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## REQUEST LETTER

03-021

NAME  
ADDRESS  
PHONE

This is to request a ruling of your department with respect to the application of sales and use tax under the situations described below, for our client, COMPANY, and its wholly owned subsidiary, OTHER COMPANY

### FACTS

DIVISION OF OTHER COMPANY, is in the business of manufacturing and selling large quantities of monogrammed products such as shirts, caps, etc. DIVISION OF OTHER COMPANY has its sole manufacturing facilities in STATE, with products sold and shipped throughout the United States. DIVISION OF OTHER COMPANY customers buy products for their own consumption. In certain instances, employees of DIVISION OF OTHER COMPANY customers may purchase such merchandise, where the DIVISION OF OTHER COMPANY customer provides its employees, a price subsidy for such purchases by making supplemental payments directly to OTHER COMPANY. In addition to paying for the merchandise purchased, customers also pay certain other fees for services performed in conjunction with the purchase of such merchandise. Such other fees are described in detail below.

1. **Set-up fees:** These are one-time charges to design or adapt a logo/monogram. Such charges vary with the nature of customization involved. These are lump-sum fees and payable even if a customer decides not to order merchandise. Set-up fees are a one-time charge and not applicable to subsequent merchandise orders using the same logo/monogram.
2. **Application Fees:** These fees are for application of the customized logos/monograms to the merchandise. Application fees are charged per item of merchandise.
3. **Rush Fee:** These are lump-sum fees for a rush order. A rush order is when a customer wants to receive the merchandise sooner than it would under the normal process. For a fee, DIVISION OF OTHER COMPANY will move rush orders ahead of other orders.
4. **Gift Boxing:** A gift boxing service is available to all DIVISION OF OTHER COMPANY customers for a per item charge. The cost of materials for such service is minimal compared to the total charge to the customer. Unlike gift-wrap, the customer receives a box that could be re-used.
5. **Minimum Charges:** These are lump-sum charges applied to a customer

whose order is below a minimum quantity of merchandise.

All of the above services are performed at the DIVISION OF OTHER COMPANY STATE facilities. All charges for these services are separately stated on customer invoices. For the purpose of this ruling, please assume that OTHER COMPANY (and therefore DIVISION OF OTHER COMPANY) has nexus in your state.

We request a ruling of your Department with respect to the application of sales and use tax to the above described fees when charged in conjunction with purchase of merchandise by a DIVISION OF OTHER COMPANY customer for its own use and by an employee of DIVISION OF OTHER COMPANY customer, when the DIVISION OF OTHER COMPANY customer provides a price subsidy for the purchase of such merchandise by its employee.

For any questions about this matter, please contact me at PHONE.

Sincerely,

NAME

### **RESPONSE LETTER**

RE: Private Letter Ruling Request –

Dear NAME,

We received your request for a ruling with respect to the application of sales and use tax to the fees described by you when charged in conjunction with purchase of merchandise by a DIVISION OF OTHER COMPANY customer for its own use, or by an employee of a DIVISION OF OTHER COMPANY customer, when the DIVISION OF OTHER COMPANY customer provides a price subsidy for the purchase of such merchandise by its employee. You said the charge for each of the services is separately stated on customer invoices. Our response to your request presumes nexus in the State of Utah. Though the responses deal with sales tax, the analysis is also applicable to use tax.

#### Set-up Fees

With respect to set-up fees, there are two possible results, depending on whether a transfer of tangible personal property occurs. A sale, as defined in UCA 59-12-102 (both the current version (28) and the one effective July 1, 2004, (57)(a)), involves the transfer of tangible personal property for consideration.

First, if a customer asks you to design a logo or monogram, and does not

receive tangible personal property, there would be no sales tax. If we understand your question regarding set-up fees correctly, the payment of a set-up fee, when not followed by a purchase of something to which a logo or monogram is applied, involves no tangible personal property, nor a taxable service. Thus, there would be no taxable sale, and, hence, no sales tax.

Second, if a customer approves the logo or monogram and receives tangible personal property to which the logo or monogram have been applied, the cost of creating the logo or monogram is part of the sales price for that transaction, and, therefore, subject to sales tax. If subsequent purchases using the logo or monogram do not include the set-up fee as part of the total amount of consideration for which the merchandise was sold, sales tax would apply only to the purchase price of the subsequent sale.

#### Application Fees

Application fees are charges a customer must pay in order to receive title to a given order of merchandise. As such, they are part of the total amount of the purchase price for which the merchandise was sold by DIVISION OF OTHER COMPANY. See UCA 59-12-102 (23), effective until July 1, 2004, and UCA 59-12-102 (50), effective July 1, 2004. Thus, they are subject to sales tax.

#### Rush Fees

Under the current statute, UCA 59-12-102 (23) these have been taxable as part of the purchase price. Under the statute effective July 1, 2004, "purchase price" includes a service cost or a charge by the seller necessary to complete the sale. See 59-12-102 (50)(b)(ii)(C) and (iii). The rush fee is subject to sales tax.

#### Gift Boxing

You indicated the customer receives a gift box that may be reused. This is tangible personal property received by the customer. The cost is billed separately. As the customer has paid for a discrete item of personal property, it is subject to sales tax.

#### Minimum Charges

As minimum charges must be paid in order for the customer to receive the merchandise, they are part of the total amount of consideration for which the merchandise was sold and are subject to sales tax.

You asked about these fees “when charged in conjunction with purchase of merchandise by a DIVISION OF OTHER COMPANY customer for its own use and by an employee of DIVISION OF OTHER COMPANY customer, when DIVISION OF OTHER COMPANY customer provides a price subsidy for the purchase of such merchandise by its employee.” Purchases by a DIVISION OF OTHER COMPANY customer for its own use would be subject to sales tax. It appears that DIVISION OF OTHER COMPANY customer price subsidies are directly connected with the sale of particular merchandise, and are, in fact paid by the customer to DIVISION OF OTHER COMPANY. Thus, the subsidies are part of the total amount of consideration for which the merchandise was sold and are also subject to sales tax.

Should you have further questions or need further clarification, please do not hesitate to contact us.

For the Commission,

Marc B. Johnson  
Commissioner

MBJ/SR03-021