FINAL PRIVATE LETTER RULING

REQUEST LETTER

11-007

December 20, 2011

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

RE: Request for Private Letter Ruling

Dear Tax Commission Representative:

COMPANY and its affiliates, COMPANY1 sell and service turbine generators. Because the turbine generators can be removed, relocated or upgraded, and are specialized equipment that retain their tangible personal property (TPP) characteristics, we view our repair services as taxable repair services to TPP. We have a customer who believes the services to their aeroderivative gas turbine generator (Turbine Generator), should be treated as an exempt service to real property. Therefore, we are requesting an opinion as to whether our repair services are taxable repair services to TPP or exempt repair services to real property.

FACTS:
The repair Turbine Generators involves COMPANY1 field service personnel going on-site to the customer's Utah facility and either repairing the unit on-site or removing the turbine engine, preparing the engine for shipment to COMPANY1 repair center outside Utah and installing customer's spare engine. Once the original engine is repaired it will be returned to the customer's Utah site and serve as a spare.

The Turbine Generator is a dual-rotor, "direct drive" gas turbine derived from the AIRCRAFT ENGINE. The Turbine Generator is used primarily as equipment to generate electricity for sale, not as equipment incorporated into and used primarily to serve the electrical needs of the underlying real property. The Turbine Generator does not lose its identity as TPP if affixed to real property.

The Turbine Generator can be removed with no damage to the equipment, with minimal or no damage to the real property and it can be moved to another site. There is an active secondary market for used Turbine Generators.

Discussion of Law:
Utah Code Ann. § 59-12-102(68)(a)(i)(B) suggests that TPP will remain attached to real property in the same place over the useful life of the tangible personal property; or 59-12-102(68)(a)(ii) if the tangible personal property is detached from the real property, the detachment would:

> 59-12-102(68)(a)(ii)(A) cause substantial damage to the tangible personal property; or
> 59-12-102(68)(a)(ii)(B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

Turbine Generators are frequently removed and relocated or sold before the end of their useful lives. The removal of the Turbine Generator does not cause substantial damage to the real property and does not cause damage to the equipment itself.

UCA §59-12-102(68)(b) "Permanently attached to real property" includes:
59-12-102(68)(b)(ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located.

The repairs involved in our scenario can include the removal and shipment of the Turbine Generator engine out-of-state as opposed to a complete on-site repair.

Utah Publication 42 – August 2010 clarified that TPP becomes part of real property if it is an essential part of the real property, explaining that TPP which services the real property is viewed as real property. Gas, water and electrical lines installed solely for the operation of equipment will not be part of the real property.

Publication 42 also advises that permanently attached TPP may be temporarily removed for repair onsite and still be considered permanently attached and that an item attached to real property removed for repair off-site, reverts to TPP.

Publication 42 also clarifies that permanently attached TPP does not include movable TPP that is attached for convenience or stability. Advising that manufacturing M&E remains TPP even if affixed to real property and that MRI machines are real property if attached by more than power supply

UCA §59-12-103(1)(g)(i) provides that amounts paid for services for repairs or renovations of tangible personal property are subject to taxation.

Utah Admin Rule R865-19S-58(4)(b) provides, that manufacturing machinery and equipment remains tangible personal property even when permanently attached to real property.

Utah Code Ann. 59-12-104(14)(b)(1) provides an exemption for machinery or equipment leased or purchased by cogeneration facilities that are placed in service on or after May 1, 2006

Utah Private Letter Ruling No. 04-019, Utah State Tax Commission, issued March 29, 2005. The Commission concluded that back-up generators used by a hospital to power the entire facility were real property. In its discussion, the Commission noted that larger generators used by energy

production facilities, such as power plants, are considered to remain tangible personal property after installation, since such generators are used primarily as equipment to generate a product for sale, not as equipment incorporated into and used primarily to serve the electrical needs of the underlying real property

Utah Private Letter Ruling No. 95-051, Utah State Tax Commission, issued August 28, 1995. The Commission concluded that generator sets, consisting of a gas turbine, attached hoses, control and monitoring devices on skids, that are welded or bolted to a concrete pad inside a building are specialized equipment that can retain the characteristics of tangible personal property.

Private Letter Ruling No. 05-010, Utah State Tax Commission, issued January 11, 2006. The Commission advised that the purchase of a GE turbine and generator set did not qualify for the manufacturing exemption. Although the ruling request was to determine if the turbine and generator equipment qualified for the MFG exemption, the take away from the ruling is the Commission confirmed that the equipment was tangible personal property, as opposed to realty. Although the ruling was issued in 2006, it is still relevant today, since Utah exempts turbines, generators and other equipment used by a cogeneration facility as defined in Section 54-2-1. The exemption also covers equipment repairs. The equipment used in a cogeneration facility is the same used in other power generation plants. If the state viewed large electrical generation equipment as permanently affixed to real property, a specific exemption for cogeneration facilities would not be needed. Publication 25, Utah State Tax Commission, December 2009, lists purchases of machinery and equipment and repair or replacement parts with an economic life of three or more years as exempt when used in a cogeneration facility.

Private Letter Ruling No. 01-032, Utah State Tax Commission, November 16, 2004. Concluded that above ground tanks are usually considered personal property unless they are so attached to the realty in such a way that they become part of it. "It has been found that when a tank is field erected and would require structural dismemberment to be removed from its host real property or when the real property upon which said tank is situated would be damaged or disturbed that said tank is to be considered real property for purposes of taxation." See Appeal No. 91-0330. From this settlement of the appeal, the Commission has set two guidelines that determine when a tank is real property: 1. Structural dismemberment required to remove the tank and, 2. Substantial damage to the underlying real property would occur when the tank is moved. These principles generally apply to the test for all real versus personal property questions. The Commission determined that the storage tanks addressed in the ruling were moveable without structural dismemberment and could be relocated to another site. The Commission also determined that their removal would not cause damage to the real property when removed. Accordingly, they concluded, the tanks would not be deemed real property.

Our customer relies on Utah Private Letter Ruling No. 09-009 issued August 20, 2009, which concluded repair and maintenance services to back-up generators deemed to be tangible personal property and which were not an integral part of real property, are exempt services to real property, since the back-up generators were permanently attached to real property. The ruling goes on to say that the parts used in performing the service would be taxable.

Conclusion:
The fact that the engine can be removed and repaired off – site and that the Turbine Generator can be moved from one site to another site and remain operational and that such movement can be done without material damage to either the Turbine Generator or the real property, we do not believe the Turbine Generator is functionally or permanently attached to real property and therefore, repairs and maintenance to the Turbine Generator are taxable services to TPP.

Although the Turbine Generators at issue are not utilized in a cogeneration facility, they are similar to those that are and both are affixed in a similar manner, further supports that the Turbine Generators are not functionally attached to real property, since the state advises that manufacturing machinery & equipment remain TPP and Turbine Generators used in a cogeneration facility qualify for an M&E exemption

Thank you for your time and consideration in this matter. If you have any questions, or need additional details you can contact me at PHONE NUMBER.

Sincerely,

NAME
TITLE

RESPONSE LETTER

August 16, 2012

NAME
TITLE
COMPANY
ADDRESS
CITY, STATE ZIP CODE

RE: Private Letter Ruling Request—Utah Sales Tax Treatment of Repair Services on Turbine Generators Located in Utah and Used to Generate Electricity for Sale

Dear NAME:

You have requested a ruling on the Utah sales tax treatment of repair services your company provides for the Turbine Generators ("Generators") you have described. You think these repair services are subject to Utah sales tax, but your customer disagrees. You explained by telephone that this customer declined to participate in this private letter ruling request.

According to your request letter, you explained the following. The Generators are aeroderivative gas turbine generators with each generator being a dual-rotor, "direct drive" gas turbine derived from the AIRCRAFT ENGINE. You represent that the Generators do not lose their identity as tangible personal property if they are affixed to real property. They can be removed with no damage to the equipment, with minimal or no damage to the real property and they can be moved to other sites. There is an active secondary market for used Generators, which are frequently removed and relocated or sold before the end of their useful lives.

In a subsequent communication, you indicated that the PRODUCT NAME Aeroderivative Gas Turbine Generator is one of the Generators considered for purposes of this ruling. Based on the WEBSITE, the PRODUCT NAME generator is a package that is factory built with final assembly onsite. The site preparation for an PRODUCT NAME generator includes a fuel supply, foundation, and electrical transmission capabilities. The inlet and exhaust parts of the PRODUCT NAME generator can be optimized for sand, salt, and noise requirements of the site.

According to your request letter, when your company repairs Generators your service personnel go onsite to a customer's Utah facility and either repair the unit onsite or remove the turbine engine, prepare it for shipment to COMPANY1 repair center outside Utah and install a customer's spare engine. Once the original engine is repaired your company returns the engine to the customer's Utah site to serve as a spare. Likewise, the WEBSITE states that the PRODUCT NAME generator's design allows the engine to be removed for overhaul to a depot, and a spare or exchange engine to be installed to continue production within 3-4 days.

Finally, you stated that the Generators are used primarily as equipment to generate electricity for sale, and not as equipment incorporated into and used primarily to serve the electrical needs of the underlying real property. Because you have only provided this one use, this private letter ruling will only address that use. Other uses of a Generator are not covered in this private letter ruling.

After reviewing the applicable law and analyzing the facts you provided, we conclude that installed Generators are tangible personal property permanently attached to real property. The labor charges for onsite repairs of Generators that are permanently attached at the times of the repairs are not subject to Utah sales tax. However, repair parts for onsite repairs and both labor and parts charges for offsite repairs are subject to Utah sales tax. Our analysis for these conclusions is provided after the Applicable Law section below.

I. Applicable Law

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

> amounts paid or charged for . . .
> (a) retail sales of tangible personal property made within the state;
> . . . .
> (g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax 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 . . .
> . . . .
> (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is
> (i) stored;
> (ii) used; or
> (iii) consumed . . .

Utah Code Ann. § 59-12-102(98) defines “repairs or renovations of tangible personal property” as follows:

> (a) Except as provided in Subsection (98)(b), "repairs or renovations of tangible personal property" means:
> (i) a repair or renovation of tangible personal property that is not permanently attached to real property; . . .
> . . . .

Utah Code Ann. § 59-12-102(79) states:

(a) "Permanently attached to real property" means that for tangible personal property attached to real property:
  (i) the attachment of the tangible personal property to the real property:
    (A) is essential to the use of the tangible personal property; and
    (B) suggests that the tangible personal property will remain attached to the real property in the same place over the useful life of the tangible personal property; or
  (ii) if the tangible personal property is detached from the real property, the detachment would:
    (A) cause substantial damage to the tangible personal property; or
    (B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

(b) "Permanently attached to real property" includes:
  (i) the attachment of an accessory to the tangible personal property if the accessory is:
    (A) essential to the operation of the tangible personal property; and
    (B) attached only to facilitate the operation of the tangible personal property;
  (ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located; or
  (iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (79)(c)(iii) or (iv).

(c) "Permanently attached to real property" does not include:
  (i) the attachment of portable or movable tangible personal property to real property if that portable or movable tangible personal property is attached to real property only for:
    (A) convenience;
    (B) stability; or
    (C) for an obvious temporary purpose;
  (ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (79)(b)(ii);

. . . .

Utah Code Ann. § 59-12-102(32) and (94) define delivery charge and purchase price, as follows in part:

(32) (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 (32)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:
(i) transportation;
(ii) shipping;
(iii) postage;
(iv) handling;
(v) crating; or
(vi) packing.

. . . .

(94) (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;
. . . .

(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;
. . . .

Utah Administrative Code R865-19S-4[1] states the following:

(3) Unless otherwise provided by statute, if a purchase consists of items that are exempt from sales tax and items that are subject to sales tax, the entire purchase is subject to sales tax unless the seller, at the time of the transaction:
(a) separately states the tax exempt items on the invoice; or
(b) is able to identify by reasonable and identifiable standards, from the books and records the seller keeps in the seller's regular course of business, the items exempt from sales tax.

Utah Code Ann. § 59-12-102(18)(a) provides the following general definition of "bundled transaction":

"Bundled transaction" means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:
(i) distinct and identifiable; and
(ii) sold for one nonitemized price.

[1] Utah Administrative Code R865-19S-4 is available online at http://tax.utah.gov/commission/effective/r865-19s-004.pdf.

Utah Code Ann. § 59-12-102(18)(b) lists specific exclusions from the general definition of bundled transaction.[2]

Utah Code Ann. § 59-12-103(2)(d)(iii) prescribes how bundled transactions for non-food items are taxed,with § 59-12-103(2)(d)(iii)-(iv) stating in part:

> (iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):
> (A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:
> (I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or
> (II) state or federal law provides otherwise; . . .
> . . . .
> (iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

Utah Code Ann. § 59-12-211 instructs on the locations of certain transactions, with § 59-12-211(3) stating:

> Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), 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.

[2] The full text of the current version of § 59-12-102(18) is available online at http://le.utah.gov/~code/TITLE59/htm/59_12_010200.htm.

Utah Admin. Code R865-19S-58 ("Rule 58"),[3] titled "Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103," states in pertinent part:

> (1) Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.
>
> (a) "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.
>
> (b) Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.
>
> . . . .
>
> (4) This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:
>
> . . . .
>
> (b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;
>
> . . . .

Utah Tax Commission Publication 42,[4] titled "Sales Tax Information for Sales, Installation and Repair of Tangible Personal Property Attached to Real Property," states in part:

> **Personal Property Permanently Attached to Real Property**
>
> The above rules [applying to construction materials converted to real property] do not apply to sales of items that remain tangible personal property after they are attached to real property. Sales of tangible personal property attached to real property are taxable to the last buyer.
>
> Tangible personal property is considered permanently attached to real property if it must be attached to function correctly and it will remain attached over its useful life. This includes an accessory which is essential to the operation of the tangible personal property. Often, removing permanently attached personal property would seriously damage it or require a major repair of the real property. Permanently attached personal property may be temporarily removed for repair or renovation onsite and still be considered permanently attached.

[3] Rule 58 is available online at http://tax.utah.gov/commission/effective/r865-19s-058.pdf.
[4] Publication 42 is available online at http://tax.utah.gov/forms/pubs/pub-42.pdf.

Permanently attached personal property does not include movable tangible personal property that is attached for convenience, stability or an obviously temporary purpose.

Some items that remain tangible personal property even when permanently attached to real property are:

- Manufacturing machinery and equipment (including accessories and repair parts), even if the machinery or equipment is attached to real property. A manufacturer can buy or lease manufacturing equipment tax-free upon giving the seller an exemption certificate. Replacement equipment is eligible for an exemption.

. . . .

Tangible personal property that is considered permanently attached to real property includes:

. . . .

- Manufacturing machinery and trade fixtures where the attachment is essential for the operation of the equipment and where removal of the equipment will cause substantial damage to the equipment or the real property.

The following items are not considered tangible personal property permanently attached to real property:

. . . .

- Manufacturing equipment and trade fixtures that are attached for convenience, stability or an obviously temporary purpose.

Repair

Sales tax applies to charges for labor and parts to repair tangible personal property. If the item has been permanently attached to real property, the separately-listed labor charges are not taxable. However, charges for the repair parts are taxable

II. Analysis

A. The Generators Remain Tangible Personal Property after Installation; They are not Converted to Real Property.

Under § 59-12-103(a) and (g), amounts charged for parts and services to repair tangible personal are generally subject to Utah sales tax. However for amounts charged to repair *real property* are not subject to Utah sales tax because they are not among the taxable enumerated services listed in § 59-12-103. When tangible personal property is converted to real property, taxpayers may consult Rule 58 for direction. Under Rule 58, when a real property contractor or repairman converts tangible personal property into real property, the contractor or repairman does not charge sales tax to his or her customer. Instead, he or she pays sales and use tax on his

or her purchases of the tangible personal property before the property is converted into real property. Tangible personal property converted into real property includes items that lose their separate identity, such as lumber, bricks, and nails and also includes items that become integral parts of the real property, such as furnaces and built-in air conditioning systems. Rule 58 specifically states that the rule does not cover manufacturing equipment and machinery; such property cannot be converted to real property. Consistent with this, Publication 42 states that manufacturing machinery and equipment remain tangible personal property even when permanently attached to real property.

In your situation, the Generators used to generate electricity for sale are not converted to real property. These generators retain their identity as tangible personal property and are not integral parts of real property. They are similar to the manufacturing equipment and machinery mentioned in Rule 58 and Publication 42.

This conclusion is consistent with the Commission's prior private letter rulings ("PLR's").[5] In PLR 04-019, the Commission explained that "large[] generators used by energy production facilities, such as power plants, are considered to remain tangible personal property after installation" and are not converted to real property. In PLR 09-009, the Commission found that generators supporting telecommunications equipment remained tangible personal property. In PLR 95-051, the Commission found that certain generator sets on skids also remained tangible personal property. Finally, in PLR 05-010, the Commission treated a generator as tangible personal property for its analysis of whether a power plant's planned purchases of equipment qualified for the exemption found in §59-12-104(14), for machinery and equipment purchased by manufacturing facilities. Similar to each of these situations, the Generators you have described remain tangible personal property and are not converted to real property after they have been installed.

Even though the Generators remain tangible personal property, the tax treatment of their repairs would still be affected by whether they are tangible personal property permanently attached to real property. Tangible personal property *converted* to real property is not the same as tangible personal property *permanently attached* to real property.

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[5] The concept of tangible personal property being permanently attached to real property has existed for a period of time. Utah Administrative Code R865-19S-51 E. (1994) states:

> Tangible personal property which is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, and the installation charges are exempt if separately stated. If the retailer does not segregate the selling price and installation charges, the sales tax applies to the entire sales price, including installation charges.

Utah Administrative Code R865-19S-78 F. (1994) states:

> Property, fixtures, or equipment attached to the real property, in a permanent or semipermanent manner, shall be considered as real property while so attached; but, if removed from the premises for the purpose of repairs, shall be considered as tangible personal property.

B. An Installed Generator is Tangible Personal Property Permanently Attached to Real Property unless a Subsequent Detachment is Permanent and the Generator Becomes Personal Property.

Utah Code § 59-12-103(1)(g) imposes Utah sales tax on amounts charged to repair tangible personal property. However, § 59-12-102(98) narrows the definition of repair to exclude repairs to tangible personal property *permanently attached to real property*. Utah Code § 59-12-102(79) defines permanently attached to real property and includes two provisions under which tangible personal property can be permanently attached. Under the first provision, found in § 59-12-102(79)(a)(i), the attachment of the tangible person property to the real property must be essential to the use of the tangible personal property and the attachment must suggest that the tangible personal property will remain attached in the same place over the useful life of the tangible personal property. Under the second scenario, found in § 59-12-102(79)(a)(ii), a detachment of the tangible personal property from the real property must cause substantial damage to the tangible personal property or the detachment must require substantial alteration or repair of the real property to which the tangible personal property is attached.[6]

We will now analyze whether the Generators are permanently attached to real property. Under the first provision, the Generators are permanently attached. According to the WEBSITE, the Generators must have a foundation to be used. We infer the generators must be attached to this foundation. Furthermore, according to the WEBSITE, the generators must have fuel supplies and electrical transmission capabilities as part of their site preparations. Thus, the Generators are attached by multiple connections, suggesting that the Generators cannot easily be moved from one site to another.[7] These attachments suggest that the Generators will remain attached in the same place over their useful lives. The attachments are more than just for convenience or stability.[8] The fact that there is an active secondary market for used Generators does not change the type of attachment required for an installed Generator.

Inasmuch as the Generators qualify under the first provision, the second provision is irrelevant. We note, however, that it is not clear whether the Generators might also permanently attached to real property under that second scenario.

After the Generators are installed, they remain permanently attached to real property even if they are temporarily detached for an onsite repair. See § 59-12-102(79)(b)(ii). However, any detachment other than a temporary detachment under § 59-12-102(79)(b)(ii) may cause the Generator or a part of the Generator to no longer be permanently attached to real property. See § 59-12-102(79)(c)(ii).

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[6] Publication 42 includes a similar instruction for determining whether manufacturing machinery is permanent attached to real property, stating "Manufacturing machinery [is considered permanently attached to real property] where the attachment is essential for the operation of the equipment and where removal of the equipment will cause substantial damage to the equipment or the real property."

[7] Additionally, the fact that the final assembly of the Turbine Generators is completed onsite also suggests that Turbine Generators cannot easily be relocated.

[8] In Example 2 of its Repair section, Publication 42 includes an example of a repair to tangible personal property that is attached for just convenience or stability.

The conclusion that installed Generators are permanently attached to real property is consistent with our ruling for PLR 09-009 and distinguishable from PLR's 04-019, 95-051, and 05-010. In PLR 09-009, the Commission concluded that the generators were permanently attached to real property after looking at pictures of the generators and considering the descriptions of how they were attached.[9] In PLR's 04-019, 95-051, and 05-010, the Commission did not analyze whether tangible personal property was permanently attached to real property. In PLR 04-019, the generator was converted to real property; it was no longer tangible personal property after installation. In PLR's 95-051 and 05-010, the Commission only addressed purchases of generators and other items, but not their repair.

C. For Onsite Repairs of Generators, Labor Charges are Not Subject to Utah Sales Tax when the Generators or Other Items Repaired are Permanently Attached to Real Property at the Time of the Repair. However, Repair Parts are Subject to Tax.

For Generators that are permanently attached to real property, labor charges for repairs are not subject to Utah sales tax if the repaired items are permanently attached to real property at the times of their repairs. For repairs at the customers' sites, the labor charges for these repairs would not be subject to Utah sales tax *if* the items repaired remain permanently attached to real property or are only temporarily detached while the onsite repair is performed. In particular, if your repair personnel install a spare engine into a Generator, your labor charges for this installation would not be subject to Utah sales tax if the Generator is permanently attached to real property, i.e. the Generator remains onsite, at the time of the installation of the engine.

Unlike the labor charges, the repair parts are subject to Utah sales tax. In general, § 59-12-103(1)(a) taxes "retail sales of tangible personal property made within the state" and § 59-12-103(1)(l) taxes the storage, use, or consumption of tangible personal property within the state. Parts are taxable under either § 59-12-103(1)(a) or § 59-12-103(1)(l). We are unaware of any exemption in § 59-12-104 that would apply to the situation you described.[10]

If your company's repair charges include both non-taxable labor charges and taxable repair parts, the entire repair charges could become taxable unless at the times of the transactions your company either separately states the non-taxable labor charges on the invoices or your company is able to identify from its regular books and records the non-taxable labor charges. *See* R865-19S-4(3), § 59-12-102(18), and § 59-12-103(2)(d). You are welcome to contact the Tax Commission to learn more about how R865-19S-4, § 59-12-102(18) and § 59-12-103(2)(d) would apply to your situation.

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[9] The Commission withdrew PLR 01-032 on November 16, 2004, see http://tax.utah.gov/commission/ruling/01-032.htm; thus, PLR 01-032 is not analyzed for this ruling on Turbine Generators even though it addressed permanent attachment.

[10] Our conclusions in this section are consistent with Example 1 on page 3 of the Repair section of Publication 42. In that example, a built-in refrigerated meat counter is tangible personal property permanently attached to real property, and, for an on-site repair, the labor charges are not taxable but the repair parts are taxable.

D. For Off-Site Repairs of Generators, Both Labor Charges and the Repair Parts are Subject to Utah Sales Tax.

When Generators and their parts are not permanently attached to real property, their repair charges are subject to Utah sales tax under § 59-12-103(1)(a) and (g). Items that are detached for any reason other than a temporary detachment described in § 59-12-102(79)(b)(ii) are not permanently attached to real property and their repairs are subject to Utah sales tax. That is if a Generator or Generator component is removed and repaired off-site, the repair charges for both parts and labor would be subject to Utah sales tax because the Generator or Generator component was not permanently attached to real property at the time of the repair. Example 1 on page 3 of the Repair section of Publication 42 has some similarities to your situation even though the example includes a built-in refrigerated meat case. The example explains that when a meat case is removed and repaired off-site, the repair would be a repair to tangible personal property and the entire repair charge for parts and labor would be taxable. The online location for Publication 42 has been previously provided in footnote 4. For your situation, the off-site repairs of Generator engines are subject to Utah sales tax. Although the actual repairs of the engines are completed out of state, under § 59-12-211(3) the locations of those repair transactions are still in Utah, at your customers' sites where they take receipt of the services. Section 59-12-211(1)(a)(i)(B) defines receipt as "taking possession of tangible personal property [or] making first use of a service." For the Generators, your customers take possession of the repaired engines and make first use of the repair services when they receive the repaired engines back at their Utah sites to serve as spares.

Although the repair charges for off-site repairs of engines are subject to Utah sales tax, such repairs might involve other related charges that are not subject to Utah sales tax. In § 59-12-102(94), the Utah Code defines purchase price to exclude delivery charges <u>if</u> they are separately stated on an invoice, etc. provided to the purchaser. § 59-12-102(94)(c)(ii)-(ii)(B). Under § 59-12-102(32), delivery charges are limited to the shipping and handling charges listed in § 59-12-102(32)(b) for delivery of an item *to a location designated by the purchaser*. If your company separately states the delivery charges for delivering the repaired engines to the customer's sites, then such delivery charges are not part of the purchase prices to repair those engines and they are not subject to Utah sales tax. However, if your company charges to deliver the engines *to COMPANY1 repair center*, those charges do not meet the definition of delivery charge and are not excludable from the purchase prices of the repairs, regardless of whether they are separately stated.

<u>III. Conclusion</u>

Based on the above analysis, the Commission has concluded the following. The Generators remain tangible personal property after installation; they are not converted to real property. An installed Generator is tangible personal property permanently attached to real property as long as the generator is not subsequently detached for more than a temporary detachment for an onsite repair. For these onsite repairs, the labor charges to repair Generators permanently attached to real property are nontaxable, but the repair parts are taxable. If your company's repair charges include both non-taxable labor charges and taxable repair parts, the entire repair charges could become taxable unless at the times of the transactions your company

either separately states the non-taxable labor charges on the invoices or your company is able to identify from its regular books and records the non-taxable labor charges. For off-site repairs, both the labor charges and repair parts are subject to Utah sales tax.

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

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