

## REQUEST LETTERS

06-026

December 7, 2006

NAME  
ADDRESS

Re: Request for Ruling

COUNTY #1 received local option sales tax revenue distributions based on point of sale within CITY during the first months of that city's incorporation in #####, until the Tax Commission took over beginning with the September ##### distribution. COUNTY and CITY are not in the process of finally settling distribution of local sales taxes remitted to the County where the point of sale was in the city of CITY, for filing periods from January ##### to June #####.

During the settlement process, there has been a question about the correct point of sale location for a particular business. After talking this issue over with TP REP 1 and TP REP 2, we determined that there were conflicting rules that could apply to the business in question. Both COUNTY and the City of CITY are requesting a ruling to answer the following questions related to distribution of local option sales tax revenues from BUSINESS:

### **Background**

BUSINESS acts as a broker for short-term rental of several private homes, condominiums, and cabins that are located within COUNTY. The properties are conveniently located for access to ski resorts in CANYONS, and so are marketed to skiers. The current properties are located in CITY, COUNTY #2, and the unincorporated county, with the majority of the properties in CITY. The company's place of business, however, is located in the unincorporated county. In summary, we have a place of business in the unincorporated county that pays sales taxes based on income from rental units in three different municipalities, the bulk of which currently comes from CITY.

### **Questions:**

1. Is the point of sale in one jurisdiction, or three?
2. If the point of sale is deemed to be in one jurisdiction, is the point of sale to be based on the location of the sales transaction, or is it to be based on some threshold for where the bulk of the service was delivered? If the latter, what is the threshold?

3. Does the fluid nature of this business serve as a differentiating factor? The portfolio of properties that are brokered can and likely will change over time, potentially changing the mix of jurisdictions where the income is generated.

We respectfully request that the Tax Commission rule where the point of sale is for the purpose of distributing local option sales taxes.

Sincerely,

REQUESTOR NAME

Cc: NAME 2  
NAME 3  
NAME 4  
NAME 5

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November 28, 2006

NAME  
ADDRESS

Re: Request for Private Letter Ruling – Allocation of Local Option Sales Taxes on Short Term Rentals

The city of CITY has a concern regarding allocation of local option sales taxes collected by either property owners or off-site property management companies for short term (less than 30 days) rentals of homes or condominiums located in the city, primarily during the winter ski season. We have been asked by TP REP 1, Manager of Sales Tax Collections, to request a private letter ruling to resolve the issues in a questions.

Our questions is this: When the “business office” effecting the short term rental of a home or condo is located in a different jurisdiction than the physical location of such property, **which jurisdiction should be credited with the local option sales tax resulting from such rental?** Many, if not most, of these transactions are accomplished via the Internet with a credit card purchase. Many of these homes have a lock box or coded entry system that allows the guests to access the home. Consequently, in most situations, the rental is accomplished without the renter ever physically visiting any “business office” location in Utah.

Due to its strategic location between CANYONS, CITY has a large concentration of these private residences that are offered for short-term rental. The city requires each rental home to have a business license with the city. Additionally, these short-term rentals are required to collect a one percent transient room tax imposed by the city, in addition to other similar taxes that have been levied. We believe that both local option

sales taxes and the transient room taxes should be reported to the same jurisdictional city/county code. Requiring local option sales taxes to be remitted differently than the transient room tax associated with the same rental transaction will, we believe, create confusion and mistakes concerning appropriate collection rates and appropriate division of those funds among the various local jurisdiction that may be involved.

Obviously, the services being purchased by the customer are the physical home or condo lodgings. The jurisdiction where those lodgings are located has disproportionate responsibility to manage all of the issues related to regulation, including business licensing administration and public safety and code enforcement issues arising from location of the rentals in residential neighborhoods. The local option sales taxes generated by these rentals are needed to help offset the local jurisdiction's additional costs. In our experience, these short-term rental units do require extraordinary oversight to bring them into compliance, not only with city ordinances, but also general sales and transient room tax collections.

**We feel strongly that the jurisdiction of the physical location of short term rentals should be credited with the point of sale distribution for local option sales taxes collected from such rentals, thereby providing for direct use of those revenues for their intended purposes, rather than providing a windfall for another jurisdiction whose only tie to the transaction is as the (remote) location of the "business office" booking the rental transaction.**

Thank you for addressing this issue. We welcome your questions and response.

Sincerely,

REQUESTOR NAME  
DEPT  
#####

cc: TP REP 1, TITLE

#####3

### RESPONSE LETTER

February 26, 2007

REQUESTOR NAME  
REQUESTOR NAME

RE: Private Letter Ruling 06-026  
Local option sales tax on short-term rentals

Gentlemen:

We have received your letter requesting a ruling regarding the correct point of sale for sales tax on short-term (less than 30 days) rentals of private homes, condominiums and cabins with physical locations in three separate jurisdictions within 1<sup>ST</sup> COUNTY. You also noted that 1<sup>ST</sup> COUNTY and the City of CITY are in the process of finally settling distribution of local sales taxes remitted to the County where the point of sale was in the city of CITY, for filing periods from January ##### to June #####.

It should be noted that the ruling in this letter is not intended to be a statement of broad Tax Commission Policy. It is an interpretation of the tax law as it relates to the facts presented in your request letter and the assumptions stated in this ruling. If the facts or assumptions are not correctly described in this ruling, please let us know so we can assure a more accurate response to your circumstances.

### **FACTS**

According to the information in both requests, BUSINESS, acts as a broker for short-term rental of several private homes, condominiums and cabins located in three different municipalities—CITY, 2<sup>ND</sup> CITY, and unincorporated COUNTY. The bulk of the properties are located in CITY. The Company's main office, on the other hand, is located in unincorporated COUNTY. Given these facts, your letters request a ruling in regards to the correct point of sale location for the purpose of distributing revenue from local option sales tax by asking the following questions:

1. Is the point of sale in one jurisdiction, or three?
2. If the point of sale is deemed to be in one jurisdiction, is the point of sale to be based on the location of the sales transaction, or is it to be based on some threshold for where the bulk of the service was delivered? If the latter, what is the threshold?
3. Does the fluid nature of this business serve as a differentiating factor? The portfolio of properties that are brokered can and likely will change over time, potentially changing the mix of jurisdictions where the income is generated.
4. When the "business office" effecting the short-term rental of a home or condo is located in a different jurisdiction than the physical location of such property, which jurisdiction should be credited with the local option sales tax resulting from such rental?

### **APPLICABLE LAW**

Utah Code Ann. § 59-12-103(1)(i) imposes state sales tax on amounts paid and charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days. Tax Commission Administrative

Rule R865-19S-79A.1. further defines accommodations as “any place having room, apartments, or units to rent...” (Emphasis added.) Part 2 of Title 59 of the Code comprises The Local Sales and Use Tax Act, commonly referred to as the local option sales tax. Subsection 59-12-204(1) states that the tax ordinance adopted pursuant to this part shall impose a tax on the transactions listed in Subsection 59-12-103(1). Therefore, amounts paid or charged for tourist home, hotel, motel or trailer court accommodations and services that are regularly rented for less than 30 consecutive days are subject to the local option sales tax.

Subsection 59-12-204(2) states that the tax ordinance under subsection (1) shall include a provision imposing a tax upon every transaction listed in Subsection 59-12-103(1) made within a county, including areas contained within the cities and towns located in the county: (i) at the rate of 1% of the purchase price paid or charged; and (ii) if the transaction is consummated within the county in accordance with Section 59-12-205.

Section 59-12-203 states that any county, city, or town may levy sales and use tax under this part. It allows any county, city, or town which elects to levy such sales and use tax to use any or all of the revenues for the mutual benefit of local governments which elect to contract with one another pursuant to the Interlocal Cooperation Act.

Section 59-12-205 provides for the distribution of the local option sales and use tax and thereby requires that 50% of each dollar collected be paid to each county, city, and town on the basis of the percentage that the population of the county, city, or town bears to the total population of all counties, cities, and towns in the state; and 50% of each dollar collected be paid to each county, city, and town on the basis of the location where the transaction is consummated as determined under § 59-12-207. Section 205 goes on to say that for fiscal years beginning with 1983-84 and ending with fiscal year #####-##, a county, city, or town may not receive a tax revenue distribution less than .75% of the taxable sales within the boundaries of the county, city or town.

Finally, § 59-12-207(1) provides for the point of sale when a retailer (seller) has no permanent, or more than one, place of business. It states that sales and use tax collected under this part shall be reported to the commission based on where the transaction resulting in a tax is consummated.

### **ANALYSIS**

The business (seller) charged with collecting the local option sales tax is required to report the short-term rental sale transactions for the homes and condominiums based on the physical location of the properties, pursuant to Section 59-12-207. The transaction is consummated where the real property is actually leased and occupied; not where the contract is signed or the location to where rent is mailed. It is also our understanding that the local option sales tax from those transactions is to be distributed pursuant to the formula set forth in Section 59-12-205. Therefore, the answer to question 1 is that the point of sale is in three separate jurisdictions based on the stated physical locations of the

properties. Question 2 then becomes moot.

As for question 3, the point of sale remains that of the physical location of the property being rented. Therefore, as the portfolio of the properties changes over time, the point of sale changes according to the physical location of the property.

In response to question 4, the location of the business office should have no effect on the point of sale for the short-term rental transactions associated with the properties being rented, as the point of sale is the physical location of the properties themselves and not the business office.

As noted above, the distribution of the local option sales tax should be handled according to Section 59-12-205. However, we note that Section 59-12-203 allows the jurisdictions imposing the tax to use the revenues for the mutual benefit of local governments, which elect to contract with one another pursuant to the Interlocal Cooperation Act.

### **CONCLUSION**

It follows from the foregoing analysis that the distribution of the local option sales tax on rentals of properties should be based on the location of the properties that are being rented. Hence, the Tax Commission rules that

1. The point of sale is in three separate jurisdictions: CITY 1, CITY 2 and the unincorporated County.
2. As the portfolio of properties changes over time, the point of sale (as determined in 1) will change accordingly.
3. The location of the business should have no effect on the point of sale, as the point of sale is the physical location of the property being rented.

Our conclusion is based on the facts you presented. Should the facts be different from those represented in this letter, our opinion may change accordingly. Thank you for your inquiry into this matter.

For the Commission,

Marc B. Johnson  
Commissioner

MBJ/BA  
06-026