

REQUEST LETTER

August 16, 2005

NAME
ADDRESS

Re: Request for Sales & Use Tax Ruling

We hereby request a written ruling in regard to the Utah sales tax and its application to certain types of labor services that we perform for a customer in Utah as described below:

FACTS:

Taxpayer is headquartered in STATE and has an office in the State of Utah. Taxpayer is supplying the customer with a technician who performs the following tasks at the customer's premises:

- Installing software on desktop computers using an imaging process where commercially available software packages are installed on a single desktop computer. An image of that computer is then captured via commercially available software. Remaining new desktop computers are then "cloned" from the captured image to speed deployment.
- As issues arise in the computer image, troubleshooting takes place which may include creating a complete new image or simply adding needed software to the existing image.
- Troubleshooting hardware failures and replacing failed parts on desktop computers where the manufacturer warranty has expired. This action may result in the sale of an electronic part to repair the desktop computer.
- Imaging, configuring, and physically connecting new desktop computers for either new employees or existing employees where the previous desktop computer was retired from service.

These services are separately invoiced monthly and performed at the customer's location in Utah.

GOAL:

To determine if any of the above labor services be taxable per the State of Utah.

RULING REQUEST:

It is respectfully requested that a written ruling be granted that explains the proper application of your state's sales tax to the above facts. I will appreciate your assistance on this respect. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

NAME
ADDRESS
PHONE
EMAIL

RESPONSE LETTER

March 14, 2007

NAME
ADDRESS

RE: Private Letter Ruling Request – Issues relating to computer software

Dear NAME,

You have requested an advisory opinion regarding possible Utah sales and use tax liability of a STATE company doing business in Utah. To assist in answering your specific questions, I will first provide an overview of Utah's laws and policies concerning computer software for purposes of sales and use tax.

Utah law generally provides for sales or use tax on the sale and repair of tangible personal property. Utah Code Ann. Section 59-12-103(1)(a) provides for a tax on "retail sales of tangible personal property made within the state." Utah Code Ann Section 59-12-103(1)(g) applies the same tax to "amounts paid or charged for services for repairs or renovations of . . . tangible personal property" along with the "parts used in the repairs." The tax on repairs or renovations applies "whether or not any parts are actually used in the repairs or renovations of the tangible personal property." Utah Code § 59-12-103(1)(g)(ii). Installing items of tangible personal property are considered repairs unless the installation is to real property. Utah Code Ann. Section 59-12-102(73) describes the act of installation as "attaching tangible personal property to other tangible personal property" and defines this installation as a part of "repairs or renovations of tangible personal property."

Both computers and prewritten computer software are tangible personal property under Utah law. Computers are covered under Utah Code Ann. Section 59-12-102(93)(a). This statute defines as personal property items that may be seen, weighed, measured, felt, touched, or are in any manner perceptible to the senses. Meeting any one of these conditions will bring the item into the definition of personal property. Prewritten software is defined by Utah Code Ann. Section 59-12-102(65) as "computer software that is not designed and developed . . . to the specifications of a specific purchaser." (Emphasis added). Utah Code Ann. Section 59-12-

102(93)(b) includes prewritten computer software in the definition of tangible personal property.

Custom software qualifies for different treatment than prewritten software. The definition of “prewritten software” excludes software that is “designed and developed . . . by the author or other creator of the computer software . . . to the specifications of a specific purchaser.” Utah Code Ann. § 59-12-102(65). There is no sales tax on custom software.

A business with an office, service enterprise, or similar place of business in Utah is required to collect sales tax on taxable sales of goods and services in the state. Utah Code Ann. § 59-12-107. The business must also create and keep records that separately state the amounts of taxable and non-taxable sales. Utah Code Ann. § 59-12-111; Utah Administrative Rule R865-19S-22.

Taxable Transactions

Applying these statutes and rules to your situation, most of your computer work will be taxable. Selling prewritten software or hardware is taxable as a sale of tangible personal property under Utah Code Ann. Section 59-12-103(1)(a). Troubleshooting and fixing prewritten software, or a software problem, would be taxable under Utah Code Ann. Section 59-12-103(1)(g) as a “repair or renovation” to “tangible personal property.” Under Utah Code Ann. Section 59-12-103(1)(g)(ii), changing software settings or making similar adjustments would be taxable as a repair because it is not necessary to replace parts to come within the definition of a repair. Installing prewritten software would be taxable as attaching one item of tangible personal property (software) to another item of tangible personal property (a computer). *See* Utah Code Ann. § 59-12-102(73). This is true whether you are installing the software one program at a time or whether you use an imaging process to speed the installation.

Nontaxable Transactions

Under the same statutes and rules, some of your work will not be subject to sales or use tax. Diagnosing a problem that does not lead to change in software or hardware is not a “repair or renovation” under Utah Code Ann. Section 59-12-102(73). Therefore, a diagnostic service is not taxable. *See* Utah Code Ann. § 59-12-103(1)(g). From your description of the services you provided, you may have at least two types of consultation that results in no repair. First, you described instances in which the computer problem turns out to be operator error. In these instances, you indicated that you instruct the user rather than making any changes to the computer or its software. Second, your work may uncover problems with software or hardware that, for various reasons, the client may not wish to have you remedy. These services are likewise consultation only and are not subject to tax.

Conclusion

For non-taxable work you complete, your invoices will need to separately state the taxable and non-taxable items. In addition to the statutory requirements to do so, *see* Utah Code Ann. § 59-12-111; *see also* Utah Administrative Rule R865-19S-22, there is a practical reason. If an auditor reviewing your tax documents has no way to separate taxable and non-taxable items, there will be no way for you to support your reasons for not collecting sales tax on some of the services that you provided to your clients. You indicated that you currently bill repairs and consultation under the same billing code but could separate these two categories. Given that repairs, as described in Utah statute and this opinion, are taxable and consultation that does not result in a repair is not taxable, you should consider separately stating or invoicing these services. This may depend on whether you do enough consultation work to make this worthwhile.

Finally, you indicated that you do not write custom software or write code or otherwise modify prewritten software. If this should change, you should review the tax policies for services related to custom software. Writing custom software and many related activities are not subject to Utah sales and use tax. *See* Utah Code Ann. § 59-12-102(65); *see also* Utah Code Ann. § 59-12-103. You may also request another Private Letter Ruling from the Tax Commission.

The Tax Commission provides this opinion on the basis of the information you presented. This ruling only applies to the specific fact situation, and for the individuals, addressed in this letter. If you wish to address these or other Utah tax concerns further, please do not hesitate to contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/CDJ/05-018