

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-023

August 7, 2009

Utah State Tax Commission
210 North 1950 West
Salt Lake city UT 84134

Dear Utah State Tax Commission:

In response to Hearing 08-0302, we respectfully request a letter ruling regarding several charges that may be billed on an invoice to a customer in relation to an oil or gas well cementing job. COMPANY ("COMPANY") currently collects tax on all charges referenced in the request below.

COMPANY provides oilfield cementing services. Invoices to our customers itemize each charge incurred as a part of the cementing job. Thus materials, equipment, services, mileage, and other miscellaneous services charges are all separate line items on an invoice. COMPANY delivers the materials, equipment and personnel to the jobsite. We blend the cement at the jobsite and then pump it downhole.

Utah State Tax Commission's Decision for Hearing 08-0302 provides separately stated delivery and installation charges on sales of cement are nontaxable. We are requesting clarification as to whether specific charges we bill our customers qualify as exempt delivery or installation charges.

Freight Charges

Please advise whether the following charges (as identified on COMPANY invoices) qualify as exempt freight charges for Utah sales/use tax:

- 1). Mileage Cement Materials-Mileage to transport cement and cement additives to jobsite.
- 2). ZI Fuel Surcharge Cement-Additional mileage charge to transport cement and cement and cement additives to jobsite.
- 3). Handle & Dump SVC Charge Cement and Additives-Handling charge for delivery of cement and cement additives.
- 4). CMT-DOT Vehicle Charge-A charge for reimbursement for over-weight permits during delivery of cement and cement additives to the jobsite.

Installation Charges

Please advise whether the following charges qualify as exempt installation charges for Utah sales/use tax:

- 1). Plug Back/Spot Cement–First four hours charge to pump cement down hole in plug to abandon services
- 2). Plugging Back-Additional hours charges to pump cement down hole in plug to abandon services for first four hours
- 3). Port Data Acquisition w / Opticem-A program on the supervisor’s computer that is wired to the pump truck. It documents/charts the events taking place during the pumping process such as rate, pressure, density, etc.
- 4). Pumping Charge-First 4 hours of pumping cement downhole
- 5). Additional Hours-Additional hour charges for pumping cement downhole
- 6). ADC (Auto Density CTRL)-Automated system that mixes & monitors cement while cement is pumped down hole.
- 7). RCM II w/adc/job-Unit mixes the cement
- 8). R/A Densometer w/Chart Recorder-Unit weights the cement while it’s being mixed
- 9). Food and Lodging – Reimbursable expense for employees who will install cement down hole.

Please notify me when this request for ruling has been received. Your assistance is greatly appreciated.

Sincerely,

NAME
TITLE
PHONE

RESPONSE LETTER

March 10, 2010

NAME
TITLE
COMPANY
ADDRESS

RE: Private Letter Ruling Request—The Sales Tax Treatment of Specific, Itemized Charges for an Oil or Gas Well Cementing Job

Dear NAME:

You have requested a ruling on behalf of COMPANY concerning the sales tax treatment of several, itemized charges that it bills for oil or gas well cementing jobs. You stated that COMPANY delivers materials, equipment, and personnel to the jobsites, blends the cement onsite, and then pumps the cement down the oil and gas holes. You referred to Appeal No. 08-0302¹ and asked that we clarify whether the itemized charges of COMPANY qualify as nontaxable delivery or installation charges. During a subsequent telephone conversation, you provided that the methods described for delivering, mixing, and pumping the cement for Appeal No. 08-0302 are substantially the same as those for COMPANY.

I. Applicable Law

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

- (a) retail sales of tangible personal property made within the state;
. . . .
- (k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) otherwise consumed . . .

Utah Code Ann. § 59-12-102(82) defines purchase price, stating in part:

- (b) "Purchase price" and "sales price" include:
 - (i) the seller's cost of the tangible personal property, a product transferred electronically, or services sold;
 - (ii) expenses of the seller, including:
 - (A) the cost of materials used;

¹Appeal No. 08-0302 is available online at <http://tax.utah.gov/research/decisions/08-0302sanqc.pdf>.

- (B) a labor cost;
- (C) a service cost; [or]
-
- (F) the cost of transportation to the seller; . . .
-

(iii) a charge by the seller for any service necessary to complete the sale[.]

(c) "Purchase price" and "sales price" do not include:

(ii) the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser:

- (B) a delivery charge; [or]
- (C) an installation charge[.]
-

Utah Code Ann. § 59-12-102(28) defines delivery charge, stating in part:

(a) "Delivery charge" means a charge:

- (i) by a seller of:
 - (A) tangible personal property;
 - (B) a product transferred electronically; or
 - (C) services; and
- (ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection (28)(a)(i) to a location designated by the purchaser.
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Utah Code Ann. § 59-12-102(47) defines installation charge, as follows in pertinent part:

(a) . . . "installation charge" means a charge for installing:

- (i) tangible personal property; or
- (ii) a product transferred electronically.
-

II. Analysis

For delivery or freight, you listed four charges; and for installation, you listed nine charges. We will respond separately to the freight and installation charges.

A. Freight Charges

For freight, you provided the following four charges:

1. Mileage Cement Materials—Mileage to transport cement and cement additives to jobsite.
2. ZI Fuel Surcharge Cement—Additional mileage charge to transport cement and cement additives to jobsite.
3. Handle & Dump SVC Charge Cement and Additives—Handling charge for delivery of cement and cement additives.
4. CMT-DOT Vehicle Charge—A charge for reimbursement for overweight permits during delivery of cement and cement additives to the jobsites.

In general, the purchase price of the cement does not include a delivery charge if the charge is separately stated on the invoice. § 59-12-102(82)(c). A delivery charge must be made by the seller for the preparation and delivery of the cement to the location designated by the purchaser. § 59-12-102(28). Appeal No. 08-0302 involved the tax treatment of certain charges for a company performing services similar to those performed by COMPANY. In that appeal, this Commission found that a charge for mileage for the crew truck was not a delivery charge within the meaning of § 59-12-102(28) because the charge was not for the transportation of the cement. Likewise, the Commission found that a charge for mileage for driving a pump truck to the jobsite was not a delivery charge because it also was not a charge for delivery of the cement.

For this ruling, the four charges you presented are for transporting the cement to the jobsite; therefore, they are delivery charges under § 59-12-102(28) and not subject to tax. Furthermore, because they are separately stated, they are not part of the taxable purchase price of the cement.

B. Installation Charges

For installation, you provided the following nine charges:

1. Plug Back/Spot Cement—First four hours charge to pump cement down hole in plug to abandon services.
2. Plugging Back—Additional hours charges to pump cement down hole in plug to abandon services for first four hours.
3. Port Data Acquisition w/ Opticem—A program on the supervisor’s computer that is wired to the pump truck. It documents/charts the events taking place during the pumping process such as rate, pressure, density, etc. During a subsequent telephone conversation, you stated that the program only monitors pumping, not mixing or blending.

4. Pumping Charge—First 4 hours of pumping cement downhole.
5. Additional Hours—Additional hour charges for pumping cement downhole.
6. ADC (Auto Density CTRL)—Automated system that mixes & monitors cement while cement is pumped down hole. Through a subsequent email, you clarified that the ADC system is used when the cement is initially mixed to the proper consistency and throughout the cementing process, including when the cement is pumped down a hole.
7. RCM II w/adc/job—Unit mixes the cement. Through your subsequent email, you clarified that this unit is used when the cement is initially mixed to the proper consistency and throughout the cementing process.
8. R/A Densometer w/ Chart Recorder—Unit weighs the cement while it is being mixed. Through your subsequent email, you clarified that this unit is used when the cement is initially mixed to the proper consistency and throughout the cementing process.
9. Food and Lodging—Reimbursable expense for employees who will install cement down a hole. During a subsequent telephone conversation, you provided that the employees might be involved in either mixing or pumping or both and that there is no way to breakout this charge between mixing and pumping. Furthermore, you explained that this charge is not on all invoices, but instead is only included when reimbursement is part of the contract.

In general, the purchase price of the cement does not include an installation charge if the charge is separately stated on the invoice. § 59-12-102(82)(c)(ii). An installation charge is defined as a charge for installing tangible personal property, which for this ruling, is the cement. § 59-12-102(47). In Appeal No. 08-0302, this Commission found that pumping charges for cementing services are installation charges and that the company's "pump charge" and "additional hours" charge were nontaxable. However, the Commission also found that a charge for driving a pump truck to the jobsite was not an installation charge because the company did not describe it as an installation charge; the installation charges were accounted for through other line items, and the pump truck was used for a manufacturing (mixing) purpose, not just for an installation purpose.

For this ruling, the first five charges you presented are for pumping cement down a hole; therefore, they are installation charges under § 59-12-102(47). Furthermore, because they are separately stated, they are not part of the taxable purchase price of the cement.

The next three charges, numbered six (6) through eight (8), are for mixing. Mixing is a manufacturing process, not just an installation one; therefore, these charges are not installation charges under § 59-12-102(47). Furthermore, these charges are part of the taxable purchase price of the cement either under § 59-12-102(82)(b)(ii)(C) as a service cost/expense of

COMPANY or under § 59-12-102(82)(b)(iii) as a charge for a service necessary to complete the sale.²

For the last charge, numbered nine (9), you provided that the reimbursed food and lodging is for employees who will install cement down a hole either by pumping or mixing, or both and that the charge cannot be broken out between pumping and mixing. Based on these facts, the charge has not been shown to be a separately stated installation charge. Rather, the food and lodging line item relates to both installation (the employees' pumping) and manufacturing (the employees' mixing). To qualify under § 59-12-102(82)(c)(ii)-(ii)(C), the installation portion must be separately stated, which has not happened in this situation. Therefore, like the mixing charges, the food and lodging charge is part of the taxable purchase price of the cement either under § 59-12-102(82)(b)(ii)(C) as a service cost/expense of COMPANY or under § 59-12-102(82)(b)(iii) as a charge for a service necessary to complete the sale.³

III. Conclusion

The following are delivery charges, which are nontaxable because they are separately stated.

1. Mileage Cement Materials
2. ZI Fuel Surcharge Cement
3. Handle & Dump SVC Charge Cement and Additives
4. CMT-DOT Vehicle Charge

The following are installation charges, which are nontaxable because they are separately stated.

1. Plug Back/Spot Cement
2. Plugging Back
3. Port Data Acquisition w/ Opticem
4. Pumping Charge
5. Additional Hours

The following are not installation charges and are taxable as part of the purchase price of the cement.

1. ADC (Auto Density CTRL)
2. RCM II w/adc/job

² Commissioner Dixon disagrees with this portion of the ruling. Consistent with her dissent in Appeal No. 08-0302, available at <http://tax.utah.gov/research/decisions/08-0302sanqc.pdf>, she holds the charges numbered six through eight are part of the installation process and therefore not taxable.

³ Commissioner Dixon disagrees with this portion of the ruling. Because she would hold the charges numbered six through eight are part of the installation process, the charges outlined in number nine would be part of the installation process also and therefore not taxable.

3. R/A Densometer w/ Chart Recorder
4. Food and Lodging

Our conclusions are based on the facts as described and the Utah law currently in effect. Should the facts be different or if the law were to change, 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,

Michael J. Cragun
Commissioner

MJC/aln
09-023