

06-004

NAME
ADDRESS

Dear Sir or Madam:

In accordance with the provisions of Utah Admin. Rule R861-1A-34, we request the Utah State Tax Commission confirm our understanding of the taxability of the business activities outlined below as they pertain to Utah sales and use tax.

FACTS:

Our client ("Company A") provides applications software and services to its customers. Company A's revenue streams include license of canned computer software, maintenance of software, support for the software, professional services, and hosting services. Each of these services are contracted for and billed separately on invoices provided to its customers. These services are not bundled together and each customer may chose which services it would like to purchase.

The canned computer software is delivered to all customers electronically; no software disks are provided to the customers. The maintenance of software is for periodic software updates, bug corrections, and patches, and does not include support. All software maintenance and updates items are also delivered electronically. Support is a separate service offered by Company A and is provided via the telephone unless there is a requested or required need for onsite support. Professional services are provided to customers based upon time and expense or for a set fee for installation, configuration, customization consulting, and training. The following two types of hosting services are provided by Company A: (1) remote administrative/monitoring hosting services and (2) information/data hosting services.

For the remote administrative/monitoring hosting services, Company A provides remote management services of the customer's computer environment. The equipment is owned by the customer and located at the customer's office.

Company A's owns and maintains the server equipment at its location in Utah for the customer in the information/data hosting services. The server equipment maintained by Company A provides storage and backup of data and the tools to support the customer's information systems infrastructure. This service operates as an outsourced technology department.

Both hosting services offered by Company A are an add-on-service. Approximately 20% of Company A's customers are hosted. The hosting services group quotes the prices and works with the customers to sell, establish and setup the hosting service.

ISSUES:

1. Is the sale of remote administrative/monitoring hosting services by Company A subject to Utah sales tax?
2. Is the sale of information/data hosting services by Company A subject to Utah sales tax?
3. Is the sale of remote administrative/monitoring hosting services by Company A subject to Utah sales tax if computer equipment/hardware is sold with the services?

CONCLUSIONS

1. The sale of remote administrative/monitoring hosting services by Company A should not be subject to Utah sales tax because it is not enumerated as a taxable service in Utah Code Ann. §59-12-103 and no tangible personal property is provided with the service.
2. The sale of information/data hosting services by Company A should be subject to Utah sales tax because the sale involves the leasing of tangible personal property.
3. The sale of remote administrative/monitoring hosting services with the sale of computer equipment/hardware by Company A should not be subject to Utah sales tax if the amount of the taxable computer equipment/hardware is separately stated.

DISCUSSION

Issue 1:

Only services enumerated in Utah Code Ann. §59-12-103 are subject to Utah sales and use tax. Remote hosting services are not an enumerated service in Utah Code Ann. §59-12-103 and thus should not be subject to Utah sales and use tax. Therefore, Company A's sale of remote administrative/monitoring hosting services should not be subject to Utah sales tax because it is not enumerated as a taxable service in Utah Code Ann. §59-12-103 and no tangible personal property is provided with the service.

Issue 2:

The lease of tangible personal property in Utah is subject to Utah sales and use tax if the tangible personal property is stored, used, or consumed within Utah. Utah Code Ann. §59-12-103(1)(k). The Commissioner stated in Utah Advisory Opinion, No. 01-030, that "the leasing of disk space in Utah for storage would typically be viewed as the lease of tangible personal property, therefore, taxable under Utah Code Ann. §59-12-103(1)(k)." Therefore, the information/data hosting services provided by Company A should be subject to Utah sales tax because the sale involves the leasing of data storage space in Utah.

Issue 3:

Generally, the sale of non-taxable services will not be subject to Utah sales and use tax if sold with taxable tangible personal property when the charges for the nontaxable services and taxable tangible personal property are separately stated.

The Commissioner stated in Utah Advisory Opinion, No. 95-036DJ, that “charges for services to modify or adapt prewritten computer software are not taxable if separately stated” from the prewritten computer software. Additionally, the Commissioner stated in Utah Advisory Opinion, No. 91-030DJ that “if non-taxable services are separately billed from taxable services or rentals, the non-taxable amount is exempt.”

Therefore, charges for Company A’s remote administrative/monitoring hosting services should not be subject to Utah sales and use tax if separately stated from the charges for the taxable computer equipment/hardware.

Utah Code Ann. §59-12-103(1), A tax is imposed on the purchaser as provided in this part 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:
 - (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;

Please consider the above facts and our related conclusions, and provide a written response detailing your confirmation or any exceptions to these conclusions. If you require additional information or would like to discuss this request further, please call me at PHONE. Thank you in advance for your consideration.

Sincerely,

NAME
TITLE

RESPONSE

July 27, 2006

NAME
ADDRESS

Re: Private Letter Ruling 06-004
Application of Sales Tax to computer hosting services

Dear NAME,

This letter is in response to your request for tax guidance. This letter ruling is not intended as a statement of broad Tax Commission policy. It is an interpretation and application of the tax law as it relates to the facts presented in your request letter and the assumptions stated in the Analysis portion of this ruling letter. If the facts or assumptions are not correctly described in this letter ruling, please let me know so we can assure a more accurate response to your circumstances.

Facts

Your client, Company A, charges its customers for the licensing of canned software, software maintenance, software support, professional services and hosting services. However, your question focuses on the taxability of charges for hosting services, which are billed separately from any other charges. Hosting services may include:

- a. remote administrative/monitoring services, which provides remote management of the customer's computer environment on the customer's own equipment; remote administrative/monitoring services along with the sale of computer equipment or hardware; or
- c. remote information/data hosting services, which involves the use of Company A's server in Utah.

Analysis

Although Company A charges customers for a variety of services and functions, you have specifically asked for advice concerning the hosting fees. Therefore, this letter ruling focuses on that issue and does not attempt to determine the tax status of the other kinds of sales Company A makes.

Without a more detailed description of the hosting services, we assume the following for purposes of this ruling:

Private Letter Ruling 06-04
Page 2

The customer is not required to purchase, lease or download taxable software. Company A provides the customer with remote administration of the customer's network infrastructure for the purpose of monitoring and responding to, for instance, the customer's site traffic, bandwidth utilization, security, hardware problems, downtime alerts, and to provide routine infrastructure maintenance.

Remote information and data hosting means that the customer uploads and stores data on Company A's remote server, and that company maintains all hardware and software to operate this system.

Remote administrative/monitoring services

Company A provides remote administrative and monitoring service by accessing the customer's information system. If the customer has its own equipment, the customer can purchase this hosting service separately. If the customer does not have the needed equipment, hardware or software, Company A will sell the customer that equipment as well. Of course, the sale or lease of computer hardware is taxable in Utah. The sale of software may also be taxable depending on whether it is "pre-written" software pursuant to section 59-12-104 of the Utah Code. Otherwise, charges for administrative and monitoring service are not taxable so long as the customer does not download taxable software in conjunction with this service.

Remote data/information hosting services

Company A also offers data and information storage on Company A's remote servers, which are located in Utah. Presumably, the customer may select either shared or dedicated server service. In either case, the Commission considers this to be the lease of disk space and server equipment and hardware. Therefore, this transaction is taxable as a lease of tangible personal property.

Separately stated charges

In your request letter, you referenced several prior Tax Commission opinions to support the point that non-taxable elements of a transaction are exempt if billed separately. Utah law now contains language that you should keep in mind. Under section 59-12-106 (61) of the Utah Code, "purchase price" includes charges for any service that is necessary to complete the sale. If Company A sells or leases equipment or software in conjunction with the hosting service or other technical services, the entire charge may be taxable even if the charges are separately stated on the billing invoice.

In determining whether the service component of a "mixed" transaction is taxable, the Commission will look at the connection between the sale or lease of tangible personal property and the service component. If the service component is essential or necessary to completing the sale, then the entire transaction is taxable. For instance, if a customer purchases taxable software, but also requires help with installation and setup, the service component may be viewed as an essential component of the software purchase. If your client has specific questions on this point, please let us know.

Generally, charges for remote administrative and monitoring services are not taxable so long as the customer is not required to purchase or lease equipment or to download taxable software to accomplish the contract. Where the customer leases space on or use of Company A's equipment, which is located in Utah, the charges are taxable.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/IR
06-004