

FINAL PRIVATE LETTER RULING

REQUEST LETTER

10-006

May 14, 2010

VIA FACSIMILE (801) 297-3919, Attn: Cheryl

Utah State Tax Commission – PLR
210 North 1950 West
Salt Lake City, UT 84134

Re: Private Letter Ruling Request

To Whom It May Concern:

I am requesting a private letter ruling on behalf of my client. The client is located AREA and has business activities in Utah. My client's business activities include the manufacture, sale, lease and service of large format projection systems and the licensing of trademarks. In YEAR, my client entered into an agreement to sell a large format projection system and licensing of trademarks to a theater in Utah (the "Agreement").

Article 4 of the Agreement is entitled "Payment." Section 4.01 is then entitled "Purchase Price" and requires the theater to pay a fixed Purchase Price, payable 90% upon execution of the Agreement and 10% upon the earlier of the date of acceptance of the system or a date certain. Section 4.02 is entitled "Additional Payment," and requires the theater to pay, on a monthly basis for ten years, an amount equal to the greater of either a set amount (as adjusted for inflation) or a percentage of Net Theater Admissions. My client has remitted Utah sales tax on both the upfront "Purchase Price" payment and the "Additional Payment" amounts. The theater was billed for these amounts and has paid my client for the sales tax on the upfront "Purchase Price" payment, but does not agree that sales tax should be charged on the "Additional Payment" and therefore has not remitted sales tax on those payments.

Because the "Additional Payment" is based on either a set amount or a percentage of Net Theater Admissions, the theater believes this payment is a function of tickets sold, and that since sales taxes have already been paid on those ticket sales the "Additional Payment" to my client is therefore not subject to further sales tax. The theater also claims the "Additional Payment" is really akin to a payment for films and not a payment for tangible personal property. Payment for films is not subject to sales tax in Utah. UT Code Sec. 59-12-104(6). My client has leased a few films to the theater, which are separate charges from the system charge, and due to the exemption, no sales tax was charged on the lease of the films.

Utah imposes a tax on the purchaser for amounts paid or charged for retail sales of tangible personal property made within Utah. UT Code Sec. 59-12-103(1)(a). Purchase price and sales price represent the total amount of consideration valued in money for which tangible personal property is sold. UT Code Sec. 59-12-102(82). The total consideration the theater pays my client under the Agreement consists of the upfront "Purchase Price" payment and the "Additional Payment." My client believes the methodology used in determining the amount of the "Additional Payment" does not determine whether the payment is subject to sales tax. Rather, my client believes the determination of whether the "Additional Payment" is subject to sales tax is based upon what the payment is for, under the terms of the Agreement. My client claims the "Additional Payment," together with the upfront "Purchase Price" payment, constitutes the total purchase price of the projection system, which is, in fact, tangible personal property, subject to Utah sales tax. For clarity, I have included that portion of the Agreement setting forth the upfront "Purchase Price" payment and the "Additional Payment" and what they represent.

My client is requesting a ruling on the taxation of the "Additional Payment" stream described above. Specifically, is the "Additional Payment," which is the greater of a set amount or a percent of the Net Theater Admissions, subject to sales tax in Utah? In your response, please include the applicable statutes supporting the ruling.

Should you have questions regarding this request for a private letter ruling, please contact the undersigned. Thank you for your assistance in this matter.

Sincerely,

NAME
ADDRESS
PHONE
FAX
EMAIL

Enclosures

RESPONSE LETTER

August 9, 2010

NAME
ADDRESS

RE: Private Letter Ruling Request–Sales Tax Treatment of Additional Monthly Payments for the Purchase of a Motion Picture Projection System

Dear NAME:

You have requested a ruling on behalf of your client, who entered into an agreement dated DATE, to sell a motion picture projection system to a theater in Utah for an up-front purchase price followed by additional monthly payments for ten years. These monthly payments are based on net theater admissions, subject to certain minimum amounts.

Your client believes the up-front payment and the additional monthly payments are subject to sales tax because they are consideration for the sale of tangible personal property. You have said that your client has charged sales taxes to the theater on all payments, but the theater believes the additional monthly payments are not taxable for two reasons: first, the monthly payment amounts are based on ticket sales that have already been taxed, and second, the monthly payments are “akin to a payment for films and not a payment for tangible personal property.” Payments for films are exempt under Utah Code § 59-12-104(6).

Lastly, you included a partial copy of the agreement dated DATE between your client and the theater. This agreement generally supports your description of its terms. However, it also suggests that your client might have leased instead of sold the projection system. After the agreement’s initial term of ten years, the agreement might either automatically renew for ten more years or terminate and the theater might have the option of purchasing the projection system for a set price.

I. Applicable Law

Utah Code § 59-12-103(1) states in part:

- (1) A tax is imposed on the purchaser . . . for . . .
 - (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 § 59-12-102(97) defines sales, in part, as follows:

- (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.
- (b) "Sale" includes:
 -
 - (v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

Utah Code § 59-12-102(50) defines lease, in part, as follows:

- (a) "Lease" or "rental" means a transfer of possession or control of tangible personal property or a product transferred electronically for:
 - (i) (A) a fixed term; or
 - (B) an indeterminate term; and
 - (ii) consideration.

Utah Code § 59-12-102(85) defines purchase price, in part, as follows:

- (a) "Purchase price" and "sales price" mean the total amount of consideration:
 - (i) valued in money; and
 - (ii) for which tangible personal property, a product transferred electronically, or services are:
 - (A) sold;
 - (B) leased; or
 - (C) rented.

Utah Code § 59-12-104 provides exemptions, which include:

- (6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;
-
- (23) a product stored in the state for resale;
-
- (25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;
-

(27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

.....

Utah Code § 59-12-103(1)(b)-(d) involves amounts paid for certain telecommunications and ancillary services and amounts paid for certain fuels.

II. Analysis

Under § 59-12-103(1)(a) or (1)(k), Utah sales tax is imposed on the theater for the sale or lease of the projection system because the system has been sold or leased within the State. The definitions of “sale” and “lease” are broad and found in § 59-12-102(97) and § 59-12-102(50), respectively. Under § 59-12-102(85), sales price is also broadly defined. The sales price of the projection system includes the additional monthly payments because these payments are consideration for the projection system. The statutes cited above make no distinction for the manner in which consideration is based or is received.

Furthermore, the additional monthly payments are not exempt under § 59-12-104. First, the monthly payments are not akin to exempt payments for films. The exemption for films is found in § 59-12-104(6) and only covers films, tapes, and records; the exemption does not cover the equipment used to play the films, tapes, or records. Under the facts presented, the additional monthly payments are only for the projection system, not for any films, tapes, or records.

Second, the monthly payments are not exempt under a resale exemption even though the ticket sales have already been taxed. The resale exemptions of § 59-12-104(23) and (25) do not apply because the theater is not reselling the projection system and the projection system is not a component of the ticket sales. Additionally, the resale exemption of § 59-12-104(27) cannot apply because the theater is not selling telecommunications services or fuels.

III. Conclusion

For the situation you have described, the Commission finds that the additional monthly payments are subject to Utah sales tax under § 59-12-103(1)(a) or (1)(k) and no exemption applies. This ruling is based on current law and could be changed by subsequent legislative action or judicial interpretation. Also, 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, you have additional facts that may be relevant, or you have any other questions, you are welcome to contact the Commission.

For the Commission,

Michael J. Cragun
Commissioner

MJC/aln
10-006