

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-013

May 26, 2009

Mr. Marc B. Johnson
Commissioner
Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

Re: Taxpayer Request for a Private Letter Ruling

Dear Mr. Johnson:

Pursuant to Utah Adm. Code Rule R861-1A-34, COMPANY submits this Request for a Private Letter Ruling on behalf of its client, respectfully asking whether certain entities have a Utah sales and use tax registration and collection requirement and a Utah corporate income tax filing requirement.

I. Facts

Service Company (“Service”) is an out-of-state-corporation. It is part of an affiliated group of companies. Service is based outside of Utah and does not have any payroll or property in the state. Service’s business includes e-commerce services, online payment processing capabilities, product fulfillment services, customer service support, and assistance in building and developing customized web-stores.

Service would like to have some of its employees travel to Utah to attend the Outdoor Retailer tradeshow in Salt Lake City in July. The employees would stay for the full-length of the tradeshow – approximately four days. The employees would attend the tradeshow for the purpose of reviewing vendors’ products, networking and collecting literature and information regarding the products. The employees would not negotiate the sale or provision of any of Service’s business services while in Utah nor would any contracts for the provision of services be executed. All sales of services and the performance of any services would occur outside of Utah.

In addition to attendance at the tradeshow, Service would like to have a few employees make two to four follow-up visits to Utah during the year to preview tangible products and services sold by vendors. Service anticipates these trips would last one to three days. The purpose of the visits would be to collect literature and information regarding vendors’ goods and services.

The information gathered by Service employees at the tradeshow or through a visit to a vendor may be used by Service or provided to other affiliates and unaffiliated entities. The information would be used to determine whether to purchase the products or services for the subsequent sale. All decisions regarding the purchase and sale of product or services will be conducted outside of Utah. All contracts for purchase will be executed outside of Utah.

Service is also affiliated with other entities, including Retailers, Internet sellers of tangible property and digital goods to customers around the world, including customers in Utah. Retailers are located outside of Utah. Retailers do not operate any retail stores, own or lease any property, or have employees in Utah, and are not registered as a retail merchants in Utah.

II. Issues

1. Would Service be required to register to collect and remit Utah sales and use tax based on its proposed attendance at the Outdoor Retailer tradeshow?
2. Would Service be required to register to collect and remit Utah sales and use tax if in addition to attendance at the Outdoor Retailer tradeshow, it also makes *two* additional trips to Utah to visit vendors in the state and the trips last *two* days each?
3. Would Service be required to register to collect and remit Utah sales and use tax if in addition to attendance at the Outdoor Retailer tradeshow, it also makes *three* additional trips to Utah to visit vendors in the state and the trips last *two* days each?
4. Would Service be required to register to collect and remit Utah sales and use tax if in addition to attendance at the Outdoor Retailer tradeshow, it also makes *four* additional trips to Utah to visit vendors in the state and the trips last *two* days each?
5. Would Retailers be required to register to collect and remit Utah sales and use tax based on the proposed presence of Service in the state under scenarios one through four above?
6. Would Service be required to file a Utah corporate income tax return based on its proposed attendance at the Outdoor Retailer tradeshow?
7. Would Service be required to file a Utah corporate income tax return if in addition to attendance at the Outdoor Retailer tradeshow, it also makes *two* additional trips to Utah to visit vendors in the state and the trips last *two* days each?
8. Would Service be required to file a Utah corporate income tax return if in addition to attendance at the Outdoor Retailer tradeshow, it also makes *three* additional trips to Utah to visit vendors in the state and the trips last *two* days each?

9. Would Service be required to file a Utah corporate income tax return if in an addition to attendance at the Outdoor Retailer tradeshow, it also makes *four* additional trips to Utah to visit vendors in the state and the trips last *two* days each?

III. Legal Framework for Analysis

A. Sales Tax

1. Registration and Collection Requirement

Utah imposes a sales tax on sellers meeting certain statutory requirements. Utah Code § 59-12-107. A “seller” is a person that makes a sale, lease or rental of tangible personal property or a service. Utah Code § 59-12-102(89). Sellers are required to register to collect and remit sales and use tax if the seller has or utilizes:

- (a) an office;
- (b) distribution house;
- (c) sales house;
- (d) warehouse;
- (e) service enterprise; or
- (f) place of business.

Utah Code §59-12-107(1)(a)(i).

In addition, a seller is required to register to collect and remit sales and use tax if the seller engages in any the following activities:

- (a) Maintains a stock of goods within the state;
- (b) Regularly solicits orders in the state, unless the seller’s only activity is:
 - (i) advertising or solicitation by:
 - (aa) direct mail;
 - (bb) electronic mail;
 - (cc) the internet;
 - (dd) telecommunications service; or
 - (ee) or another similar means;
- (c) Regularly engages in the delivery of property in the state by means other than common carrier or US Mail; or
- (d) Regularly engages in an activity directly related to the leasing or servicing of property located within the state.

Utah Code § 59-12-107(1)(a).

a. Affiliate Nexus

Utah tax law also requires sellers that do not have a registration and collection requirement under any of the aforementioned sections to register to collect Utah sales and use tax if the seller is considered a “related seller.” Utah Code § 59-12-107(l)(f)(i)(C). A “related seller” is a seller that does not otherwise have a Utah registration and collection requirement, but is related to a seller, as part of an affiliated group or through common ownership, that has a sales and use tax collection and registration requirement. Utah Code § 59-12-107(1)(f)(C). A seller is also related seller if it is a limited liability company owned by a parent corporation of an affiliated group if the parent corporation of the affiliated group is required to pay or collect and remit sales and use taxes. Utah Code § 59-12-107(1)(f)(i)(C)(II)(Bb).

“Affiliated group” is defined as one or more chains of corporations connected through stock ownership with a common parent corporation that are:

- (1) at least 80% of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and
- (2) the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

Utah Code § 59-7-101(2)(a).

In addition, “affiliated group” includes a corporation that is qualified to do business, but is not otherwise doing business in the state. Utah Code § 59-12-107(1)(e)(i)(A).

“Common ownership” is defined as direct or indirect control or ownership of more than 50% of the outstanding voting stock of:

- (1) a parent-subsidary controlled group as defined under IRC Sec. 1563, except that 50% shall be substituted for 80%;
- (2) a brother-sister controlled group as defined under IRC Sec. 1563, except that 50% shall be substituted for 80%; or
- (3) three or more corporations each of which is a member of an affiliated group of corporations, as defined above, and one of which is:
 - (a) a common parent corporation included in a group of corporations in which 80% of the stock of each corporation is owned by one or more of the other corporations; and
 - (b) included in a group of corporations where the common parent directly owns at least 80% of the stock of at least one of the corporations in the group.

Utah code § 59-7-101(97)

Utah law provides a related seller exception to the requirement to register and collect Utah sales and use tax described above. A “related seller” is not required to register to collect and remit Utah sales or use tax if the seller (to which the related seller is related) does not engage in any of the following activities on behalf of the related seller:

- (1) advertising;
- (2) marketing;
- (3) sales; or
- (4) other services.

Utah Code § 59-12-107(1)(f)(ii)(B).

In addition, the seller (to which the related seller is related) may not accept returns of the related seller's tangible personal property unless it accepts returns of items sold by others on the same terms as offered to the related seller. Utah Code § 59-12-107(1)(f)(ii)(C).

b. Tradeshow

While the aforementioned provisions set forth the statutory standard, the Utah State Tax Commission ("Commission") has consistently held that a physical presence in the state for certain purposes will not create a sales and use tax registration and collection requirement. For example, the Commission has indicated that it is their policy not to consider participants who are in the state for less than two weeks to attend a trade show to create a sales and use tax registration and collection requirement unless the participants have some other nexus creating contact with Utah or their trade show presence in Utah is regular or systematic. Advisory Opinion 98-021, Utah State Tax Commission, March 20, 1998.

B. Income Tax

1. Filing Requirement

Utah tax law imposes an income tax on all taxpayers doing business in Utah. Utah Code § 59-7-104. "Doing business" is defined as any transaction in the course of its business by a domestic or foreign corporation qualified to do or doing intrastate business. Utah Code § 59-7-101(10)(a). Doing business includes the right to do business through incorporation or qualification; the owning, renting, or leasing of real or personal property within the state; and the participation in joint ventures, working agreements and operating agreements which the performance of those ventures and agreements takes place in the state. Utah Code § 59-7-101. Utah regulations also provide further guidance on the types of activities that constitute doing business, including, but not limited to making delivery from stocks of goods in the state, performing the necessary duties to fulfill contracts or subcontracts in the state and deriving income from revenue producing properties located in the state or moving through Utah or from services performed by personnel in the state. Utah Adm. Code Rule 865-6F-6.

The Commission has also indicated, as described above, that it is their policy not to consider participants who are in the state for less than two weeks for purposes of attending a trade show in Utah to have income tax nexus in the state. Advisory Opinion 98-021, Utah State Tax Commission, March 20, 1998.

IV. Legal Analysis of Questions Presented

A. Sales Tax

1. Service is Not Required to Register to Collect and Remit Utah Sales and Use Tax.

Service is not required to register to collect and remit Utah sales and use tax because it would not meet the statutory requirements to be considered doing business in Utah. Service will not maintain an office, distribution house, sales house, warehouse, service enterprise or place of business in Utah. Service's only proposed presence in Utah would be to attend the Outdoor Retailer tradeshow for approximately four days in July 2009 and then to make two to four additional trips to Utah to visit vendors, with each trip lasting approximately two days. Service's presence in Utah would be limited to reviewing products, gathering literature on products and establishing and developing client relationships. They would not maintain a stock of goods in the state, nor solicit orders while in the state. Any contracts for business services and the provision of any services would be conducted outside Utah. Any contracts for purchase of product would be negotiated and conducted outside of Utah. Therefore, Service does not meet any of the statutory requirements for registration and collection of Utah sales and use tax and would not have a sales and use tax registration requirement in the state.

Utah's treatment of participants at trade shows provides further support for the conclusion that Service does not have a Utah sales and use tax registration requirement. The Commission has ruled that attendance at a trade show in Utah for less than two weeks, without other regular presence in the state, will not create a Utah sales and use tax registration and collection requirement. Advisory Opinion 98-021, Utah State Tax Commission, March 20, 1998. Service's presence at the Outdoor Retailer tradeshow would be considered attendance at a trade show. Service's subsequent visits to vendors is similar to participation at a trade show in that Service will be reviewing products of the vendors and obtaining additional information and literature on the products. Thus, Service's presence in Utah for the purpose of attending the Outdoor Retailer tradeshow and the subsequent visits to particular vendors should in whole be afforded the same treatment as attending a trade show and should not lead to a Utah sales and use tax registration and collection requirement. Furthermore, the visits to Utah in whole will result in Service being present in Utah to attend trade shows or visit vendors for less than two weeks which falls below Utah's trade show attendance policy.

2. Retailers Do Not Have a Sales and Use Tax Registration or Collection Requirement in Utah Based on Utah's Statutory Provisions

Retailers would not be considered "related sellers" requiring registration and collection of Utah sales or use tax based on Service's presence in the state. Retailers and Service are related entities and therefore satisfy the definition of an "affiliated group." Both Service and Retailers share a greater than 80% stock ownership by a common parent. However, in order to be considered "related sellers", the affiliated or commonly owned entity must have a sales/use tax registration and collection requirement in Utah. As discussed above, Service does not have a sales and use tax registration requirement in Utah therefore, Retailers would not be considered

“related sellers” requiring a sales and use tax registration. Furthermore, even if the Commission were to find that Service did have a sales and use tax registration requirement under one of the presented scenarios, Service does not advertise, market, sell or provide similar types of services for Retailers and therefore would not create a sale and use tax registration and collection requirement for Retailers.

In addition, Retailers would not be subject to Utah’s requirement to register and collect Utah sales and use tax because they do not satisfy Utah’s statutory doing business standard. Retailers do not maintain an office, distribution house, sales house, warehouse, service enterprise or place of business in Utah. In addition, Retailers do not maintain a stock of goods in the state, regularly solicit orders in the state other than by the Internet, regularly engage in the delivery of property in the state by other than common carrier or regularly engage in an activity related to the leasing or servicing of property located in the state. Thus, Retailers would not be required to register to collect and remit Utah sale and use tax.

B. Income Tax

1. Service Does Not Have a Utah Corporate Income Tax Filing Requirement Based on Utah Statutory Provisions.

Service does not have a corporate income tax filing requirement in Utah because it is not doing business in Utah. In order to be considered “doing business” for Utah corporate income tax purposes, Service must be incorporated or qualified in the state; own, rent, or lease real or personal property within the state; participate in joint ventures, working agreements and operating agreements if the performance of those ventures and agreements takes place in the state; deliver a stock of goods in the state or derive revenue from services performed by personnel in the state. Service is not qualified or incorporated in Utah nor would it own, rent or lease any real or personal property in Utah. In addition, Service would not participate in any joint ventures or agreements that take place in Utah. Service would not sell tangible property maintained or delivered in the state and it would not have employees that are performing services in the state.

Service’s presence in Utah would be limited to attendance at the Outdoor Retailer tradeshow for approximately four days and two to four subsequent visits with particular vendors – all for the purpose of reviewing vendor products, obtaining product literature and networking – similar to attendance at a tradeshow. Service’s business is located outside of Utah and all of the services it provides are performed outside of Utah. Therefore, Service would not have a corporate income tax filing requirement in Utah based on its proposed visits to Utah.

Utah’s treatment of participants at trade shows provides further support for the conclusion that Service does not have a Utah corporate income tax filing requirement. The Commission has indicated that it is their policy not to consider participants who are in the state for less than two weeks for purposes of attending a trade show in Utah to have income tax nexus in the state. Advisory Opinion 98-021, Utah State Tax Commission, March 20, 1998. Service’s presence at the Outdoor Retailer tradeshow would be considered attendance at a trade show. Service’s subsequent visits to vendors is similar to participation at a trade show in that Service will be

reviewing products of the vendors, and obtaining additional information and literature on the products. Thus, Service's presence in Utah for the purpose of attending the Outdoor retailer tradeshow and the subsequent visits to particular vendors should in whole be afforded the same treatment as attending a trade show and should not lead to a Utah corporate income tax filing requirement. Furthermore, the visits to Utah in whole will result in Service being present in Utah to attend trade shows or visit vendors for less than two weeks which falls below Utah's trade show attendance policy.

V. Conclusions

Taxpayer seeks confirmation of the Commissioner's agreement with the following conclusions, which result from application of Utah's statutory and judicial guidance.

1. Because Service would not maintain a place of business in Utah and it would not be considered to be doing business in Utah, it would not be considered a seller and it would not be required to register to collect or remit Utah sales and tax based on its proposed attendance at the Outdoor Retailer tradeshow.
2. Because Service would not maintain a place of business in Utah and it would not be considered to be doing business in Utah, it would not be considered a seller and it would not be required to register to collect or remit Utah sales and tax based on its proposed attendance at the Outdoor Retailer tradeshow and *two* additional *two day* trips to Utah to visit vendors in the state.
3. Because service would not maintain a place of business in Utah and it would not be considered to be doing business in Utah, it would not be considered a seller and it would not be required to register to collect or remit Utah sales and tax based on its proposed attendance at the Outdoor Retailer tradeshow and *three* additional *two day* trips to Utah to visit vendors in the state.
4. Because Service would not maintain a place of business in Utah and it would not be considered to be doing business in Utah, it would not be considered a seller and it would not be required to register to collect or remit Utah sales and tax based on its proposed attendance at the Outdoor Retailer tradeshow and *four* additional *two day* trips to Utah to visit vendors in the state.
5. Because Retailers affiliate, Service, does not have a Utah sales and use tax registration and collection requirement, Retailers should not be considered "related sellers" and therefore would not have a Utah sales and use tax registration and collection requirement. In addition, Retailers would not maintain a place of business in Utah and they would not be considered to be doing business in Utah, thus they would not be considered sellers required to register to collect or remit Utah sales and tax.

6. Because Service is not doing business in Utah for corporate income tax purposes, it does not have a corporate income tax filing requirement in Utah based on its proposed attendance at the Outdoor Retailer tradeshow.
7. Because Service is not doing business in Utah for corporate income tax purposes, it does not have a corporate income tax filing requirement in Utah based on its proposed attendance at the Outdoor Retailer tradeshow and **two** additional **two day** trips to Utah to visit vendors in the state.
8. Because Service is not doing business in Utah for corporate income tax purposes, it does not have a corporate income tax filing requirement in Utah based on its proposed attendance at the Outdoor Retailer tradeshow and **three** additional **two day** trips to Utah to visit vendors in the state.
9. Because Service is not doing business in Utah for corporate income tax purposes, it does not have a corporate income tax filing requirement in Utah based on its proposed attendance at the Outdoor Retailer tradeshow and **four** additional **two day** trips to Utah to visit vendors in the state.

In advance of the issuance of a response to this request for a ruling, we respectfully request that the Commission contact us to discuss any facts or questions that may potentially result in an adverse ruling.

Please feel free to contact NAME at PHONE or 2ND NAME at PHONE if you have any questions.

Very truly yours,

NAME
2ND NAME

cc: Mr. Bruce Johnson, Commissioner, Utah State Tax Commission

RESPONSE LETTER

June 25, 2009

NAME
2ND NAME
COMPANY
ADDRESS

Sent via e-mail

Original to follow in U.S. Mail

Re: Private Letter Ruling Request—Sales Nexus and Corporate Franchise Tax Nexus
Analysis for Out-of-State Company Attending 4-day Tradeshow in Utah

Dear Mr. NAME and 2ND NAME:

You have requested a ruling as to whether a company (“Service”) that will send some of its employees to the Outdoor Retailer tradeshow (“Tradeshow”) will cause Service and other affiliates (“Retailers”) to acquire nexus within the State of Utah.

I. Facts

Service is an out-of-state corporation; it is based outside of Utah and does not have any payroll or property in Utah. Service sells e-commerce services, online payment processing capabilities, product fulfillment services, customer service support, and assistance in building and developing customized web-stores. Through follow-up conversations, you verified that Service does not sell tangible personal property or digital goods. Also, it is our understanding that Service does not have any Utah customers.

Service would like to have some of its employees travel to Utah to attend all four days of the Tradeshow in July 2009. The employees’ purposes would be to review vendors’ products, networking, and collecting literature and information regarding the products. The employees would not negotiate the sale or provision of any of Service’s business services while in Utah nor would they enter into any contacts for the production of such. All sales and performance of any services would occur outside of Utah.

In addition to the Tradeshow, Service would like to have a few employees make two to four follow-up visits to Utah during the year of one to three days each, to preview tangible products and services sold by the vendors. Service’s employees would collect literature and information about the vendors’ goods and services. Service would use the information it gathers at the Tradeshow and from the follow-up visits to determine whether to purchase the vendors’ products or services for subsequent sale. Service would also provide the information to affiliated

and unaffiliated entities that would use the information for the same purpose. All decisions about the purchase and the subsequent sale of the items will be made outside of Utah. Likewise, all contracts to purchase the vendors' products will be made outside of Utah.

Through a follow-up conversation, you provided that Service is not networking or collecting information at the Tradeshow or during the follow-up visits to sell its services to the vendors; rather, it is networking and collecting information only to potentially buy items from the vendors. You also said that Service is not selling the information it collects to its affiliates or to the unrelated entities.

Services' affiliated entities include Retailers, which are Internet sellers of tangible property and digital goods to customers around the world, including customers in Utah. Retailers are located outside of Utah. Retailers do not operate any retail stores, own or lease any property, or have employees in Utah, and they are not registered as retail merchants in Utah. It is also our understanding that, without considering Service, Retailers are not related to any entity that has a Utah sales and use tax registration requirement.

II. Issues

For various scenarios, you asked nine questions about the Utah sales and use tax obligations of Service and Retailers (questions 1-5) and about the Utah corporate income tax obligations of Service (questions 6-9). We will discuss your questions in detail in the Application section of this ruling.

III. Applicable Law

The applicable law for Utah sales tax and Utah corporate franchise tax is discussed below.

A. Sales Tax

Under Utah Code Ann. § 59-12-107, Utah imposes a sales and use tax on sellers meeting certain statutory requirements. Utah Code Ann. § 59-12-102(100) defines "seller" as "a person that makes a sale, lease, or rental of: (a) tangible personal property; (b) a product transferred electronically; or (c) a service." Utah Code Ann. § 59-12-107(1)(a)¹ states:

- (1)(a) Except as provided in Subsection (1)(d) . . . , each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:
- (i) has or utilizes: (A) an office; (B) a distribution house; (C) a sales house; (D) a warehouse; (E) a service enterprise; or (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);
 - (ii) maintains a stock of goods;

¹ Section 59-12-107(1)(a) contains the following exceptions that were not quoted because they do not apply: § 59-12-107.1 (re: direct payment permits), § 59-12-123 (re: direct mail), and § 59-12-107(1)(e) (re: property at printer's facility).

- (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is: (A) advertising; or (B) solicitation by: (I) direct mail; (II) electronic mail; (III) the Internet; (IV) telecommunications service; or (V) a means similar to Subsection (1)(a)(iii)(A) or (B);
- (iv) regularly engages in the delivery of property in the state other than by: (A) common carrier; or (B) United States mail; or
- (v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.

In Private Letter Ruling (“PLR”) 98-021, the Commission addressed a situation involving an out-of-state seller of *goods* that would have a temporary trade booth in the state for less than two weeks. At the booth, the seller would promote its products, give away catalogs, have a temporary stock of goods for display only, and directly respond to customers that had a complaint. The seller would not sell goods, accept deposits, take orders, approve or accept orders, or service, repair or install equipment. The Commission stated: It is the policy of the Commission not to apply sales and use tax nexus to trade show participants who are in the state for less than two weeks, unless they have some other contact with Utah that results in nexus or their trade show presence in Utah is regular or systematic. Please be advised that if you participate in various Utah trade shows in a manner that would suggest regular or systematic presence, then sales and use tax nexus with Utah may then exist. The Commission found that the company was not required to collect and remit sales tax.

In PLR 08-013, the Commission addressed a situation involving an out-of-state company that sold *services* (“Entertainment”) that would attend a ten-day Festival in the state. For PLR 08-013, the Commission explained:

The principles in PLR 98-021 for attendance of trade shows also apply to attendance of the Festival. Annual attendance of the ten-day Festival, alone, is not sufficiently “regular” and “systematic” to create nexus. Therefore, since your request states that Entertainment has not satisfied any of the other listed criteria in § 59-12-107 and even though it appears Entertainment may solicit orders during the festival and attend the festival annually, its employees’ attendance at the Festival would not invoke sales tax nexus.

However, if Entertainment participates in other Utah events, such participation would indicate a regular or systematic presence wherein Entertainment may be regularly soliciting orders, a condition found in § 59-12-107(1)(a)(iii). In PLR 98-021, the Commission warned the company with the trade booth: “Please be advised that should you participate in various Utah trade shows in a manner that would suggest regular or systematic presence, then sales and use tax nexus with Utah may then exist.”

In PLR 08-013, the Commission found that the company was not required to collect and remit sales tax.

Under § 59-12-107(1)(f), an out-of-state seller may have Utah sales and use tax nexus based on being related to another seller with Utah nexus. Section 59-12-107(1)(f) states:

- (i) As used in this Subsection (1)(f):
 - (A) "affiliated group" is as defined in Section 59-7-101, except that "affiliated group" includes a corporation that is qualified to do business but is not otherwise doing business in this state;
 - (B) "common ownership" is as defined in Section 59-7-101;
 - (C) "related seller" means a seller that:
 - (I) is not required to pay or collect and remit sales and use taxes under Subsection (1)(a) or Section 59-12-103.1;
 - (II) is:
 - (Aa) related to a seller that is required to pay or collect and remit sales and use taxes under Subsection (1)(a) as part of an affiliated group or because of common ownership; or
 - (Bb) a limited liability company owned by the parent corporation of an affiliated group if that parent corporation of the affiliated group is required to pay or collect and remit sales and use taxes under Subsection (1)(a); and
 - (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).
- (ii) A seller is not required to pay or collect and remit sales and use taxes under Subsection (1)(a):
 - (A) if the seller is a related seller;
 - (B) if the seller to which the related seller is related does not engage in any of the following activities on behalf of the related seller:
 - (I) advertising;
 - (II) marketing;
 - (III) sales; or
 - (IV) other services; and
 - (C) if the seller to which the related seller is related accepts the return of an item sold by the related seller, the seller to which the related seller is related accepts the return of that item:
 - (I) sold by a seller that is not a related seller; and
 - (II) on the same terms as the return of an item sold by that seller to which the related seller is related

B. Income Tax

Utah tax law imposes an income tax on all corporations doing business in Utah. Utah Code Ann. § 59-7-104. Utah Code Ann. § 59-7-101(12) defines “doing business” as follows:

- (a) "Doing business" includes any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state.
- (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:
 - (i) the right to do business through incorporation or qualification;
 - (ii) the owning, renting, or leasing of real or personal property within this state; and
 - (iii) the participation in joint ventures, working and operating agreements, the performance of which takes place in this state.

Utah Admin. Code R865-6F-6 ("Rule 6") provides further guidance on the types of activities that constitute doing business. Rule 6 discusses protections that apply to some corporations selling tangible personal property to customers in the state. In particular, subsection C. of Rule 6 specifies that foreign corporations outside of the state are not taxable if: "1. they maintain no office nor stocks of goods in Utah, and 2. they engage in no other activities in Utah." Rule 6 closely relates to P.L. 86-272, as seen in subsection J. of Rule 6, which explains the protections of P.L. 86-272. Notably, Rule 6 and P.L. 86-272 do not protect the sales of services. Rule 6.J.1. For sales of tangible personal property, solicitation alone does not create nexus.

Utah Code Ann. § 59-7-319 provides when the receipt of services is considered to be in the state of Utah. Subsection (3) of § 59-7-319 states:

- (a) Subject to Subsection (3)(b), a receipt from the performance of a service is considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule prescribe the circumstances under which a purchaser of a service receives a greater benefit of the service in this state than in any other state.

IV. Application

The Commission addresses your questions below. The first five questions are addressed under "Sales Tax" and the last four questions are addressed under "Income Tax." Your questions deal with Utah nexus only.

A. Sales Tax

Please note, your request does not ask for a determination about the taxability of Service's business services in general, nor have you provided enough detailed information to make such a determination. If Service's services/products are not subject to Utah sales and use tax, then there would be no sales tax collection or reporting requirement and the question of sales tax nexus would be moot.

Question 1: Would Service be required to register to collect and remit Utah sales and use tax based on its proposed attendance at the Tradeshow?

Service would not be required to register to collect and remit Utah sales tax under § 59-12-107(1)(a) based on its attendance at the Tradeshow. Service does not have an office, warehouse, etc. in Utah; it does not maintain a stock of goods in Utah; it does not regularly solicit orders in Utah by means other than advertising or solicitation by direct mail, email, Internet, telecommunications services, or similar means; it does not regularly deliver property into Utah by means other than common carrier or U.S. mail; and it does not engage in activities related to leasing or servicing property in Utah. Furthermore, unlike the companies in PLR 98-021 and 08-013, Service is not promoting the sale of its services while in Utah. Rather, Service is only networking and gathering information to decide whether to purchase from the vendors at the Tradeshow.

Questions 2-4: Would Service be required to register to collect and remit Utah sales and use tax if in addition to attendance at the Tradeshow, it also makes two [three, four] additional trips to Utah to visit vendors in the state and the trips last two days each?

Service would still not be required to register to collect and remit Utah sales tax. It is still not engaging in the activities of § 59-12-107(1)(a). You have provided that Service is not soliciting orders or promoting its services while it is networking and gathering information in Utah. You stated that the information Service gathers would be used in deciding whether to purchase from the vendors, not for marketing to the vendors. This fact distinguishes Service from the company in PLR 98-021, which attended a tradeshow to promote its products, and from the company in PLR 08-013, which might have been soliciting orders during a festival. Because Service is not selling or promoting its services while in Utah, this ruling does not reach the same issue as PLR 98-021 and PLR 08-013; which issue is whether the company's activities in Utah are the regular solicitation of orders that would create a sales and use tax obligation under § 59-12-107(1)(a)(iii).

Question 5: Would Retailers be required to register to collect and remit Utah sales and use tax based on the proposed presence of Service in the state under scenarios one through four above?

Retailers would not be required to register to collect and remit Utah sales and use tax based on the proposed presence of Service in the state as you have described. Section 59-12-107(1)(f) addresses "related sellers," which may have a sales and use tax registration requirement based on the activities of a different but related entity that has a registration requirement. § 59-12-107(1)(f)(i)(C). In this case, according to our understanding, Retailers are not related to any entity that has a Utah sales and use tax registration requirement. Furthermore, because we have found that Service would not have a registration requirement based on the facts you presented, Retailers could not be "related sellers" with a registration requirement based on Service's proposed presence in the state.

B. Income Tax

Question 6: Would Service be required to file a Utah corporate income tax return based on its proposed attendance at the Tradeshow?

Service would not be required to file a Utah corporate income tax return *based on* its proposed attendance at the Tradeshow. Under § 59-7-104, Utah imposes income tax on all corporations doing business in Utah. Under § 59-7-101(12)(a), “[d]oing business” includes any transaction in the course of its business by . . . a foreign corporation . . . doing interstate business in this state.” We broadly interpret “doing business” based on the language of “any transaction.” We note that, under subsection J.1. of Rule 6, companies selling services are not protected by Rule 6 or by P.L. 86-272. However, similar to our rulings in PLR 98-021 and PLR 08-013, in this situation, we find that Service does not have filing requirements for sales tax or income tax purposes when its only connection with Utah is attendance at the Tradeshow.

Questions 7-9: Would Service be required to file a Utah corporate income tax return if in addition to attendance at the Tradeshow, it also makes two [three, four] additional trips to Utah to visit vendors in the state and the trips last two days each?

Service would not be required to file a Utah corporate income tax return *based on* its proposed attendance at the Tradeshow and its two to four follow-up visits. A filing requirement for corporate income tax is not created where the sole instate activity is shopping for a supplier. However, if Service is doing more, then a filing requirement could be created.

In general, if a seller of services is targeting the Utah market and making sales of services into Utah beyond a de minimis level, economic presence would be created. This presence would be sufficient to entitle the State of Utah to impose its corporate franchise or income tax on such corporation. In particular, if Service provides services in Utah, then Service would have a Utah filing requirement based on those activities. Addressing the sourcing of services, § 59-7-319(3) (a) states that “receipt from the performance of a service is considered to be in [Utah] if the purchaser of the service receives a greater benefit of the service in [Utah] than in any other state.” This discussion of the law is consistent with our previous guidance in PLR 08-013. In the current case, it is our understanding that Service does not have Utah customers. We note that if this fact changes, then the above analysis for sales to Utah customers would apply.

V. Conclusion

To summarize, the Commission finds:

1. Service would not be required to register to collect and remit Utah sales and use tax under § 59-12-107(1)(a) based on its proposed presence in the state for the purpose of networking and gathering information to potentially purchase items from Utah vendors.

2. Retailers would not be required to register to collect and remit Utah sales and use tax based on the proposed presence of Service in the state because Service does not have a registration requirement, as stated above in Conclusion 1.
3. Service would not be required to file a Utah corporate income tax return based on its proposed attendance at the Tradeshow. However, if Service's activities are more extensive than proposed, then nexus could result.

Our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. This ruling is binding only to the extent that the facts are correct and specified. 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.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
09-013