

06-009

April 13, 2006

REQUESTOR NAME  
ADDRESS

Re: Request for Private Letter Ruling Pursuant to Utah Code Annotated §59-1-210  
and Utah Administrative Code Rule R861-1A-34

We have been retained by our clients (hereinafter collectively referred to as the “Petitioners”), CORP HOLDINGS, and CORP INSURANCE , to determine the Utah sales tax treatment of certain specified sales of extended service contracts on equipment and related parts. Accordingly, we respectfully request that the Utah State Tax Commission issue a private letter ruling under Utah Code Annotated § 59-1-210 and Utah Administrative Code Rule R861-1A-34 to confirm our conclusions regarding the transactions described below. The issues presented in this request for a private letter ruling are not currently the subject of an audit, refund request, or other agency action, and are not pending before a court on judicial review of a decision of the Utah State Tax Commission.

Facts:

*General Information*

CORP , CORP HOLDINGS, and CORP INSURANCE are part of a group of related entities owned by ENTITY INC, a STATE 1 corporation with principle operations in the following three highly integrated lines of business:

1. **Machinery** – This line of business includes the design, manufacture, marketing, and sale of construction, mining, and forestry machinery, such as track and wheel tractors, track and wheel loaders, pipelayers, motor graders, wheel tractor-scrapers, track and wheel excavators, backhoe loaders, log skidders, log loaders, off-highway trucks, articulated trucks, paving products, telescopic handlers, and skid steer loaders and related parts.
2. **Engines** – This line of business includes the design, manufacture, marketing, and sale of engines for machinery, electric power generation systems, on-highway vehicles (heavy and medium duty commercial trucks), locomotives, marine, petroleum, construction, industrial, agricultural, and other applications and related parts.
3. **Financial and Insurance Products** – This line of business consists primarily of the provision of a wide range of financing alternatives and various forms of insurance to customers and dealers to help support the purchase and lease of the machinery and engines described above.

ENTITY CORP owns 100% of CORP, a STATE 2 corporation that operates as a general business corporation in all states except STATE 3 and STATE 4 and is regulated and licensed as a special purpose warranty company in a limited number of jurisdictions. CORP is the obligor on extended service contracts on ENTITY CORP engines and machines. CORP federal employer identification number is #####. CORP is headquartered at the following address:

CORP  
ADDRESS

Additionally, ENTITY CORP owns 100% of ENTITY Holdings, a STATE 1 corporation formed for the purpose of holding ownership interests in insurance company subsidiaries. ENTITY INC Holdings' federal employer identification number is #####. ENTITY Holdings is headquartered at the following address:

ENTITY HOLDINGS.  
ADDRESS

ENTITY INC Holdings owns 100% of ENTITY INC Insurance, a STATE 2 domiciled property and casualty insurance company that is licensed in forty-eight states and the District of Columbia. ENTITY INC Insurance's federal employer identification number is #####. ENTITY insurance is headquartered at the following address:

ENTITY INC  
ADDRESS

#### *Utah Transactions*

The Petitioners will engage in the following transactions in Utah:

1. **Non-Truck and Truck Extended Service (ESC) Contracts – ENTITY INC** will sell a new non-truck engine, truck engine, or machinery, with a standard manufacturer's warranty to an unrelated ENTITY INC dealer in Utah (hereinafter referred to as the "ENTITY DEALER"). This sale will be pursuant to a contract under which the ENTITY DEALER remits payment to ENTITY INC when the engine or machinery is sold to an end user, and will be subject to a security interest. The ENTITY DEALER will collect and remit Utah sales tax on the sales price of the engine or machinery when it is sold to the end user. Then, the ENTITY DEALER will send ENTITY INC a fixed fee payment for the engine or machinery; retaining the difference between the sales price and the amount sent to ENTITY INC.

Further, on behalf of CORP, the ENTITY DEALER or a TRUCK DEALER operating under the ENTITY Dealer's authority, will sell to the end user an extended service contract covering the cost of repairs for

mechanical breakdowns to the engine or machinery for a period of time after the termination of the standard warranty. This extended service contract will be issued by CORP and will be backed by a nonperformance insurance policy issued by ENTITY INC INSURANCE. In the event of a claim under the extended service contract, CORP will pay for covered repairs. Should CORP be unable to perform under the contract, the end user will have the right to file a claim with ENTITY INSURANCE.

The ENTITY DEALER, or the TRUCK DEALER(for truck engine ESC contracts), will collect and remit Utah sales tax on the sales price of the extended service contract. Then, the ENTITY DEALER will send CORP a fixed fee payment for the extended service contract; retaining the difference between the sale price and the amount sent to CORP.

2. **National Account on-Highway Vehicle (Truck Engine) Extended Service Contracts – ENTITY INC** will sell a new truck engine with a standard manufacturer’s warranty to an unrelated original equipment manufacturer in Utah (hereinafter referred to as the “OEM”). The OEM will install the new truck engine into a truck chassis and sell the truck to an unrelated Dealer in Utah. The Dealer will sell the truck to a Utah end user and will collect and remit Utah sales tax on the sales price of the truck.

The extended service contract, negotiated by the end user at the time of the sale of the engine to the OEM, will be issued by CORP and will be backed by a nonperformance insurance policy issued by ENTITY INSURANCE . In the event of a claim under the extended service contract, CPSC will pay for covered repairs. Should CORP be unable to perform under the contract, the end user or extended service contract holder will have the right to file a claim with ENTITY INSURANCE.

When the OEM sells the truck to the Dealer, and the Dealer resells the truck to the end user, the extended service contract will be included in the sale to the end user. The Dealer will collect and remit Utah sales tax on the sales price of the truck, which will include the engine, standard warranty, and extended service contract. The Dealer will notify ENTITY INC of the sale to the end user for the purpose of registering the end user as the covered party under the extended service contract. ENTIY INC will notify CORP of this registration.

3. **Non-National Account Truck/Machinery Extended Service Contracts** ENTITY INC will sell a new truck engine, or machinery, with a standard manufacturer’s warranty to a ENTITY DEALER or OEM. This sale will be pursuant to a contract under which the ENTIY DEALER or OEM remits payment to ENTITY INC when the engine or machinery is sold to an end user, and will be subject to a security interest. The ENTITY

DEALER or OEM will collect and remit Utah sales tax on the sales price of the engine or machinery. The ENTITY DEALER or OEM will send ENTITY INC a fixed fee payment for the engine or machinery; retaining the difference between the sales price and the amount sent to ENTITY INC.

Further, on behalf of CORP, the ENTITY DEALER or unrelated dealer may sell to the end user an optional extended service contract covering the cost of repairs for mechanical breakdowns to the engine or machinery for a period of time after the termination of the standard warranty. This extended service contract will be issued by CORP and will be backed by a nonperformance insurance policy issued by ENTITY INSURANCE. In the event of a claim under the extended service contract, CORP will pay for covered repairs. Should CORP be unable to perform under the contract, the end user or contract holder will have the right to file a claim with ENTITY INSURANCE.

The ENTITY DEALER or unrelated dealer will collect and remit Utah sales tax on the sales price of the extended service contract. The ENTITY DEALER or unrelated dealer will send CORP a fixed fee payment for the extended service contract; retaining the difference between the sales price and the amount sent to CORP.

Issues:

1. Does the sale of an extended service contract constitute a sale subject to Utah sales tax?
2. Can CORP take a valid sale for resale exemption certificate from the ENTITY DEALER or OEM on the extended service contracts sold either by the ENTITY DEALER or OEM, or TRUCK DEALER to the end user?
3. If CORP takes a sale for resale exemption certificate in good faith from the ENTITY INC DEALER or OEM on the extended service contracts sold either by CORP to the ENTITY DEALER or OEM, can CORP be held liable for the sales tax due if the ENTITY DEALER or OEM either (1) fails to collect and remit sales tax from the end user, or (2) fails to remit use tax in the event that the ENTITY DEALER or OEM puts the extended service contracts to its own use? Further, if CORP takes a sale for resale exemption certificate in good faith from the ENTITY DEALER on the extended service contracts sold by the ENTITY DEALER to the TRUCK DEALER, and the ENTITY DEALER fails take a resale exemption certificate in good faith from the TRUCK DEALER, can CORP be held liable for the sales tax due if the TRUCK DEALER either (1) fails to collect and remit sales tax from the end user, or (2) fails to remit use tax in the event that the TRUCK Dealer puts the extended service contracts to its own use?

## **Conclusions:**

1. Yes. The sale of extended service contracts covering mechanical breakdowns of the engines and machinery is a taxable sale under Utah Code Annotated § 59-12-103, because the extended service contracts are extended warranties within the meaning of Utah Administrative Code Rule R865-19S-78.B and *Tax Bulletin* No. 8-92, Utah State Tax Commission, May 4, 1992.
2. Yes, If CORP takes a properly completed resale certificate from the ENTITY DEALER or OEM on the extended service contracts, the resale certificate should be valid under Utah Code Annotated § 59-12-106(3)(a), Utah Administrative Code Rule R865-19S-23.A, and Form TC-721, because the ENTITY DEALER and OEM are in the business of selling engines and machinery and related extended service contracts.
3. No. Under Utah Code annotated § 59-12-107(7) and Utah Administrative Code Rule R865-19S-23, if CPSC takes a resale certificate from the ENTITY DEALER or OEM, the ENTITY DEALER or OEM assumes CORP'S liability for sales tax. In the event the ENTITY DEALER or OEM fails to collect and remit sales tax from an end user, or puts the extended service contract to its own use, then the ENTITY DEALER or OEM, and not CORP, are liable for sales tax or use tax due. Further, in the event the ENTITY DEALER fails to obtain a resale certificate from the TRUCK DEALER, then potential sales and use tax liability falls on the ENTITY DEALER, and not on CORP.

## ***Applicable Law:***

### ***Imposition of Sales Tax***

Utah imposes a sales tax on the retail sale of tangible personal property and certain enumerated services. Utah Code Annotated § 59-12-103.

The term "retail sale" is defined as any sale for any purpose other than resale. Utah Code Annotated §59-12-102(69).

The term "sale" is defined as any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property or other taxable transaction for consideration. Utah Code Annotated §59-12-102(71).

### ***Taxability of Sale of Extended Warranty***

The sale of an extended warranty covering the future provision of parts and labor on tangible personal property is subject to sales tax because it is considered to be a sale of future repair services. Utah Administrative Code Rule R865-19S-78.B and *Tax Bulletin* No. 8-92, Utah State Tax Commission, May 4, 1992.

### ***Sales for Resale***

Sales of tangible personal property are exempt from sales tax if the property so purchased is for resale in the purchaser's regular course of business. Utah Code Annotated §59-12-104(26) and (28).

Utah statutes and regulations do not explicitly state that sales for resale of repair services (or extended warranties treated as future repair services) are exempt from sales and use tax; however, the enumerated exception from the presumption of the taxability for services purchased under an exemption certificate, Form TC-721, and the requirements related thereto make it clear that sales for resale of services are treated in the same manner as sales for resale of tangible personal property, and are, therefore, exempt if the services so purchased are for resale in the purchaser's regular course of business. *See*, Utah Code Annotated § 59-12-106(3)(a), Utah Administrative Code Rule R865-19S-23A, and Form TC-721.

### ***Resale Certificates***

There is a presumption that every sale of tangible personal property or services is a taxable sale, and that the purchaser is the consumer of the tangible personal property or services purchased. The burden of proving that a sale of tangible personal property is not a taxable sale at retail is upon the seller unless the seller takes from the purchaser a properly completed exemption certificate stating that the sale is for resale in the regular course of the purchaser's business. Utah Code Annotated §59-12-106(3)(a), Utah Administrative Code Rule R865-19S-23, and Form TC-721.

### ***Effect of Resale Certificate on Sales Tax Liability***

When a seller sells tangible personal property to a purchaser under a properly completed resale certificate, the purchaser assumes the seller's liability for sales tax due when the purchaser later sells the tangible personal property at retail, or use tax due if the purchaser puts the tangible personal property to its own use instead of reselling it. Utah Code Annotated §59-12-107(7) and Utah Administrative Code Rule R865-19S-23.

### **Analysis:**

#### ***Taxability of Sale of Extended Services Contracts***

As long as the extended service contracts covering mechanical breakdowns of the engines and machinery are extended warranties within the meaning of Utah Administrative Code Rule R865-19S-78.B and *Tax Bulletin No. 8-92*, Utah State Tax Commission, May 4, 1992, the sale of the extended service contracts should be subject to sales tax in the same manner as repair services under Utah Code Annotated §59-12-103.

The extended service contracts should be extended warranties within the meaning of Utah Administrative Code Rule R865-19S-78.B and *Tax Bulletin No 8-92*, Utah State Tax

Commission, May 4, 1992, because the extended service contracts cover the future provisions of parts and labor on tangible personal property.

***Taking a Resale Certificate on Extended Service Contracts***

The ENTITY INC DEALER and OEM are in the business of selling engines and machinery (though in the case of the OEM the engines and machinery are subsequently installed in trucks). As part of its business, the ENTITY INC DEALER and OEM sell extended service contracts on the equipment and machinery to the end user on behalf of CORP. Additionally, the ENTITY DEALER transfers extended service contracts to the TRUCK DEALER to sell to end users on behalf of CORP. Accordingly, if CORP takes a properly completed resale certificate from the ENTITY DEALER or OEM for the purchase of the extended service contracts, the resale certificate should be valid under Utah Code Annotated §59-12-106(3)(a), Utah Administrative Code Rule R865-19S-23.A, and Form TC-721, because the ENTITY DEALER and OEM are in the business of selling engines and machinery and related extended service contracts.

***Effect of Resale Certificate on Sales Tax Liability***

Under Utah Code Annotated §59-12-107(7) and Utah Administrative Code Rule R865-19S-23, if CORP takes a resale certificate from the ENTITY DEALER or OEM, the ENTITY DEALER or OEM assumes CORP'S liability for sales and use tax. In the event the ENTITY DEALER or OEM fails to collect and remit sales tax from an end user, or puts the extended service contract to its own use, then the ENTITY DEALER or OEM, and not CORP, are liable for sales tax or use tax due. Further, in the event the ENTITY DEALER fails to obtain a resale certificate from the TRUCK DEALER, then potential sales and use tax liability falls on the ENTITY DEALER, and not on CORP.

If you agree with the analysis and conclusions reached in this letter, please indicate your agreement by signing the acknowledgement below and either faxing a copy to me at (615) 399-3663, or mailing a copy to me at the following address:

REQUESTOR NAME  
ADDRESS

We appreciate your consideration in this matter. If you have any questions or comments, please call me at #####  
Sincerely,

REQUESTOR NAME  
COMPANY NAME  
ADDRESS

November 20, 2006

REQUESTOR NAME  
COMPANY  
ADDRESS

Re: Private Letter Ruling Request

Dear REQUESTOR NAME:

We are in receipt of your request for a private letter ruling on behalf of CORP , CORP HOLDINGS , and CORP INSURANCE , regarding the Utah sales tax treatment of certain specified sales of extended service contracts (ESC contracts) on equipment and related parts.

Your letter described three different types of transactions. While each transaction has its own terms and facts, all three basically involve the sale of tangible personal property to an unrelated entity that will generally resell the tangible personal property to its customer. The extended service contracts are also sold by ENTITY INC to the same unrelated entity and the contract will also generally be resold.

You asked three questions in your letter. They are discussed below in the order you asked them.

Question 1. "Does the sale of an ESC contract constitute a sale subject to Utah sales tax?"

Utah Code Section 59-12-103 (1) states, "A tax is imposed on the purchaser as provided in the part for amounts paid or charged for the following transactions: ... (g) amounts paid or charged for services for repairs or renovations of tangible personal property..."

Tax Commission Administrative Rule R865-19S-78(B)(1) states, "Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable...."

It was your interpretation that the service agreements in question are subject to Utah sales tax. We agree. The extended service contracts are extended warranties within the meaning of Utah Administrative Code Rule R865-19S-78(B) and Tax Bulletin No. 8-92, Utah State Tax Commission, May 4, 1992.

Question 2. May a valid sale for resale exemption certificate be taken from the dealer who resells the service contract?

Utah Code Section 59-12-106(3) states as follows:

"a) For the purpose of the proper administration of this chapter and to prevent evasion of the tax and the duty to collect the tax, it shall be



presumed that tangible personal property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for delivery in this state is sold for storage, use, or other consumption in this state unless the person selling the property, item, or service has taken from the purchaser an exemption certificate:

(i) bearing the name and address of the purchaser; and

(ii) providing that the property, item, or service was exempted under Section 59-12-104.

(b) An exemption certificate described in Subsection (3)(a):

(i) shall contain information as prescribed by the commission; and

(ii) if a paper exemption certificate is used, shall be signed by the purchaser.

This provision permits use of an exemption certificate for property or service sales that are normally taxable. If CPSC takes a properly completed resale certificate from the ENTITY DEALER or OEM on the extended service contracts, the resale certificate should be valid under Utah Code Annotated § 59-12-106(3)(a) thru (d), Utah Administrative Code Rule R865-19S-23.A thru F, and Form TC-721, because the ENTITY DEALER and OEM are in the business of selling engines and machinery and related extended service contracts. Assuming compliance with the above noted provisions, CORP has correctly concluded that an exemption certificate may be taken on the sale of these contracts.

Question 3. Could CORP be held liable for various situations where the purchaser may not fulfill its obligations under the Utah sales tax provisions such as, not reselling the item and using it for its own purposes or failing to collect tax from the end user on its sales tax transaction.

Utah Code Section (59-12-106)(3) states as follows:

c) Except as provided in Subsection (3)(d), a seller that has taken an exemption certificate from a purchaser in accordance with this Subsection (3) with respect to a transaction is not liable to collect a tax under this chapter:

(i) on that transaction; and

(ii) if the commission or a court of competent jurisdiction subsequently determines that the purchaser improperly claimed the exemption.

(d) Notwithstanding Subsection (3)(c), Subsection (3)(c) does not apply to a seller that:

(i) fraudulently fails to collect a tax under this chapter; or

(ii) solicits a purchaser to participate in improperly claiming an exemption from a tax under this chapter.

Utah Code Section (59-12-107) (7), effective July 1, 2006, states, in pertinent part, as follows:

(7) If any sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), is made by a wholesaler to a

retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale and the retailer is responsible for the collection or payment of the tax imposed on the sale if:

- (a) the retailer represents that the personal property is purchased by the retailer for resale; and
- (b) the personal property is not subsequently resold.

Unless CORP fraudulently failed to collect tax or participated in improperly claiming an exemption from tax, it would not be held responsible for the actions of its customer. When the dealer executes the exemption certificate the box, that must be checked for resale sales contains this wording, “[I]f I use or consume any tangible personal property or services I purchase tax free for resale,...I will report and pay sales tax on the proper cost thereof directly to the Tax Commission on my next regular sales and use tax return.”

Under the language effective July 1, 2006, CORP has no liability if the retailer represents to CORP that the purchase is for resale. The retailer is liable if the property is not resold. Ideally, this representation would be in the form of a valid resale exemption certificate.

Assuming CORP has obtained a valid resale exemption certificate, we agree with your position that it would not be liable for sales or use taxes based on the actions of its customers. However, if CORP does not obtain the exemption certificate, it may be liable for any uncollected tax.

These conclusions are based on the information provided to us. Our responses might be different if the facts are other than those upon which our response is based. Please contact us if you have any other questions.

For the Commission,

Marc B. Johnson  
Commissioner  
MBJ/SR 06-009