

REQUEST LETTER

07-004

December 19, 2006

Utah State Tax Commission
Technical Research Division
210 North 1950 West
Salt Lake City UT 84134

SUBJECT: Tax Opinion Letter

On behalf of our client, COMPANY, we respectfully request written advice for the taxability of printed materials purchased from a Utah printer/fulfillment company. The vendor is registered for sales and use tax purposes in Utah. COMPANY does not currently have any pending administrative matters before the Utah Tax Commission.

FACTS

COMPANY is a STATE corporate attorney-in-fact for 2ND COMPANY, which is a STATE domiciled reciprocal interinsurance exchange.

COMPANY is purchasing printed materials including but not limited to monthly statements, disclosure documents, and similar printed materials. COMPANY CITY data center compiles a print file with all mailing addresses and customer information. The print files are sent electronically to a printer located in Utah for printing and fulfillment. Customer statements are mailed directly to COMPANY customers. Currently, COMPANY policyholders/customers are located in the following states: 5% located in Utah and 95% located outside of Utah.

On occasion, customer statements may be delivered directly to COMPANY's STATE headquarters for approval and mailing to policyholders. The paper used to print the customer statements may be provided by either COMPANY or the printer.

ISSUES:

Assuming the Utah printer performs the printing and provides the paper/supplies:

Does Utah sales tax apply to printed materials shipped to COMPANY's Utah policyholders?

Does Utah sales tax apply to printed materials shipped to COMPANY's Non-Utah policyholders (interstate shipments)?

Assuming the COMPANY provides the paper and printer performs printing only:

Does Utah sales tax apply to the fabrication labor for property shipped to COMPANY's Utah policyholders?

Does Utah sales tax apply to the fabrication labor used to produce property shipped to COMPANY's Non-Utah policyholders (interstate shipments)?

Does COMPANY owe Utah use tax on the paper shipped to Utah from STATE (no STATE tax previously paid), if the paper is used to produce customer statements delivered within and without Utah?

Assuming the printer ships the printed materials to COMPANY's STATE Headquarters for further distribution.

Does Utah sales/use tax apply to property reshipped to COMPANY's Utah policyholders?

Note: To the extent Utah sales or use tax is determined to apply to property shipped outside of Utah, please address why an interstate commerce exemption does not apply.

Thank you in advance for your assistance to determine the proper application of Utah sales and use tax to these transactions. If you require any additional information, please give me a call at (###) ###-####.

Sincerely

NAME
COMPANY

Cc: 2ND NAME, 2ND COMPANY

October 29, 2007

NAME
ADDRESS

RE: Private Letter Ruling 07-004
Application of Sales and Use Tax to printed materials purchased from a Utah
printer/fulfillment company

Dear Mr. NAME,

We have received your letter requesting a ruling regarding the applicability of Utah sales and use tax to printed materials purchased from a Utah printer/fulfillment company. The request asks a series of questions under different scenarios. Our response addresses each question separately. It should be noted, however, 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

Taxpayer, COMPANY, is a STATE corporate attorney-in-fact for ND COMPANY. COMPANY purchases printed materials from a printer located in Utah. Occasionally, the printed materials are delivered directly to COMPANY's STATE Headquarters. Either COMPANY or the printer provides the paper. The printed materials include monthly statements, disclosure documents and similar printed materials. COMPANY also compiles a print file in its CITY data center that includes the data and the mailing addresses of its customers. These files are then sent electronically to the Utah printer for printing and fulfillment. COMPANY's customers are located both within (5%) and outside (95%) Utah. Under different scenarios, COMPANY wants to know if the Utah sales and use tax are applicable to printed materials purchased from a Utah printer/fulfillment company.

APPLICABLE LAW

Utah Code § 59-12-103 imposes tax on the purchaser for, "(1)(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) otherwise consumed;"

Utah Code § 59-12-102(104) defines the term "use" as, "(a) 'Use' means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service."

ANALYSIS

Your letter requests answers with respect to the taxability of printed materials under three different scenarios. Our response addresses the questions under each scenario separately.

A. Utah printer performs the printing and provides the paper/supplies.

1. Does Utah sales tax apply to printed materials shipped to COMPANY's Utah policyholders?
2. Does Utah sales tax apply to printed materials shipped to COMPANY' Non-Utah policyholders (interstate shipments)?

Answer:

Utah sales tax is imposed on retail sales of tangible personal property **made within the state** per Utah Code §59-12-103(1). Tax Commission rule R865-19S-80 (3) clarifies that a printer shall collect sales and use tax on charges for printed material, even though the customer may provide the paper. However, pursuant to the Tax Commission rule R865-19S-80 and R865-19S-44, sales made from Utah via interstate commerce are not subject to Utah sales tax, provided the materials, including pre-press materials are physically shipped out of state.

So in reference to question A.2 above, Tax Commission Rule R865-19S-44 defines the circumstances for which the exemption applies: "B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with: 1. The transaction must involve actual and physical movement of the property sold across the state line; 2. such movement must be an essential and not an incidental part of the sale; 3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;"

Private Letter Ruling, 00-039 previously stated that "a printer who has nexus with Utah is required to collect sales and use tax on its Utah sales, which includes those sales of tangible personal property that are delivered to a Utah location." It goes on to say "Accordingly, for those catalogs that the mail order retailer contracts with the printer to deliver within Utah, the printer should collect and remit sales and use tax from the retailer. For those catalogs that are delivered outside of Utah and, thus, considered items sold in interstate commerce, there is no Utah sales and use tax liability."

In a related ruling, Private Letter Ruling 98-051, the Commission dealt with a fulfillment company that provided various mailing services such as cutting, folding, stapling, etc. while these services standing alone would normally not be taxable, the Commission stated, "However, you then add that on some jobs, COMPANY 1 also creates and prints the advertising piece. This changes the nature of the services provided. In this instance, the customer is purchasing printed matter (the advertising pieces) that COMPANY 2 is mailing for them. This sale is subject to sales tax. Utah Administrative Code R865-19S-80 further provides that services in connection with the sale of printed matter, such as cutting, folding, addressing, and mailing are taxable, but actual postage charges where the cost is passed through to the customer without markup are exempt.

Thus, on such a job as this, all charges to COMPANY 1 customer are taxable, except those for actual postage costs.”

Therefore, the answer to question A.1 above is yes: that is, the items shipped to Utah customers are subject to Utah sales or use tax. If the printer does not collect the sales tax from COMPANY, then COMPANY must accrue and remit use tax on these items to the State of Utah.

The answer to question A.2 is no, provided the printed material and all pre-press materials are shipped outside of Utah pursuant to the requirements of rule R865-19S-44. If the pre-press material is retained by the Utah printer or otherwise remains in Utah, Utah sales tax is due on the pre-press material. In that case, the purchase price of the pre-press material must be separately stated and taxed on the invoice; otherwise the entire transaction is subject to Utah sales tax.

B. Assuming COMPANY provides the paper and printer performs printing only.

1. Does Utah sales tax apply to the fabrication labor used to produce property shipped to COMPANY’s Utah policyholders?
2. Does Utah sales tax apply to the fabrication labor used to produce property shipped to COMPANY’s non-Utah policyholders?
3. Does COMPANY owe Utah use tax on the paper shipped to Utah from STATE if the paper is used to produce customer statements delivered within and without Utah?

Answer:

Tax Commission rule R865-19S-80 states that “(3) Except as provided in Subsection (3), a printer shall collect sales and use tax on the following: (i) charges for printed material, even though the paper may be furnished by the customer.” So the answer to the taxability of the printer’s charges, question B.1, is the same as for A. above. When the property produced is shipped to Utah customers, it is subject to Utah sales or use tax. However, when the property is shipped to COMPANY’s non-Utah customers, question B.2, and fits the interstate commerce provisions of rule 865-19S-44, the product is not subject to Utah sales and use tax.

As for whether COMPANY owes Utah use tax on the paper it supplies to the printer, question B.3, the answer is yes. Therefore, under the above quoted provisions of the Utah law, use tax would be reportable to the State of Utah on of the paper used, including paper that is ultimately shipped to non-Utah policy-holders and statements shipped back to COMPANY by the printer. If tax were properly paid and first due to the State of STATE, Utah would allow credit for the tax paid to STATE up to the amount of the Utah tax.

C. Assuming printer ships printed materials to COMPANY’s STATE Headquarters for further distribution; does Utah sales/use tax apply to property reshipped to COMPANY’s Utah policyholders?

Answer:

In this case, COMPANY owes Utah use tax on all the paper it supplies to the printer regardless of where it was distributed. This is based on Utah Code 59-12-103 (1)(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. As is the case with question B.3., Utah would allow credit for tax paid to STATE on the paper if first due to STATE.” (Emphasis added.)

While the analysis for your questions is accurate, a caveat must be added. Under 59-12-107 (1) (d) the ownership of property by the retailer (COMPANY) at the printer’s facility by itself does not create nexus. The sales tax is due, but in the absence of nexus, the retailer has no obligation to collect the tax. However, if the retailer has other contacts within Utah that create nexus, such as the presence of a sales office or agents, then the retailer is required to collect the sales tax. It is up to COMPANY to take the responsibility for determining whether other aspects of its operations in Utah create nexus.

CONCLUSION

Based on the analysis provided above and in line with the facts stated in your request letter, our ruling is as summarized as follows:

- Utah sales tax is due on items shipped to Utah customers of COMPANY when the Utah printer performs the printing and provides the paper/supplies.
- Utah sales and use tax are not applicable to printed materials shipped to COMPANY’s non-Utah policyholders, provided the printed material and all pre-press material are shipped outside of Utah.
- Utah sales and use tax are due on items shipped to Utah customers of COMPANY, while items shipped to non-Utah policyholders are not taxable, even when COMPANY provides the paper and the Utah printer performs printing only.
- When items are reshipped to COMPANY’s Utah policyholders, use tax is owed to the State of Utah, which would allow credit for tax paid to STATE on the paper if first due to STATE.

Our conclusions are 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
07-004