostats, heating and air conditioning units, etc. installed into commercial buildings are sales of real property improvements. Sales of other items, such as dishwashers, dryers, freezers, microwaves, refrigerators, stoves, or washers, do not become real property, but instead remain tangible personal property under § 59-12-102(124)(c). **Because you have not stated you sell the items listed in § 59-12-102(124)(c), this private letter ruling does not cover sales of such items.** If you sell such items, you can obtain more direction in this area by consulting Publication 42, which is available through the tax.utah.gov website, and by contacting the Taxpayer Services Division, Technical Research Unit, by phone at 801-297-7705, by email at taxmaster@utah.gov, or by mail at 210 N 1950 W, Salt Lake City, UT 84134.

are tangible personal property and fall within the definition of “construction materials,” under § 59-12-102(30). After the items are installed, they are a real property improvement. Because the Company is selling items converted to real property, the Company is selling the Customer a real property improvement, not tangible personal property, for purposes of Utah sales and use taxes. Sales of real property improvements and related interest are not subject to Utah sales and use taxes. Although the Company and the Customer agree in the Equipment Lease to treat the installed equipment as personal property for purposes of their agreement, the installed equipment will **not** be treated as tangible personal property for Utah sales and use tax purposes because the installed equipment are items converted to real property.

Generally, for a real property improvement, the last person who owns the tangible personal property before it is installed and converted into real property is the person who is responsible for the Utah sales and use taxes on the tangible personal property before it is converted to real property. That person might have been assessed tax on the tangible personal property under § 59-12-103(1)(a) for “retail sales of tangible personal property made within the state” or under § 59-12-103(1)(l) for “amounts paid or charged for tangible personal property if within this state the tangible personal property is: . . . (iii) consumed.” Based on the facts you presented, the Contractor both furnishes and installs the items of tangible personal property such as LED lighting, dimmer switches, locks, thermostats, and heating and air conditioning units. In such a case, the Contractor is the last person to own the items as tangible personal property before they are converted into a real property improvement. The Contractor is responsible for the Utah sales and use taxes on the amounts he paid to acquire such tangible personal property unless an exemption applies. Some exemptions that apply specifically to construction materials include those found in § 59-12-104(2), (66), (67), and (73). Other exemptions found in § 59-12-104 could also apply.

No provision in the Utah Code allows a Contractor to transfer his or her Utah sales and use tax liability to the Company. The Utah State Tax Commission has issued Publication 42, titled “Sales Tax Information for Sales, Installation and Repair of Tangible Personal Property Attached to Real Property,” which addresses situations in which construction materials and fixtures are converted to real property.² Publication 42 on page 2 states the following in part:

Incorrect Practices

A contractor who sells tangible personal property under a furnish-and-install contract may not:

1. collect sales tax on the transaction;
2. offset the sales tax owed on the contractor’s purchase of the tangible personal property by any sales tax the contractor incorrectly collected on the furnish-and-install contract; or

² Publication 42 is available through the tax.utah.gov website.

3. show the tax owed on the contractor's purchase of construction materials (or any amount that appears to be tax) as a separate item on a customer invoice or contract.

A contractor that incorrectly collects sales tax on property sold under a furnish-and-install contract must pay that tax to the Tax Commission, unless the tax is refunded to the buyer.

Both the Contractor and the Company should **not** show on their invoices or contracts with each other or with the Customer any sales taxes incurred by the Contractor on the Contractor's purchase of the tangible personal property that the Contractor converts into a real property improvement.

Based on the sample invoice from the Contractor to the Company, the Company provided the Contractor with a resale certificate and the Contractor did not charge the Company sales tax on the installed locks, thermostats, and light switches. However, the Contractor listed on the invoice in bold "***No sales tax, per Resale Certificate provided by [Company].**" It is correct that the Company would not be subject to Utah sales and use taxes for the installed locks, thermostats, and light switches. However, the reason no sales tax applies is unrelated to the resale certificate provided by the Company. If no exemption applies and the Contractor fails to pay the sales and use taxes on the locks, thermostats, and light switches when he or she purchases them, he or she is still subject to the sales and use taxes for those items when he or she installs them, as explained previously in this private letter ruling. The Company's resale certificate **does not** apply to exempt the transaction between the Contractor and the Company from sales tax when the Contractor has not sold tangible personal property.

Similarly, for real property improvements, the Company cannot transfer the Contractor's Utah sales and use tax liability to the Customer. In the situation you presented, the Company would report certain itemized charges in Table 1. Included in the itemized charges is "Sales Tax to Collect and Remit" of \$\$\$\$\$ calculated based on the Equipment Cost of \$\$\$\$\$. When the Company is reselling a real property improvement such as installed locks, thermostats, and light switches, it is incorrect for the Company to collect and remit Utah sales taxes from the Customer. Likewise, for a real property improvement, the Company should not show an amount of sales tax as an itemized line item charged to the Customer. As explained previously in this private letter ruling, the Contractor is the person responsible for such taxes.

To specifically answer your three questions, because the Company's sale is of a real property improvement:

1. The Company should not pay or charge sales or use taxes on the Labor Cost.
2. The Company should not pay or charge sales or use taxes on the Interest/Fees.
3. The way in which the Company has laid out the Equipment Cost, Labor Cost and Interest/Fees are unrelated to the nontaxability of the Labor Cost and Interest/Fees.

Furthermore, listing an amount of “Sales Tax to Collect and Remit” would be incorrect because the Equipment Cost is for a real property improvement.

V. Conclusion

This private letter ruling concludes the following:

- The Customer’s monthly payments to the Company are not taxable under § 59-12-103(1)(k), as rental or lease payments for tangible personal property.
- The transaction between the Company and the Customer involves the nontaxable sale of a real property improvement.

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,

Rebecca L. Rockwell
Commissioner

RLR/aln
15-006