

06-013

May 9, 2006

NAME
ADDRESS

RE: Sales tax question

To Whom It May Concern:

This letter is written in hopes to get a sales and use tax question answered. The response to this letter should be sufficient to allow it to be relied upon in case of an audit. I will state the facts as clearly as possible and if additional information is required, please feel free to call me or E-mail me with any concerns or questions. The response can be in E-mail format as long as it is stated that the E-mail is sufficient to be relied upon in case of an audit. It is realize that if a deviation from the facts in your response, will not be sufficient to avoid any tax liability in case of audit. The response should be sufficient to hold up during audit and avoid any penalties, interest or tax from the date of the response till it has been determined that a law change has been significant that the response is no longer relevant. I am going to give you the facts and circumstances as they exist and you can respond to how these transactions are to be taxed or if not taxed or if a portion is taxed and a portion is not taxed. This question will ask all applicable questions and if other facts and circumstances may be applicable, please feel free to include the new facts in the response.

The facts of the questions are all related to ready mix concrete manufactures as well as well as companies that are producing construction sand and gravel for sale to third parties and used in the manufacturing of ready mixed concrete which is sold to third parties. The company may produce one or both of the products, in either case the questions will be as if the question is regarding both product lines. When the term product is used from this point forward it is assumed that it is talking about both products as well as each product individually. If the response is different depending on the product, please indicate why it is different for each product.

The primary facts and questions are contained in this paragraph. The response for each scenario below should address each of the facts and questions contained in this paragraph as well as the specific scenario. The company delivers the good to the customers in there own trucks, they also have made arrangements with outside transportation companies to deliver the products. Sometimes the customers arrange for the delivery of the products through third party transportation companies and the customer can also pick up the products in there own trucks. In all cases the delivery, if applicable, the product and the delivery is broken out separately on the invoice and in no case is the price of the delivery higher than the actual delivery charges. All sales have written contracts before the

material is delivered that state that title passes at the manufacturing or production facility. Outlined are a few different scenarios that each should be answered as to the sales tax consequences of each scenario. It is my understanding that sales tax is based upon the selling price of the goods and it is the seller that is responsible for the tax. The seller can pass the sales tax on to the customer. If the sales tax is not collected from the customer, then it is the responsibility of the seller to remit the tax that should have been collected. It should also be addressed as to taxability of the product after title has passed. If the understanding above is not correct and it the responsibility of the consumer to pay the sales tax, then it should be addressed as to the legal issue as to how a company can be forced into collecting and remitting a tax for another party? It is understood that Streamlined sales tax does not address this issue. If it is determined that sales tax can and does continue after title passes, then it should be discussed as to the legality of this issue. Sales tax is typically a tax for the privilege of or the right to sell tangible personal property in the state. Once title has passed, then how or why can sales tax be assessed? This question should also be addressed for each scenario. Does the invoice have to state the amount of sales tax or can the invoices state that the price includes all applicable sales and use taxes. Once again contractually title passes at the manufacturing and production plant. The common way it works is there is a verbal contract that states the title passes at the production plants and this verbal contract is followed up by a written contract prior to delivery being completed.

The questions are how is each of these situations taxed and why? The first case is lets say that the delivery of the product to the customer is with the company's truck. The invoice to the customer is for the product and a reasonable cost for the delivery. The product and the delivery are broken out separately on the invoice. The amount charged for delivery is a reasonable amount and standard in the industry. There is a written agreement that states that title passes at the manufacturing or production facility. What is the appropriate amount of sales tax that is required to be remitted and why? The response should include all of the questions in the facts paragraph as well.

The second case is where the company has contracted with outside or third party transportation companies for a specific rate to deliver the goods to the customers. The transportation companies charges are billed to the customer at the exact same amount as billed to the seller of the products. The product and the delivery separately stated on the invoice. The billing and collecting of the delivery charges is done by the company in return for a reduced rate in the delivery charge. Typically the company uses just use one delivery company. Once again there is a written contract that states that title passes at the manufacturing or production facility prior to completion of the delivery of the product. What is the appropriate amount of sales tax that is required to be remitted and why? The response should include all of the questions in the facts paragraph as well.

The third case is the same as the second, but the outside or third party transportation company invoices the customer directly for the delivery charges and the company invoices for only the product. Once again there is a written contract that states that title passes at the manufacturing or production facility. What is the appropriate amount of

sales tax that I am required to remit and why? The response should include all of the questions in the facts paragraph as well.

The fourth case is where the customer arranges for the delivery through a third party transportation company. Again there is a written contract that states that title passes at the manufacturing and production facility. What is the appropriate amount of sales tax that I am required to remit and why? The response should include all of the questions in the facts paragraph as well.

The fifth case is where the customer picks up the product at the manufacturing or production facility. Again there is a written contract that states that title passes at the manufacturing or production facility. What is the appropriate amount of sales tax that I am required to remit and why? The response should include all of the questions in the facts paragraph as well.

The sixth case is where a third party does the invoices for the transportation company and for the company selling the products. This third party does the invoicing as well as the collection and remits the collected money to the appropriate company. The third party invoices the customer for the price of the product and for the price of the transportation company. The company and the transportation pays the third party that is doing the invoicing for their services. Again there is a written contract that states that title passes at the manufacturing or production facility. What is the appropriate amount of sales tax that I am required to remit and why? The response should include all of the questions in the facts paragraph as well.

Then the final question is does the sales tax need to be separated out the invoice or can the sales tax be included in the selling price? If the sales tax is included in the invoice and not broken out separately the invoice states that the invoice includes all applicable sales tax. The final thing that needs to be addressed is can I rely on your answers in an audit?

It is realized that this is a lot of questions, but this information is needed to avoid any problems and the proper amount of sales tax can be remitted. Your time in answering these questions is greatly appreciated. If you have further questions or require additional information, please feel free to call me at PHONE NUMBER.

Sincerely,
NAME

RESPONSE

July 27, 2006

NAME
ADDRESS

Re: Private Letter Ruling 06-013
Application of Sales Tax to delivery charges

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. 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 questions relate to the manufacture and sale of ready mix concrete and the sale of sand and gravel used to manufacture concrete. The ready mix concrete manufacture may sell and deliver product using its own trucks or using trucks owned by outside transportation companies. Customers may also arrange for the delivery, using their own trucks or contracting with a third party transportation company. For sales that include delivery arranged by the manufacturer, charges for the product and charges for delivery are separately stated on the invoice. The charge for delivery never exceeds the actual delivery cost. Under the sales contracts, title to the product passes at the manufacturing facility. You have asked for sales tax guidance on the following sales scenarios:

The manufacturer sells and delivers product in its own trucks. The cost of the product and the cost of delivery are separately stated on the invoice.

The manufacturer sells product, but contracts with a transportation company to deliver the product to the customer. The manufacturer bills for the sale of the product and the cost of delivery, and each is separately stated on the invoice.

The manufacturer sells product, and arranges for transportation by a transportation company. The transportation company bills the customer directly, so the manufacturer's invoice only includes charges for the product.

The manufacturer sells product. The purchaser arranges and pays for transportation separately. The manufacturer's invoice only includes the sale of the product.

The customer purchases product from the manufacturer and picks the product up from the manufacturer's plant in the customer's own truck.

An outside company handles all billing and collection for the manufacturer and the transportation company. The sale of the product and its delivery are charged on a single invoice, but the charges are separately stated. The billing and collection agent collects and remits all sales tax, and remits payments to the manufacturer and transportation companies.

You have also asked whether it is necessary to separately itemize the sales tax on the invoice or sales receipt.

Analysis

We acknowledge at the outset that you received an informal response to your inquiry from the Auditing Division last September. Since that time, the Legislature has repealed some of the relevant provisions that were set to take effect this July. Therefore, this opinion reflects the current law.

Delivery charges are not taxable under Utah law. Therefore, delivery charges are exempt from the sales tax so long as they are separately stated on the invoice. Otherwise, the charges are taxable as part of the sales price. Sales tax does apply to the sale of the product.

Recently the Legislature has repealed the “delivery based” system that was part of the Streamline Sales Tax effort. With that repeal, the tax rate that applies to your taxable sales is the rate established for the area in which the transaction occurs, without regard to where the product is delivered. In the scenarios that you have laid out, it appears that the sales take place at the manufacturer's plant or location, whether the manufacturer handles the billing or the billing is outsourced to a third party billing and collections service.

With regard to separately stating the sales tax on the invoice or receipt, section 59-12-107 of the Utah Code requires the seller to give the purchaser a receipt for the tax collected or to separately state the tax on an invoice for a sale of goods. The receipt is evidence that the purchaser paid the tax and relieves the purchaser from liability for the tax if the seller fails to remit it to the Tax Commission.

Ruling

Delivery charges under all of the scenarios described in your letter are exempt if separately stated on the invoice. The sale of the product is taxed at the place of sale. In this case, the place of sale appears to be the manufacturer's plant or place of business.

The sales tax due must be separately stated on the receipt and cannot be included as a lump sum in the cost of the product.

For the Commission,

Marc Johnson
Commissioner

MBJ/IR
PLR 06-013