

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-007

February 24, 2009

Ms Pam Hendrickson -Chair
Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84010

Dear Chair Hendrickson:

I am requesting a Private Letter Ruling from the commission on behalf of my client, who wishes to remain anonymous.

The facts are as follows:

There are four parties involved in the transaction:

Company (A) is a dealer of tangible personal property who sells and services product for a national manufacturer. A is located in Utah and has no operations in any other states.

Company (B) manages tangible personal property for other companies that is used in the course of interstate commerce. B does not own the tangible personal property. B is located in Utah.

Company (C) is the owner of the tangible personal property which is managed by (B). C is based in STATE 1 and has regional operations in Utah. The regional group that provides the services for A is located in STATE 2. The property is operated in interstate commerce.

Company (D) manufacturers repairs and refurbishes tangible personal property and is located in STATE 3.

The flow of the transaction is as follows:

C contracts with A to refurbish tangible personal property that is owned by C.

A contracts with D to perform the work to refurbish the tangible personal property. The work is performed in STATE 3.

The tangible personal property is shipped by common carrier by A from STATE 2 to STATE 3.

D refurbishes the tangible personal property and ships it back to STATE 2 by common carrier.

D bills A for the work after B approves the work and processes the paper work.

A then bills B for the work plus their mark up and costs, including the costs to transport the tangible personal property from STATE 2 to STATE 3 and back. The costs to transport are segregated on the bill and are specifically labeled with the origin and the destination of the shipment.

B is required as part of their contract with C to manage the tangible personal property owned by C and to provide the appropriate paper work.

Question:

Should A collect sales tax from B or C for the repair of the tangible personal property?

Thank you for your consideration. If you have any questions please contact me at PHONE or email at EMAIL.

Sincerely,

NAME

RESPONSE LETTER

September 22, 2009

NAME
ADDRESS

RE: Private Letter Ruling Request—Sales Tax Treatment of Repair Work

Dear NAME:

You have requested a ruling on behalf of your client (Company A or Dealer), who chooses to remain anonymous. Based on your request letter and through a subsequent telephone conversation, you presented a transaction that involves four companies, which are unrelated by ownership. The four companies are: 1) Company A (“Dealer”), 2) Company B (“Manager”), 3) Company C (“Owner”), and 4) Company D (“Manufacturer”). The business relationships between the four companies may be described as follows:

- Dealer is your client and is only located in Utah. It sells and services products, including trailers, for a national manufacturer. In particular for this case, Dealer provides refurbishment services for trailers. Dealer subcontracts with Manufacturer for the actual refurbishment services.¹
- Manager is also based in Utah. It is also a dealer and is a competitor of your client, Dealer. Manager is also a fleet management company. Manager manages the maintenance of its customers’ nationwide fleets, keeping the fleet property running in good working order and taking care of the necessary paperwork. You verbally represented that you believe Manager may have its own maintenance facilities and the capacity to do some repairs and maintenance at its facilities in Utah. Regardless, Manager does contract with other firms to perform maintenance and repair services nationwide. For this case, Manager is managing Owner’s trailers, which are used in interstate commerce, and it is contracting with Dealer for refurbishment services on those trailers.
- Owner owns the trailers. It operates nationally, is based in STATE 1, and has regional operations in Utah. It also has a regional group facility in STATE 2, where the trailers are based. The trailers are managed by Manager. By telephone, you corrected a misstatement and clarified that the regional group facility is not related in any way to Dealer.

¹ Under the understanding that the original contract would be considered a resale of services, Dealer provides Manufacturer with a Utah exemption certificate.

- Manufacturer is located in STATE 3. It manufactures, repairs, and refurbishes trailers. Manufacturer did not manufacture the specific trailers that are being refurbished in this case.

The flow of the transaction is as follows:

1. Owner contracts with Manager to manage the trailers and provide appropriate paperwork. Also, Owner authorizes Manager to do the refurbishment work.
2. Manager contacts Dealer to refurbish Owner's trailers.
3. Dealer sends a purchase order to Manufacturer requesting the refurbish work.
4. The trailers are located at Owner's regional group facility in STATE 2.
5. Dealer contracts with a common carrier to transport the trailers from STATE 2 to the Manufacturer in STATE 3.
6. Manufacturer refurbishes the property in STATE 3.
7. Manufacturer ships the property back to the regional group facility in STATE 2 by common carrier.
8. The trailers are not directly transported to Utah after they are refurbished. However, they might travel through Utah once they are refurbished and again in use for deliveries.
9. Manufacturer bills Dealer for the refurbishment work and does not charge Dealer Utah sales tax. Dealer had previously provided Manufacturer with a Utah exemption certificate.
10. Dealer then bills Manager for the work plus Dealer's mark up and costs, including the cost to ship the property from STATE 2 to STATE 3 and back. These transportation costs are segregated on the bill.
11. Manager charges Owner for its management services.

We note that you originally provided in your request letter that Owner contracts with Dealer for the refurbishment work, but based on our discussions, you clarified that Manager is contacting Dealer for the work and being billed by Dealer after the work is completed.

Issue

Your specific issue is: Should the Dealer collect sales tax from the Manager for the repair of the tangible personal property?

Applicable Law

Utah Code Ann. § 59-12-103(1) imposes tax on:

- (a) retail sales of tangible personal property made within the state;
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- (g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exception for:
 - (i) the tangible personal property; and
 - (ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property . . .

Utah Code Ann. § 59-12-102(108)(a) defines tangible personal property to be “personal property that: (i) may be: (A) seen; (B) weighed; (C) measured; (D) felt; or (E) touched; or (ii) is in any manner perceptible to the senses.”

The duties and responsibilities of a seller are outlined in Utah Code Ann. § 59-12-107, which states in subsection (2):

- (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be collected from a purchaser.
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- (c) (i) Each seller shall:
 - (A) give the purchaser a receipt for the tax collected; or
 - (B) bill the tax as a separate item and declare the name of this state and the seller’s sales and use tax license number of the invoice for the sale.

Utah Code Ann. § 59-12-211 provides instruction on the locations of certain transactions. Section 59-12-211(3) states:

Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (13), if tangible personal property, a product transferred electronically, or a service that is subject to taxation under this chapter is not received by a purchaser at a business location of a seller, the location of the transaction is the location where the purchaser takes receipt of the tangible personal property or service.

Section 59-12-211(1)(a) defines “receipt” as follows:

- (i) "Receipt" and "receive" mean:
 - (A) taking possession of tangible personal property;
 - (B) making first use of a service; or
 - (C) for a product transferred electronically, the earlier of:
 - (I) taking possession of the product transferred electronically; or
 - (II) making first use of the product transferred electronically.

- (ii) "Receipt" and "receive" do not include possession by a shipping company on behalf of a purchaser.

Analysis

As explained below, we conclude that the Dealer is not required to collect sales tax from the Manager for the refurbishment services on the trailers in this case.

According to Utah law, unless otherwise exempt, sellers must collect sales tax on “amounts paid or charged for services for repairs or renovations of tangible personal property.” § 59-12-103(1)(g). As provided by § 59-12-211(3), “if . . . a service . . . is subject to taxation under this chapter [and] is not received by a purchaser at a business location of a seller, ***the location of the transaction is the location where the purchaser takes receipt of the . . . service.***”² (Emphasis added.) Section 59-12-211(1)(a)(i)(B) defines receipt as “making first use of a service.” In this case, the amounts paid or charged for the refurbishment services fall under the plain language of § 59-12-103(1)(g), under which repair services are generally taxed. However, under § 59-12-211(1)(a)(i)(B), the location of the refurbishment transaction is outside of Utah. The Manager’s first use of the refurbishment services clearly occurs outside of Utah because the refurbished trailers do not return to Utah until after they have previously been returned to service in another state.

In general, Utah does not tax transactions for services when the transactions are located outside of Utah. The Commission recognizes that the Commerce Clause of the U.S Constitution limits Utah’s imposition of sales tax, including impositions under § 59-12-103(1)(g). In *Complete Auto Transit, Inc. v. Brady*, 430 US 274, the U.S. Supreme Court set forth a four-pronged test that must be met for a state tax to be sustained against a Commerce Clause challenge. The four-pronged test requires that the tax (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the state.

Under the facts of this case, the Commission finds that the charge or receipt for the refurbishment services does not meet the first prong of the test in *Complete Auto*, requiring that the activity have a substantial nexus with the taxing state. In this case, the refurbishment transaction does not have a substantial nexus when the transaction is located outside of Utah under § 59-12-211. The mere payment in Utah for the refurbishment services is not enough for substantial nexus. Therefore, the Dealer is not required to collect sales tax from Manager for the refurbishment services described in this ruling.

Conclusion

Your client, the Dealer, is not required to collect sales tax from the Manager for the refurbishment transaction that you described. Our conclusions are based on the facts as

² Section 59-12-211(3) also states that it is subject to § 59-12-211(10), and does not apply as provided in Subsections (7), (8), (9), (11), and (13). Section 59-12-211(10) discusses how the local taxing jurisdiction is based primarily on ZIP Code. Subsections (7), (8), (9), (11), and (13) address issues that are not present in this case.

described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us. This ruling is only binding to the extent that the conditions, i.e. product, location, affiliation, etc., are specified; the specific companies need not be named.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
09-007