

**Amended PLR 09-017**

**As of May 20, 2010, this Private Letter Ruling supersedes the prior ruling issued for this number.**

**FINAL PRIVATE LETTER RULING**

---

**REQUEST LETTER**

09-017 Amended

August 6, 2009

TO: The Utah State Tax Commission

FROM: COMPANY

SUBJECT: Request for Private Ruling

Dear Tax Commission:

I am writing to request a private letter ruling for COMPANY located at ADDRESS.

COMPANY produces “tangible personal property” out of raw material for both the CD and DVD wholesale and retail markets, whereas, there are two manufacturing lines of production respectfully.

By all standards, both the CD and DVD manufacturing lines and processes are the same. Both manufacturing lines house the same types of raw materials, with identical manufacturing equipment, and processes.

COMPANY has two different Standard Industrial Classification Codes (SIC) for the two identical manufacturing processes. The DVD Line is SIC Code 7819 and the CD Line is SIC Code 3352 [*sic*].

COMPANY is requesting from the Utah State Tax Commission a private ruling to update and change SIC Code 7819 and Code 3352 [*sic*] to represent both SIC Codes as 3572. This SIC Code is better represented to the manufacturing processes of COMPANY, whereas, both lines are closely related to SIC Code 3572.

With a private ruling COMPANY will be able to utilize the Manufacturing Exemption allowance for manufacturers located in Utah giving COMPANY the same competitive advantages that other manufacturers have in the State. COMPANY now employs over ##### people.

**About COMPANY**

COMPANY replicates pre-published material for their clients' wholesale and resale businesses.

COMPANY has two identical manufacturing (production) lines.

***Manufacturing line 1*** produces CD's with pre-published material. For example music, books church doctrines, self help information, etc.

***Manufacturing Line 2*** produces DVD's with pre-published material. For example illustrations of golf tips, music, children's movies, and many other varieties of pre-published material from various types of resale creators and customers.

Both Line 1 and line 2 take raw materials (CD's and DVD's) also known as OPTICAL STORAGE DEVICES and produces a finished good that is by all means "tangible personal property"!

Current Standard Industrial Classification Code (SIC) for ***Manufacturing Line 1 is 3352.*** [sic]

Current Standard Industrial Classification Code (SIC) for ***Manufacturing Line 2 is 7819.***

### **Definitions of SIC Code 3572 and SIC Code 7819**

**SIC CODE 3572**—Establishments primarily engaged in manufacturing computer storage devices. This includes auxiliary computer storage units, computer storage units, disk drives, computer, drum drive, computer, magnetic storage device for computers, **optical storage devices**, recorders, tape for computers, tape storage units.

**SIC CODE 7819** – Establishments primarily engaged in performing services independent of motion picture production, but allied thereto. These include motion picture film processing, editing and titling, casting, wardrobe and studio property rental, motion picture and video tape reproduction, and stock footage film libraries.

**Note – SIC Code 7819-** is a Services-motion picture and or videotape production classification and was categorized in the year 1987, ten years prior to the development of the DVD. SIC Code 7819 in today's media world is obsolete, and does not apply to this technological environment that the world is now working in. Here is a valid question! When was the last time that you played a game or watched a newly released movie on a VCR?

### **Manufacturing Equipment Exemption**

As understood by Utah Code Annotate [sic] 59-12-104(14) an exemption is available on purchase or leases by a manufacturer of machinery or equipment, but only if that machinery and **equipment is used:**

Without specificity the Utah Code Annotate [sic] 59-12-104(14) does not distinguish between the two manufacturing lines, whereas, both manufacturing lines should fall into and should be the same SIC Code regarding the set of factors listed below.

Significant factors are represented with understanding the **manufacturing equipment used, manufacturing facility, raw materials usage, and manufacturing process employed.**

Utah Code Annotated 59-12-104 exempts certain sales of tangible personal property used in a manufacturing facility from sales tax.

The following sales and uses are exempt from the taxes imposed by this chapter: **Both lines represent the machinery and equipment factor(s).**

**Machinery and equipment:**

- 1) Is used in the manufacturing process;
- 2) Has an economic life of three or more years
- 3) Is used to manufacture an item sold as tangible personal property
- 4) Is used in new or expanding operations
- 5) Is used in a manufacturing facility in Utah

Manufacturing line 2 which is classified as SIC code 7819 is identical and fits the **equipment used criteria** as does manufacturing line 1.

**Manufacturing Facility**

For purposes of Section 59-12-104 “manufacturing facility” is defined in the Utah Code Annotated 59-12-102 to mean “an establishment” described in SIC Codes 2000 to 3999 of the Standard Classification Manual of the Federal Executive Office of the President, Office of Management and Budget.

Administrative Rule R865-19S-85

A. Definitions:

1. “Establishment” means an economic unit of operations that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed.

**Raw Materials**

What is the difference between a DVD and a CD? As a functioning medium there is no difference!

DVD’s and CD’s are classified in the OPTICAL STORAGE DEVICE INDUSTRY which is the Standard Industrial Classification Code of 3572.

Both DVD’s and CD’s are optical disc storage devices, used for storing audio, video, and computer information. However, DVD’s are essentially a bigger, faster CD that can hold high quality-digital video, better-than-CD audio, pictures, and any other sort of digital information. DVD encompasses home entertainment, computers, and business information with a single

digital format. It replaced laserdisc, videotape, many video game cartridge formats, and many CD-ROM applications. DVD has widespread support from all major electronic companies, all major computer hardware companies, and all major movie and music studios!

It is easily understood~~there are no major differences between a DVD and a CD other than increased digital storage and efficiency.

Both CD's and DVD's are used to store information whether it be video, audio, or used as a computer storage device, their similarities are strongly tied together, showing only that one medium (DVD) stores more digital information and is more efficient than a CD.

### **Processes**

The manufacturing processes are identical to one another while utilizing identical equipment and training activities on equipment such as duplicators, printers, over wrappers, and packaging equipment.

### **Consensus and Conclusion:**

The primary issue in this case is whether COMPANY has sustained its burden of proof that its manufacturing activities are collectively identical in the duplication of information, i.e. Movies, book's, audio, and audio/video personal tangible property that is distributed to wholesalers and or retail markets.

The answer to this is yes, there is no clear distinct or unique differences between the manufacturing equipment, the "manufacturing establishment" raw materials used, or manufacturing processes that clearly suggests a Standard Industrial Classification Code change for Manufacturing Line 2 to reflect the new age Code of 3572.

COMPANY disagrees with the present Standard Industrial Classification Code 7819, whereas, COMPANY is not engaged in the business of services or Video Cassette Recordings, but rather COMPANY is producing "tangible personal property" products, that are subject to sales tax in the open markets.

COMPANY requests the "Private Ruling" of the State Tax Commission to endorse and allow the present SIC Code 7819 and SIC Code 3352 [sic] to the more appropriate better classed SIC Code of 3572 "computer storage device".

**Please advise me on the State Tax Commissions decision.**

Respectfully Yours;

NAME  
TITLE  
COMPANY  
PHONE

## RESPONSE LETTER

May 20, 2010

NAME, TITLE  
COMPANY  
ADDRESS

RE: Private Letter Ruling 09-017 Amended  
Determination of SIC Codes for Separate Production Lines for Audio CDs and Video  
DVDs Containing Pre-Published Material

Dear NAME:

You have requested a revised ruling on behalf of COMPANY (“COMPANY”) concerning which SIC Code(s) apply to its two profit centers. You had initially requested a letter ruling on August 9, 2009, to which we responded February 24, 2010. Following that ruling, you provided new information that was not apparent in your first request. You have explained that COMPANY produces tangible personal property in the form of CDs and DVDs for the wholesale and retail markets. The CDs and DVDs are optical disk storage devices that contain recorded data. You provided the following information through your request letter and subsequent conversations.

COMPANY manufactures CDs with pre-published material, DVDs with pre-published material, and 1000-year archival-quality DVD-Rs. COMPANY has one location with two profit centers: one for CDs, with four production lines, and the other for DVDs and DVD-Rs, with five production lines. All production lines are physically separate but look the same visually. COMPANY starts with polycarbonate plastic pellets, which are melted and injected into molds containing stampers. A stamper is a disk-shaped object containing an exact negative of the pits and lands that are to be on the final CD, DVD, or DVD-R. Pits and lands, respectively, are recessed and raised areas that represent the “0’s” and “1’s” used in binary computer coding. The molding process produces plastic disks with pits and lands containing the recorded data. These plastic disks are cooled and then metalized to make the disks readable by a laser in a CD or DVD player. A CD is a single metalized plastic disk. A DVD or a DVD-R is made from two metalized plastic disks that are bonded together. At the end of the process, printed titles are added to the disks.

The finished CDs are primarily audio; they may contain music, books on CD, church doctrines, self-help information, etc. The finished DVDs are primarily video; they may contain illustrations of golf tips, music, children’s movies, and many other varieties of pre-published material. The finished DVD-Rs are blank; they contain some basic information so that a DVD reader/writer can use them.

You explained that COMPANY is a “replicator”; COMPANY’s manufacturing process starts with plastic pellets. You further explained that other companies in your industry are characterized as “duplicators.” A duplicator purchases blank CD-Rs or DVD-Rs and then burns these disks to record the information, using towers of CD and DVD drives. You stated that there are many duplicators in Utah. The fundamental difference between the two business types is that a replicator actually produces the disk itself, while a duplicator burns an already produced disk in a process similar to an individual burning a CD on a home computer.

You also explained that your two profit centers have been classified under two different SIC Codes according to the information provided on your sales tax returns. The CD profit center is classified under SIC Code 3652<sup>1</sup> and the DVD profit center is classified under SIC Code 7819. You have asked that both profit centers be re-classified to SIC Code 3572 or to another SIC Code in the 3000s. You further explained that based on your conversations with your auditor during a recent International Organization for Standardization (“ISO”) 9000 quality audit, you believe that some companies similar to COMPANY but located in California use SIC Code 3695. You have also argued that SIC Code 3695 would be appropriate because as a replicator, COMPANY essentially does the work of a blank media manufacturer and a duplicator. COMPANY must manufacture the disk onto which the data is molded. Additionally, you asserted that SIC Code 7819 is obsolete and does not apply to DVDs but only to Video Cassette Recordings (“VCR tapes”). You also provided that there are no major differences between CDs and DVDs other than that DVDs have increased storage capacity. You explained that if the Commission changes COMPANY’s SIC Codes, COMPANY would then qualify for the Manufacturing Exemption and enjoy the same competitive advantages as other manufacturers in Utah.

Basically, the issue you have presented for this letter ruling is whether the SIC Code for both profit centers should be 3572 or another SIC Code(s) in the 3000s.

## I. Applicable Law

### **A. Sales and Use Tax and the Manufacturing Exemption**

Utah Code Ann. § 59-12-103(1)(l) imposes tax on “amounts paid or charged for tangible personal property if within the state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed . . .”

Utah Code Ann. § 59-12-104(14)(a) provides the Manufacturing Exemption, which is for:

a purchase or lease by a manufacturing facility except for a cogeneration facility,  
for . . .

(i) machinery and equipment that:

(A) are used: (I) for a manufacturing facility . . . : (Aa) in the manufacturing process; (Bb) to manufacture an item sold as tangible personal property;

---

<sup>1</sup> Through the telephone conversation, you clarified that you intended to use SIC Code 3652 and that 3352 was a typo.

and (Cc) beginning on July 1, 2009, in a manufacturing facility . . . in the state . . . [and]  
(B) have an economic life of three or more years . . .

Utah Code Ann. § 59-12-102(52) defines manufacturing facility as follows:

For the purposes of Section 59-12-104, “manufacturing facility” means: (a) an establishment described in SIC Codes 2000-3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget . . .

Utah Admin. Code R865-19S-85 (“Rule 85”), titled “Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104” defines establishment as follows:

"Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed.

. . .

R865-19S-85(1)(a).

## **B. SIC Codes<sup>2</sup>**

The SIC manual includes the following relevant codes:

### 3572 Computer Storage Devices

Establishments primarily engaged in manufacturing computer storage devices.

- Auxiliary computer storage units
- Computer storage units
- Disk drives, computer
- Drum drives, computer
- Magnetic storage devices for computers
- Optical storage devices for computers
- Recorders, tape: for computers
- Tape storage units, computer

### 3652 Phonograph Records and Prerecorded Audio Tapes and Disks

Establishments primarily engaged in manufacturing phonograph records and prerecorded audio tapes and disks. Establishments primarily engaged in the design, development, and production of prepackaged computer software are

---

<sup>2</sup> The SIC Codes of the 1987 version SIC manual are available on the federal OSHA website, at <http://www.osha.gov/pls/imis/sicsearch.html>.

classified in Services, Industry Group 737; and those reproducing prerecorded video tape cassettes and disks are classified in Services, Major Group 78.

- *Compact disc, prerecorded: except video*
- Discs, laser: audio prerecorded
- Magnetic tape, audio: prerecorded
- Phonograph record blanks
- Phonograph records (including preparation of the master)
- Prerecorded audio magnetic tape

### 3695 Magnetic and Optical Recording Media

Establishments primarily engaged in manufacturing blank tape, disk, or cassette magnetic or optical recording media for use in recording audio, video, or other signals. Establishments primarily engaged in manufacturing blank or recorded records and prerecorded audio tapes are classified in Industry 3652; those manufacturing prepackaged computer software are classified in Services, Industry 7372; and those manufacturing prerecorded video tape cassettes and disks are classified in Services, Major Group 78.

- Audio range tapes, blank
- Computer software tape and disks, blank: rigid and floppy
- Instrumentation type tape, blank
- Magnetic recording tape, blank: reels, cassettes, and disks
- *Optical disks and tape, blank*
- Video recording tape, blank

### 7819 Services Allied to Motion Picture Production

Establishments primarily engaged in performing services independent of motion picture production, but allied thereto, such as motion picture film processing, editing, and titling; casting bureaus; wardrobe and studio property rental; television tape services; motion picture and video tape reproduction; and stock footage film libraries.

- Casting bureaus, motion picture
- Developing and printing of commercial motion picture film
- Directors, motion picture: independent
- Editing of motion picture film
- Film libraries, stock footage
- Film processing, motion picture
- Laboratories, motion picture
- Motion picture consultants
- Motion picture reproduction
- Rental of motion picture equipment
- Studio property rental for motion picture film production



- Television tape services (e.g., editing and transfers)
- Titling of motion picture film
- *Video tape or disk reproduction*
- Wardrobe rental for motion picture film production

(Emphasis added.)

## II. Analysis

To qualify for the Manufacturing Exemption, COMPANY must first meet the requirements of § 59-12-104(14)(a). We agree that COMPANY “manufacture[s] an item sold as tangible personal property” as required by § 59-12-104(14)(a)(i)(A)(I)(Bb). More importantly, § 59-12-104(14)(a) requires that the machinery or equipment be purchased or leased by a manufacturing facility. Under § 59-12-102(52), a qualifying manufacturing facility is limited to “(a) an establishment described in SIC Codes 2000-3999 . . .” Under R865-19S-85(1)(a), an establishment is “an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed.” A single physical location can have more than one economic unit of operations. In this case, COMPANY has two economic units of operation: a CD profit center and a DVD profit center, both of which use separate production lines with different machinery.

The best SIC Code for both the CD and the DVD profit centers is 3695. SIC Code 3695 is for “[e]stablishments *primarily engaged in manufacturing blank tape, disk, or cassette magnetic or optical recording media* for use in recording audio, video, or other signals” (emphasis added). After reviewing COMPANY’s replication process, the Commission concludes that the majority of the process is devoted to creating the physical disks. Because COMPANY starts with plastic pellets and must physically create the disks, the Commission finds that COMPANY is *primarily engaged in* manufacturing the blank disks.

The Commission notes that COMPANY’s replication process differs significantly from a duplicator’s manufacturing process. A duplicator starts with blank physical disks and then burns these disks with the audio or video data. Thus, for audio recordings, a duplicator would be best classified under SIC Code 3652, “Phonograph Records and Prerecorded Audio Tapes and Disks” because he or she is “*primarily engaged in* manufacturing . . . prerecorded audio . . . disks” when he or she burns the recordings to the disks. For video recordings, a duplicator would be best classified under SIC Code 7819, “Services Allied to Motion Picture Production,” which includes “Video tape or disk reproduction.” Although COMPANY’s replication process may have some characteristics of SIC Codes 3652 and 7819, the Commission finds that SIC Code 3695 better applies to replication because most of the replication process produces the physical disk, rather than records the audio or video data.

As a final note, SIC Code 3572 cannot apply to the manufacture of CDs and DVDs. SIC Code 3572 applies to “[e]stablishments primarily engaged in manufacturing computer storage *devices*” (emphasis added). Examples include disk drives, tape storage units, etc. COMPANY is not manufacturing such devices.

### III. Conclusion

The appropriate SIC Code for COMPANY's CD and DVD/DVD-R profit centers is 3695. Thus, COMPANY's CD and DVD/DVD-R profit centers are manufacturing facilities, and COMPANY can qualify for the Manufacturing Exemption if the other requirements of § 59-12-104(14)(a) are met. Our conclusions are based on the facts as 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.

For the Commission,

Marc B. Johnson  
Commissioner

MBJ/aln  
09-017 Amended