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## REQUEST LETTER

07-007

July 17, 2007

NAME  
ADDRESS

Re: Private Letter Ruling Request  
Sales and use Tax  
COMPANY  
Taxpayer ID o#####

Dear Tax Commission:

The SUBSIDIARY Company, DBA: COMPANY respectfully submits this Private Letter Ruling Request to address a sales tax billing issue that has arisen with various Utah customers.

### FACTS

The Taxpayer

The SUBSIDIARY Company (a subsidiary of COMPANY Management under the brand name COMPANY) is a leading North American supplier of print and electronic document solutions that improve business processes. COMPANY document management solutions are supported by our team of trained, consultative sales associates supported by more than 40 manufacturing and distribution facilities across the U.S. and Canada, and extensive team of certified trade partners. COMPANY employs more than 3,600 people and manufactures close to 100 different products including business documents, checks and secure documents, commercial printing, tickets/tags, mailers and envelopes. We also provide digital asset management, automated identification systems, along with document analysis, design, and creation. We also offer targeted direct mail and e-mail, database marketing, electronic print and mail, and response management services.

### DISCUSSION OF ISSUES

COMPANY operates an electronic print and mail facilities in CITY, STATE (CITY) that obtains electronic data files from customers that include their customers name, address, city, state, zip and individual account information. The CITY facility processes the data files provided by the customer to print, and mail invoices, statements, dunning notices, rejection notices and correspondence notifications by first class mail all over the country. The process can include the creation and transmission of print images through fax or electronic presentment back to the customer or other end user. The customer generally

does not give an accounting of the pieces of mail that stays in Utah. There could be advertising inserted in the envelope at mail time, but that is not the main transaction.

The CITY facility has historically billed Utah sales tax on these transactions as the sale of tangible personal property under UT Ann. Code §59-12-103 so as to be compliant with the applicable sales/use tax laws and regulations.

One customer challenged our billing of sales tax on these transactions citing the sales/use tax exemption for interstate commerce sales under UT Ann. Code §59-12-103(1)(a) and Rule R865-19S-44. This Code and Rule states in part, "Certain sales in interstate commerce are not sales made within this state." They provided a Private Letter Ruling dated June 7, 2006 from Utah State Tax Commissioner Marc B. Johnson to back up this assertion.

The billing of sales tax on these transactions has actually put us at a competitive disadvantage with competitors not charging the sales/use tax.

#### SUMMARY

CITY respectfully requests a formal declaratory ruling from the Utah State Tax Commission advising us as to the correct taxability of these transactions. If you rule that these transactions are indeed taxable and that we are handling them correctly, we will advise our customers accordingly and present the ruling as evidence.

If you rule that we have been incorrectly charging sales tax on these transactions, we request that you advise us as to the best way to handle the overpayments of past and present transactions.

Thank you for your consideration of our request. Please feel free to contact me at ###-###-#### if you have any questions or want specific examples of our products and services.

Sincerely,

NAME  
Manager, Corporate Taxation

#### **RESPONSE LETTER – 07-007**

February 15, 2008

NAME  
ADDRESS

Re: Private Letter Ruling Request 07-007  
Treatment of Printing and Mailing Facility Transactions

Dear NAME:

This is in response to your recent letter in which you request a private letter ruling on behalf of your client COMPANY concerning various transactions occurring at their printing and mailing facility in CITY.

This facility uses data files from their customers that contain names, addresses, cities, states, zip codes, and individual account information. The operation then prints invoices, statements, dunning notices, rejection notices, and correspondence notifications. These items are then mailed to locations all over the country using data supplied by COMPANY clients. You also state that the process can include the creation and transmission of print images through fax or electronic mail back to the customer or other end user.

COMPANY has historically billed Utah sales tax on these transactions as a sale of tangible personal property.

Utah Code § 59-12-103(1)(a) imposes tax on “retail sales of tangible personal property made within the state.”

Pursuant to Administrative Rule 865-19S-44, sales made in interstate commerce are not subject to the sales tax imposed. That rule further defines the circumstances for which the exemption applies, i.e. so that a sale qualifies as being made in interstate commerce, by outlining the following criteria that must be met:

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.

Id.

### General Transactions

It appears that the most common transaction engaged in by COMPANY is where the customer furnishes the mailing addresses etc., and COMPANY prints and mails the documents to addresses designated by the customer. In this case, the customer is not reselling the documents. For items shipped to Utah recipients, the sale is for tangible personal property within the state.

Utah Administrative Rule 865-19S-80 provides that services in connection with the sale of printed matter, such as cutting, folding, and binding are taxable. Thus, all charges for the items shipped to Utah recipients would be subject to tax with the exception of delivery charges when separately stated on the invoice. The items shipped by COMPANY to customers outside of the State of Utah appear to meet all of the qualifications of Administrative Rule 865-19S-44, cited above, and consequently would be exempt from Utah sales tax as a sale in interstate commerce.

### Other Possible Transactions

If, rather than mail the items to recipients provided by customers, COMPANY instead delivered the items to the customers and the customers themselves mailed the items to the recipients, different results would occur. In this case, if the customer were located in Utah, the charges for the entire job (except for delivery charges) would be taxable because all of the items are delivered to a Utah location. This is true even if the customer subsequently ships some or all of the items to locations outside Utah. If, on the other hand, the customer receiving the shipped items is outside the State of Utah, then the entire job is considered to be interstate commerce and thus not subject to Utah tax.

### Tax Previously Collected in Error

Utah Code § 59-12-107(2)(f) provides

If any seller, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall remit to the commission the full amount of tax imposed under this chapter, plus any excess.

Id.

This is further defined by Administrative Rule 865-19S-16(A) which provides

The amount paid by any vendor to the Tax Commission with each return is the greater of: 1) The actual tax collections for the reporting period, or 2) the amount computed at the rates imposed by law against the total taxable sales for that period.

Id.

Therefore, COMPANY must first refund the overcollection to its customers within three years of date the tax was paid. Once COMPANY has refunded the tax to its customers, COMPANY may obtain a credit or refund from the Tax Commission by one of the methods below:

1. Adjusting its next sales tax return on line 6 of the return and attaching an explanation.
2. Amending the sales tax return in which the overpayment occurred and attaching an explanation; or
3. Filing a claim for refund with the Taxpayers Services Division.

Whichever method is chosen, COMPANY must take one of the above listed actions within three years of the overpayment, per UCA § 59-12-110 (2).

For the Commission

Marc B. Johnson, Commissioner

MBJ/cms  
07-007