FINAL PRIVATE LETTER RULING

REQUEST LETTER

17-002

December 13, 2016

Utah State Tax Commission
ATTN: Technical Research
210 North 1950 West
Salt Lake City, UT 84134

Dear Utah State Tax Commission:

We are formally requesting that the Commissioner of the Utah State Tax Commission issue a private letter ruling regarding the applicability of Utah sales and use tax on the following summary of facts.

FACTS

Subsidiary ("SUBSIDIARY") merged into Taxpayer ("TAXPAYER") for the purpose of forming one entity to sell and provide installation of custom STORAGE solutions sold by TAXPAYER. Subsequent to the merger, TAXPAYER continues to operate the installation business in substantially the same manner as predecessor.

Sale and Performance of Service. Customer of TAXPAYER ("CUSTOMER") designs a custom STORAGE solution at TAXPAYER's retail location with the help of TAXPAYER's employee. The STORAGE solution is customized based on the CUSTOMER's specifications and tastes and includes all materials necessary to complete installation of the STORAGE. Essential materials include top track, standards, brackets, wall anchors and screws. Upon completion of the design phase, CUSTOMER is given the option to select installation by TAXPAYER.

Generally, CUSTOMERs have three options for installing the custom STORAGE solution purchased from TAXPAYER: self-installation, installation by their own contractor, or engaging TAXPAYER for the installation. CUSTOMERs have chosen TAXPAYER to install on average 30 percent of all STORAGE solutions sold over the past three years.

If installation by TAXPAYER is selected, TAXPAYER's employee helps CUSTOMER select an installation date using TAXPAYER's website that shows the availability of independent contractors used by TAXPAYER. Upon completion of scheduling, CUSTOMER is provided a

quote for installation based on ##### percent of the sales price of the custom STORAGE. CUSTOMER is also given the option of having TAXPAYER deliver components of the STORAGE to be installed for an additional delivery fee.

Should CUSTOMER choose not to have the STORAGE installed by TAXPAYER at this time, CUSTOMER may use TAXPAYER's website, TAXPAYER's phone at their retail locations or TAXPAYER's retail location to inquire about installation at any time in the future. By providing the location where the STORAGE was purchased along with the order ID, CUSTOMER will receive a call back from TAXPAYER to schedule the installation. A quote for the installation is provided to CUSTOMER at that time.

Vendor is a brand of organizational products sold by TAXPAYER. Specifically, Vendor products are component-based products that can be used individually or paired with other Vendor components and/or components manufactured by third parties to create customized storage solutions based on a CUSTOMER's needs. Examples of Vendor products available for sale in TAXPAYER's retail stores include COMPONENT_PARTS-1, brackets, COMPONENT_PARTS-2, COMPONENT_PARTS-3, standards and screws. (See Attachment A.)

The majority of Vendor components are designed to hang from standards that may be attached to walls, doors or any other structure. Vendor brand standards can be directly attached with screws or hung from a European style top track. TAXPAYER sells Vendor standards in lengths of 20, 36, 60 or 84 inches and Vendor top tracks in lengths of 32, 56 or 80 inches. Screws and other hardware required to mount standards and top tracks are also available for sale by TAXPAYER.

TAXPAYER does not purchase pre-designed or pre-assembled STORAGEs from Vendor. All product purchased from Vendor comes pre-packaged and is tagged by TAXPAYER for individual sale. (See Attachment A.) While they obviously function best with other Vendor components, Vendor brackets, top tracks, COMPONENT_PARTS-2, etc. may be paired with third party products or used on their own should the CUSTOMER desire. This is demonstrated in Attachment B which shows both a Vendor bracket and a THIRD PARTY VENDOR'S bracket hanging from a THIRD PARTY VENDOR'S standard. While third party components may be used with Vendor and *vice versa*, TAXPAYER's CUSTOMERs tend to purchase Vendor components based on their superior construction and name recognition.

To enhance sales of Vendor products, TAXPAYER offers a free service by which a CUSTOMER may organize her STORAGE on her own or with the assistance of TAXPAYER employees using actual measurements from CUSTOMER's home. This involves entering the CUSTOMER's specifications into a computer terminal at TAXPAYER's retail store or online. CUSTOMER then selects which Vendor components best suit her needs and where to place them. Upon completion of the process, a complete list of Vendor components selected by the CUSTOMER is printed, and the individual components are pulled from the shelf or the stock room by the CUSTOMER and/or TAXPAYER employees. The purchase of individual components is reflected on CUSTOMER's receipt.

The component-based nature of Vendor, coupled with TAXPAYER's return policy, allow the CUSTOMER to add, modify or remove components at will. The ability of the CUSTOMER to easily place components for their intended use is vital in that over half of the component layouts designed by CUSTOMERs are self-installed by the CUSTOMER. Attachment C demonstrates how a CUSTOMER can switch between a COMPONENT_PART-4, a COMPONENT_PART-2 or a COMPONENT_PART-5 in the same space in just minutes.

For the CUSTOMER who chooses not to self-install, TAXPAYER offers installation services for a fee based on a percentage of CUSTOMER's Vendor component purchase price. TAXPAYER uses independent contractors to perform the installation and is liable for any issues with performance.

For further clarification, the installation performed by TAXPAYER is identical to those performed by CUSTOMER during self-installations and involves placing each individual component for its intended use. As an example, we'll walk through the installation steps of track mounted components as those are generally the most common type of installations performed.

1. Installer places and attaches top track in the selected area. The top track is attached to the wall using screws purchased by CUSTOMER. The number of screws depends on the length of the top track.

2. The next components placed are standards which are hung from the top track via a notch in the standard. The length and quality of standards were selected by CUSTOMER during the design phase and are determined by what the CUSTOMER wants.

3. The remaining components are placed on standards using brackets. As in the case with all other components, brackets are sold separately. Similar to standards, the number of brackets required depends on the type and quantity of components being placed. As the CUSTOMER adds, removes or modifies components in the future, brackets can be added or removed in a matter of seconds.

4. The remaining individual components are placed at the CUSTOMER's discretion. COMPONENT_PART-1, COMPONENT_PART-6, COMPONENT_PARTS-2 and COMPONENT_PARTS-4 are placed using brackets. COMPONENT_PARTS-5 are placed using STORAGE COMPONENT_PART-5 holders attached to brackets.

ISSUE STATEMENT

Is the sale of custom STORAGE systems, installed by TAXPAYER at the option of CUSTOMER, subject to Utah sales tax? Additionally, are separately stated STORAGE installation charges, if selected by CUSTOMER and performed by a third-party on behalf of the TAXPAYER, subject to Utah sales tax when installed in Utah?

CONCLUSION

Installed custom STORAGE solutions remain tangible personal property after they are affixed to real property because they are attached to real property in order to stabilize the STORAGE rather than to become a permanent part of the real property. Removal of the installed STORAGE does not cause substantial damage to either the STORAGE or the real property, since removal only leaves behind a few small screw holes in the wall where the STORAGE system was installed. These screw holes can be repaired without substantial effort. Further, the STORAGE system does not require any repairs or replacement parts upon removal from the first wall in order to be reinstalled and reconfigured on a new wall. Therefore, TAXPAYER concludes that installed STORAGE solutions remain tangible personal property and are subject to sales tax. However, separately state installation charges are not subject to sales and use tax.

DISCUSSION and ANALYSIS

Utah statutes provide that sales and use tax is imposed on retail sales of tangible personal property and certain enumerated services.[1] Tangible personal property means personal property that may be seen, weighed, measured, felt; or touched; or is in any manner perceptible to the senses.[2]

An "installation charge: is a charge for installing tangible personal property. The term "installation charge" does not include a charge for repairs or renovations.[3] Separately stated charges for installing tangible personal property are exempt.[4]

Products that are not "permanently attached to real property" will remain tangible personal property upon attachment to real property and will be subject to Utah sales tax. The law provides a number of considerations for determining whether or not tangible personal property is considered permanently attached:

- The product is considered to be permanently attached to real property if attachment is essential to the use of the tangible personal property; and attachment 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

- If product removal will cause substantial damage to the tangible personal property; or it will require substantial repair or alteration of the real property.[5]

Custom STORAGE solutions, installed by TAXPAYER, are made so that pieces are interchangeable and easily rearranged. They are affixed to the wall via a few screws in a top track so that removal is easy and the STORAGE can be reinstalled on a different wall. Based on these

[1] Utah Code Ann. §59-12-103
[2] Utah Code Ann. §59-12-102(124)
[3] Utah Code Ann. §59-12-102; Utah Admin. Rule R865-19S-58(4)
[4] Utah Code Ann. §59-12-102(57), §59-12-102(99)(c)(ii)(C)
[5] Utah Code Ann. §59-12-102(84).

facts, TAXPAYER believes that installed custom STORAGEs sold by TAXPAYER are tangible personal property under Utah law. Further, separately stated installation charges paid to Taxpayer for the labor of installing custom STORAGE SOLUTIONS are exempt from Utah sales and use tax.

RULING REQUESTED

TAXPAYER hereby requests technical assistance in confirming that the treatment of STORAGE solutions will be considered taxable as the sale of tangible personal property and the separately stated installation of STORAGE solutions will be excluded from the sales price. We respectfully request a phone conference to discuss the relevant facts, issues and analysis contained herein prior to the issuance of a final determination.

Should you have any questions regarding this request for private letter ruling, please contact me at #####.

Very truly yours,

NAME-1
TITLE
TAXPAYER

RESPONSE LETTER

PRIVATE LETTER RULING 17-002

October 31, 2018

NAME-1
TITLE
TAXPAYER
CITY, STATE, ZIP CODE

Dear NAME-1:

This letter is in response to your request for a private letter ruling for TAXPAYER ("Taxpayer"), which sells and provides installation of custom STORAGE solutions to customers ("Customer(s)"). Custom STORAGE solutions, once installed, are bracket-based, STORAGE organizers with interchangeable prefabricated component parts. You asked the following questions:

> Is the sale of custom STORAGE systems, installed by TAXPAYER at the option of CUSTOMER, subject to Utah sales taxes? Additionally, are separately stated STORAGE installation charges, if selected by CUSTOMER and performed by a third-party on behalf of the TAXPAYER, subject to Utah sales tax when installed in Utah?

The answers are as follows. The Taxpayer's Utah sales of the STORAGE systems to the Customers are subject to Utah sales and use taxes regardless of the STORAGE systems' installation by the Taxpayer. The installed STORAGE systems remain tangible personal property after their installation. The separately stated installation charges the Taxpayer bills the Customers are not subject to Utah sales and use taxes.

Section III. Analysis of this private letter ruling contains the analysis supporting the above answers.

I. Facts

You provided the following facts. The Taxpayer sells component parts for unassembled customer-designed, STORAGE solutions. Customers design STORAGE solutions at the Taxpayer's locations using the Customers' STORAGE measurements and preferences. The Taxpayer's employees use a computer program in the stores to assist the Customers in the designs. The Taxpayer does not charge the Customers for the design service. After the Customers' designs

are complete, the Taxpayer's employees print lists of individual component parts for the Customers' designs. The component parts typically include top tracks, wall anchors, screws, standards, and bracket-based components such as COMPONENT_PARTS-1, COMPONENT_PARTS-2, and COMPONENT_PARTS-3. The component parts are predesigned. The horizontal top tracks and vertical standards come in a limited number of standard lengths. Using the printed lists, the Taxpayer's employees or the Customers pull the individual component parts from the Taxpayer's store shelves or stockrooms. The component parts are individually prepackaged. The Customers purchase from the Taxpayer the individual component parts necessary for the Customers' designs. Thus, the purchase prices of the Customers' custom STORAGE solutions are, basically, the totals of the purchase prices of the individual component parts necessary for the Customers' designs. The Taxpayer does not sell the Customer-designed STORAGE solutions as either predesigned STORAGE or preassembled STORAGE.

You also provided these following facts. After Customers design their STORAGE solutions, the Customers may choose to install the STORAGE solutions by themselves or by their own contractor or they may choose to pay a separate charge for the Taxpayer to install the STORAGE solutions at the Customers' locations. You explained that, on average, Customers have chosen the Taxpayer to install 30 percent of all STORAGE solutions sold over the past three years.

The Taxpayer uses independent contractors to perform the installation services that the Taxpayer sells to the Customers. The installation steps are the same regardless of whether the Customers or the Taxpayer's independent contractors perform the installation service. When independent contractors of the Taxpayer install STORAGE solutions with top tracks, the independent contractors attach the horizontal top tracks to the STORAGE ROOM'S walls with wall anchors and screws. Then, the independent contractors attach the vertical standards to the top tracks. Next, the independent contractors attach the interchangeable components to the vertical standards using the components' brackets. After the interchangeable components are attached, the STORAGE solutions are completely installed. Alternatively, when the independent contractors install STORAGE solutions without top tracks, the independent contractors attach the vertical standards to the STORAGE ROOM'S walls with wall anchors and screws and then attach the interchangeable bracket-based components to the standards.

Based on your website, there are some necessary steps to prepare a STORAGE ROOM before installation. *See* WEB ADDRESS). These steps might include removing existing COMPONENT_PARTS-5 and COMPONENT_PARTS-1 and patching and painting the STORAGE ROOM'S walls before installing Customers' new STORAGE solutions. *Id.*

You explained the following for installation. If the Customers choose to forego purchasing installation services from the Taxpayer when purchasing the component parts of the Customer-designed STORAGE solutions, the Customers may still purchase these installation services from the Taxpayer at a future time.

For this private letter ruling, the STORAGE solutions at issue are installed into Customers' homes. In your request letter, you explained the following:

> To enhance sales of Vendor products, TAXPAYER offers a free service by which a CUSTOMER may organize her STORAGE on her own or with the assistance of TAXPAYER employees using actual measurements from *CUSTOMER's home*.
>
> (Emphasis added.)

Similarly, the Taxpayer's website explains the following: "Our professional Installation Service will come to your home . . ." *See* WEB ADDRESS.

In addition to being installed in homes, the installed STORAGE solutions of this private letter ruling are designed for personal use, rather than for business use. This conclusion is based on the pictures and descriptions of certain pre-designed STORAGE solutions shown on the Taxpayer's website. *See* WEB ADDRESS. The same vendor manufactures both the pre-designed STORAGE solutions shown on the Taxpayer's website and the STORAGE solutions at issue for this private letter ruling. You identified this vendor through Attachment A of your request for a private letter ruling. This private letter ruling concludes that the component parts of the pre-designed STORAGE solutions would be the same or very similar to the component parts of the STORAGE solutions at issue for this private letter ruling. This private letter ruling also concludes that these component parts along with the various STORAGE layouts available strongly suggest that the STORAGE solutions of this private letter ruling are designed for personal use, rather than for business use.

You did not present details about the installation contracts between or among the Customers, Taxpayer, and independent contractors.

Based on your website, the Taxpayer sells freestanding STORAGE solutions as well as those screwed to STORAGE ROOMS' walls. *See* WEB ADDRESS [WORDS REMOVED]. The Taxpayer offers its installation services for freestanding solutions, not just for the STORAGE solutions installed to walls with screws. *See Id.*

The taxation of the sales of freestanding STORAGE solutions and of the related installation services is not addressed by this private letter ruling. However, their taxation would likely be similar to the STORAGE solutions attached to the STORAGE walls with screws.

II. Applicable Law

Utah Code Annotated § 59-12-103(1) imposes tax on certain transactions, stating the following in part:

> A tax is imposed on the purchaser . . . on the purchase price or sales price for amounts paid or charged for the following transactions:
> (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 . . .
> . . . .
> (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
> . . . .
> (ii) used; or
> (iii) consumed . . .
> . . . .

Utah Code Annotated § 59-12-102 provides definitions, stating the following in part:[1]

> (57)
> (a) Except as provided in Subsection (57)(b), "installation charge" means a charge for installing:
> (i) tangible personal property; or
> (ii) a product transferred electronically.
> . . . .
> (84) . . . .
> (c) "Permanently attached to real property" does not include:
> . . . .
> (iv) an item listed in Subsection (125)(c).
> . . . .

[1] Utah Code Annotated § 59-12-102(30) defines "construction materials" as "any tangible personal property that will be converted into real property." The Utah Code Annotated uses the term "construction materials" for four exemptions found in Utah Code Annotated § 59-12-104. Section 59-12-104(2) provides that sales of certain construction materials to the state, its institutions, and its political subdivisions are not exempt. Section 59-12-104(66)-(67) exempts certain sales of construction materials to specific types of airports. Section 59-12-104(73) exempts certain sales of construction materials "used in the construction of a new or expanding life science research and development facility in the state." The analysis of this private letter ruling does not address any of the four exemptions found in § 59-12-104 that use the defined term "construction materials."

(99)

(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) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later, as demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:

. . . .

(B) a delivery charge;

(C) an installation charge;

. . . .

(104)(a) . . . "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 . . .

. . . .

(125)

(a) Except as provided in Subsection (125)(d) or (e), "tangible personal property" means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

(ii) is in any manner perceptible to the senses.

(b) "Tangible personal property" includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

(v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

(c) "Tangible personal property" includes the following regardless of whether the item is attached to real property:
  (i) a dishwasher;
  (ii) a dryer;
  (iii) a freezer;
  (iv) a microwave;
  (v) a refrigerator;
  (vi) a stove;
  (vii) a washer; or
  (viii) an item similar to Subsections (125)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Tangible personal property" does not include a product that is transferred electronically.

(e) "Tangible personal property" does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
  (i) a hot water heater;
  (ii) a water filtration system; or
  (iii) a water softener system.

. . . .

Utah Administrative Code R865-19S-58 states the following, in 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.

(2) The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

(a) The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

(b) Except as otherwise provided in Subsection (2)(d), the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

. . . .

(3) If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

(a) If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

(b) The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

(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:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

III. Analysis

This analysis section first analyzes Utah statutes and administrative rules. After determining the tax treatment for the installed STORAGE solutions cannot be clearly determined using the Utah statutes and rules, this analysis section next analyzes Utah Supreme Court decisions and prior Tax Commission decisions for guidance. Ultimately, this private letter ruling concludes that the installed STORAGE solutions remain tangible personal property and that the separately stated installation charges are not subject to Utah sales and use taxes. This analysis section includes the following subsections:

A. Utah law addresses, in general, whether the sale of an item is the sale of tangible personal property or the sale of real property.

B. The uninstalled STORAGE solutions are "personal property" "perceptible to the senses," under § 59-12-102(125)(a).

C. The installed STORAGE solutions of this private letter ruling are not among the items listed in § 59-12-102(125)(c) that are sold as tangible personal property, regardless of their attachment to real property.

D. The installed STORAGE solutions are not among the items listed in § 59-12-102(125)(e) that become real property upon installation.

E. Utah Administrative Code R865-19S-58 provides further guidance on the tax treatment of installed property.

F. The installed STORAGE solutions are not construction materials described in R865-19S-58(1)(a), which become real property upon installation.

G. The installed STORAGE solutions are not fixtures or other items described in R865-19S-58(1)(b), which become real property upon installation.

H. The installed STORAGE solutions are not among the items in R865-19S-58(4) that are sold as tangible personal property and are attached for stability, for an obvious temporary purpose, or for a business use.

I. In *Nickerson Pump*, *B.J. Titan*, and *Chicago Bridge*, the Utah Supreme Court ruled on whether various items were sold as tangible personal property or as real property.

J. The factors the Commission used in Private Letter Ruling ("PLR") 03-003 and in PLR 05-007 better apply to the installed STORAGE solutions.[2]

K. The factors the Commission used in PLR 03-003 and in PLR 05-007 include the extent of the attachment between the item and the underlying realty, the likelihood that an

[2] PLR 03-003 and PLR 05-007 are available through the Searchable Database of the http://www.tax.utah.gov/commission-office/rulings webpage.

item will remain with an underlying realty, and the amount of customization of the item.

L. The factors the Commission used in PLR 03-003 and in PLR 05-007, applied to the facts of the installed STORAGE solutions of this private letter ruling, suggest the installed STORAGE solutions of this private letter ruling remain tangible personal property and are not converted to real property.

M. The separately stated installation charges are not subject to Utah sales and use taxes.

A. Utah Law Addresses, in General, Whether the Sale of an Item is the Sale of Tangible Personal Property or the Sale of Real Property.

Under § 59-12-103(1)(a), a purchaser is subject to sales and use taxes on "retail sales of tangible personal property made within the state." A purchaser is *not* subject to sales and use taxes on a purchase of real property, which includes real property improvements. *See* R865-19S-58(2). Instead, a real property contractor is subject to sales and use taxes on his or her purchases of the items that he or she converts to real property. R865-19S-58(1)-(2).

The main issue for this private letter ruling is whether the Taxpayer is acting as a real property contractor when it both sells and installs STORAGE solutions for Customers.

Based on the above law, if the STORAGE solutions sold and installed by the Taxpayer are found to be tangible personal property, the Customer is subject to sales and use taxes under § 59-12-103(1)(a) and the Taxpayer is not acting as a real property contractor. Alternatively, if the STORAGE solutions sold and installed by the Taxpayer are found to be real property, the Taxpayer is acting as a real property contractor and the Customer is not subject to sales and use taxes. Instead, the Taxpayer would be subject to sales and use taxes under § 59-12-103(1)(a) and/or (1)(l) on the component parts that the Taxpayer converts into the installed STORAGE solutions and also on the supplies that the Taxpayer uses or consumes to install the STORAGE solutions.

In general, Utah law contains instructions on whether a seller is selling tangible personal property or real property.[3]

[3] For your analysis in your request letter, you relied on the definition of "permanently attached to real property" found in § 59-12-102(84) to determine whether an installed STORAGE solution affixed with screws remains tangible personal property or is converted to real property. The definition of "permanently attached to real property" is not included in the Utah Code to address this determination. Utah court decisions and prior Commission decisions have not applied § 59-12-102(84) to determine whether an installed item was sold as tangible personal property or real property.

Instead, "permanently attached to real property" is included in the Utah Code to support the definition of "repairs or renovations of tangible personal property" found in § 59-12-102(104), which states, in part: "(a) . . . '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* . . ." (emphasis added). The definition of "repairs or renovations of tangible personal property" found in § 59-12-102(104) was included in the Utah Code for the interpretation of

B. The Uninstalled STORAGE Solutions are "Personal Property" "Perceptible to the Senses," under § 59-12-102(125)(a).

Section 59-12-102(125)(a) defines tangible personal property as follows:

> (a) Except as provided in Subsection (125)(d) or (e), "tangible personal property" means personal property that:
> (i) may be:
> (A) seen;
> (B) weighed;
> (C) measured;
> (D) felt; or
> (E) touched; or
> (ii) is in any manner perceptible to the senses.

Under § 59-12-102(125)(a), the uninstalled STORAGE solutions are clearly "personal property" that is "perceptible to the senses." The issue for this private letter ruling is whether the STORAGE solutions upon installation remain personal property or become part of the real property to which they are attached.

Section 59-12-102(125) includes Subsections (a)-(e). Subsection (a) is discussed above. Subsection (b) provides a list of items that are specifically included in the definition of tangible personal property. None of the items listed in Subsection (b) applies to this private letter ruling. Subsection (c) provides a list of appliances that are specifically included in the definition of tangible personal property. Subsection (c) is analyzed below in Subsection III.C. of this private letter ruling. Subsection (d) of § 59-12-102(125) specifically excludes a product that is transferred electronically from the definition of tangible personal property. Subsection (d) does not apply to this private letter ruling. Subsection (e) of § 59-12-102(125) provides a list of items that are not tangible personal property if they are attached to real property. Subsection (e) is analyzed further below in Subsection III.D. of this private letter ruling.

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§ 59-12-103(1)(g), under which a purchaser is subject to sales and use taxes on "amounts paid or charged for services for *repairs or renovations of tangible personal property*" (emphasis added).

The definition of "permanently attached to real property" found in § 59-12-102(84) was *not* included in the Utah Code to apply to § 59-12-103(1)(a), under which a purchaser is subject to sales and use taxes on "amounts paid or charged for . . . (a) retail sales of tangible personal property made within the state." Similarly, the definition of "permanently attached to real property" was also *not* included in the Utah Code to apply to § 59-12-103(1)(l), under which a purchaser is subject to sales and use taxes on "amounts paid or charged for tangible personal property if within this state the tangible personal property is: . . . . (ii) used; or (iii) consumed . . ."

For the situation you have presented for this private letter ruling, § 59-12-103(1)(a) and (1)(l) are at issue, not § 59-12-103(1)(g), thus § 59-12-102(84) does not determine the outcome of this private letter ruling. *See also* the Initial Hearing Order for Appeal No. 13-488, page 17, n.12., which provides a similar explanation. The Initial Hearing Order for Appeal No. 13-488 is available through the Searchable Database of the http://www.tax.utah.gov/commission-office/decisions webpage.

C. The Installed STORAGE Solutions of this Private Letter Ruling are Not Among the Items Listed in § 59-12-102(125)(c) that are Sold as Tangible Personal Property, Regardless of Their Attachment to Real Property.

Under § 59-12-102(125)(c), a seller is selling tangible personal property when the seller sells the following items, regardless of how these items are attached to real property: a dishwasher, a dryer, a freezer, a microwave, a refrigerator, a stove, a washer, or an item similar to those listed, as determined through rulemaking. Currently through rulemaking, the Tax Commission has not determined items similar to those listed. STORAGE solutions sold and installed by the Taxpayer are not among the items enumerated in § 59-12-103(125)(c) that remain tangible personal property. Thus, further analysis is needed to determine whether the installed STORAGE solutions of this private letter ruling remain tangible personal property or are converted to real property.

D. The Installed STORAGE Solutions are Not Among the Items Listed in § 59-12-102(125)(e) that Become Real Property Upon Installation.

Under § 59-12-102(125)(e), a person is selling real property when that person sells and attaches the following items to real property: a hot water heater, a water filtration system, or a water softener system. The STORAGE solutions that are sold and installed by the Taxpayer are not among these items listed in § 59-12-102(125)(e). Thus, further analysis is needed to determine whether the installed STORAGE solutions of this private letter ruling remain tangible personal property or whether they are converted to real property.

E. Utah Administrative Code R865-19S-58 Provides Further Guidance on the Tax Treatment of Installed Property.

Utah Administrative Code R865-19S-58 provides further guidance on whether property upon installation remains tangible personal property or becomes part of the real property to which the property is attached. Subsection (1)(a) of R865-19S-58 discusses construction materials; Subsection (1)(a) is discussed below in Subsection III.F. of this private letter ruling. Subsection (1)(b) of R865-19S-58 discusses fixtures and other items; Subsection (1)(b) is discussed below in Subsection III.G. of this private letter ruling. Subsection (4) of R865-19S-58 discusses installed tangible personal property that remains tangible personal property even when it is attached to real property; Subsection (4) is discussed below in Subsection III.H. of this private letter ruling.

F. The Installed STORAGE Solutions are not Construction Materials Described in R865-19S-58(1)(a), which Become Real Property Upon Installation.

Under R865-19S-58(1)(a), a seller creates and sells real property when the seller converts construction materials into real property. Construction materials "include items . . . 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." R865-19S-58(1)(a). In *Utah Concrete Products*, the Utah Supreme Court addressed the sales tax treatment of a company's sales of concrete products to contractors. *Utah Concrete Products Corp. v. State Tax Commission*, 125 P.2d 408 (Utah 1942). The Utah Supreme Court found that the contractors were the consumers of the concrete products "because they are the last persons in the chain to deal with such products before incorporation into a separate entity and before such products lost their identity as such . . ." *Id.* at 411. The Utah Supreme Court found that sales of the concrete products to contractors were subject to sales taxes. *Id.*

For the situation you presented, the components of the uninstalled STORAGE solutions are not used to construct a building, structure, or improvement. The installed component parts do not become indistinguishable parts of the STORAGE ROOM'S walls but instead become finished STORAGE solutions attached to the STORAGE ROOM'S walls. The STORAGE solutions are much less permanent than concrete or other construction materials. The STORAGE solutions can be more easily removed than construction materials. The STORAGE solutions are not construction materials.

G. The Installed STORAGE Solutions are not Fixtures or Other Items Described in R865-19S-58(1)(b), which Become Real Property upon Installation.

Under R865-19S-58(1)(b), a seller is creating and selling real property when the seller converts the following into real property: "fixtures or other items . . . that are *appurtenant* to or *incorporated* into real property and that become an *integral* part of a real property improvement" (emphasis added).

Black's Law Dictionary defines "appurtenant" as "*annexed* to a more important thing." Black's Law Dictionary 118 (9th ed. 2009) (emphasis added). Black's Law Dictionary defines "annexation" as "1. The act of attaching; the state of being attached. 2. *Property.* The point at which a fixture becomes a part of the realty to which it is attached. . . ." *Id.* at 104.

Black's Law Dictionary defines "incorporate" as "2. To combine with something else <incorporate the exhibits into the agreement>. . . ." *Id.* at 834.

Webster's dictionary defines "integral" as "1. of, pertaining to, or belonging as a part of the whole; constituent or component: *integral parts*." Webster's New Universal Unabridged Dictionary 990 (2003).

Thus, based on the above definitions, the "fixtures or other items" described in R865-19S-58(1)(b) are fixtures or other items that are attached to more important real property or are combined into real property and that become a component part of the real property as a whole.

The installed STORAGE solutions are not among the "fixtures or other items" described in R865-19S-58(1)(b) because all characteristics listed in R865-19S-58(1)(b) are not met.

The "fixtures or other items" described in R865-19S-58(1)(b) must either be "appurtenant to or incorporated into real property." This first characteristic is met. The installed STORAGE solutions are "appurtenant to" or attached to the STORAGE ROOM'S walls of the real property, and the STORAGE ROOM'S walls of the real property are the "more important thing" when compared to the installed STORAGE solutions.[4]

The next characteristic is unmet. The installed STORAGE solutions do not "become an integral part of a real property improvement"; the installed STORAGE solutions do not pertain to or belong as component parts of the real properties as a whole. The installed STORAGE solutions do not meet this characteristic because the attachment of the installed STORAGE solution to the STORAGE ROOM'S walls is minimal.

In addition to the language analyzed above, R865-19S-58(1)(b) also lists items that are specifically included as "fixtures and other items." These items include "furnaces, built-in air conditioning systems, [and] other items." Under Publication 42, the "other items" of R865-19S-58(1)(b) include installed "hot water heaters, water softener systems, water filtration systems, sinks, tubs, etc." (*Id.* at 1) and installed wall-to-wall carpet, carpet tiles, and storm doors (*Id.* at 2). The installed STORAGE solutions of this private letter ruling are not among the groups of items listed specifically in R865-19-58(1)(b) or in Publication 42 as being fixtures or other items that become real property upon installation.

Overall, the installed STORAGE solutions of this private letter ruling are not "fixtures or other items" that are real property under R865-19S-58(1)(b).

H. The Installed STORAGE Solutions are Not Among the Items in R865-19S-58(4) that are Sold as Tangible Personal Property and are Attached Merely for Stability or for an Obvious Temporary Purpose.

Under R865-19S-58(4), the following items are "[e]xamples of items that remain tangible personal property even when attached to real property":

(a) moveable items that are attached to real property *merely for stability* or for *an obvious temporary purpose*;
(b) *manufacturing equipment* and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;
(c) items installed for the benefit of the *trade or business conducted on the property* that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself and
(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

[4] To be real property, the installed STORAGE solutions are not required to be "appurtenant to" *and* "incorporated into real property." Thus, analysis of "incorporated into real property" is not needed for this private letter ruling. However, it seems the installed STORAGE solutions are not "incorporated into real property" or combined into real property. Instead, the STORAGE ROOM'S walls are completely separate from the installed STORAGE solutions, and the STORAGE solutions' attachment to the STORAGE ROOM'S walls is minimal, through a limited number of screws.

(i) are provided as part of a single transaction;
(ii) that are part of real property are an incidental portion of the transaction;
(iii) are primarily used for the operation of a telephone system or a communications system;
(iv) are installed for the benefit of the trade or business conducted on the property; and
(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

(Emphasis added.)

As explained below, the installed STORAGE solutions are not among the examples of tangible personal property listed above in R865-19S-58(4).

The STORAGE solutions sold and installed by the Taxpayer are different from the examples found in Subsection (4)(a) of R865-19S-58, which examples include "moveable items that are attached to real property merely for stability or for an obvious temporary purpose." The STORAGE solutions sold and installed by the Taxpayer are attached for more than "merely for stability" and for more than "an obvious temporary purpose," as explained below.

The STORAGE solutions of this private letter ruling are attached to real property for more than "merely for stability" because the STORAGE solutions must be attached to the STORAGE ROOM for the STORAGE solutions to be assembled and function. The installed STORAGE solutions for this private letter ruling are not freestanding. Freestanding STORAGE solutions could be assembled and then, possibly, attached to a wall "merely for stability." However, freestanding STORAGE solutions are not the subject of this ruling.

The STORAGE solutions of this private letter ruling are not attached to real property for "an obvious temporary purpose." Although the STORAGE solutions are attached with relatively few screws, this level of attachment does not mean that the STORAGE solutions are attached for "an *obvious* temporary purpose" (emphasis added). The Commission previously considered attachment of property with screws in PLR 05-007. In PLR 05-007, the Commission concluded that "the custom-made blinds, shutters, and shades . . . described [in PLR 05-007] became part of the underlying realty upon installation." In reaching this decision, the Commission considered multiple factors including the attachment with screws. For the attachment with screws, the Commission found that attachment with screws was "for more than temporary purposes," but "[t]he Commission would not consider such attachment sufficient for a window covering to be considered part of the underlying realty in and of itself." Thus, the attachment of property to real property with screws could be an attachment for temporary purposes or for non-temporary purposes. Therefore, the attachment of the STORAGE solutions with screws is not for "an *obvious* temporary purpose" (emphasis added).

The STORAGE solutions of this private letter ruling are also different from the examples found in Subsections (4)(b)-(4)(d). The STORAGE solutions sold and installed by the Taxpayer are not "manufacturing equipment" and are not installed to benefit a "trade or business conducted

on the property." Instead, the STORAGE solutions are installed into STORAGE ROOMS of residences for personal use.

Thus, based on the explanation above, the STORAGE solutions of this private letter ruling are not among the "[e]xamples of items that remain tangible personal property even when attached to real property," provided in R865-19S-58(4). Further analysis is needed to determine whether the installed STORAGE solutions of this private letter ruling remain tangible personal property or whether they are converted to real property.

I. In *Nickerson Pump, B.J. Titan,* and *Chicago Bridge,* the Utah Supreme Court Ruled on Whether Various Items were Sold as Tangible Personal Property or as Real Property.

The Utah Supreme Court has issued decisions on whether various items of tangible personal property became real property upon installation. These decisions include the following: *Nickerson Pump & Machinery Co., Inc., v. State Tax Commission*, 361 P.2d 520 (Utah 1961); *B.J. Titan Services, v. State Tax Commission*, 842 P.2d 822 (Utah 1992); and *Chicago Bridge & Iron Company v. State Tax Commission*, 839 P.2d 303, 307 (Utah 1992). These Utah Supreme Court decisions concern property items that are unlike the installed STORAGE solutions; however, these decisions still provide guidance.

In *Nickerson Pump*, the Court ruled that the emplacement of the *large pumps* presented in that case did not change the pumps to realty. *Nickerson Pump,* 361 P.2d at 522. In *B.J. Titan*, the Utah Supreme Court found that a seller sold *cement* as tangible personal property when it provided cementing services to oil and gas well operators. *B.J. Titan*, 842 P.2d at 829. In *Chicago Bridge*, the Court ruled that a seller who designed, fabricated, and installed *large tanks* on purchasers' property was a real property contractor for sales tax purposes. *Chicago Bridge,* 839 P.2d at 305, 307 (CBI designed, fabricated, and installed large tanks); at 307 ("The Commission's ruling . . . that CBI is a real property contractor is not unreasonable."); and at 308 ("Whether that real estate was located in this or another state is not relevant as to CBI's status as a real property contractor.").

The property items of the Utah Supreme Court decisions discussed above were relatively large and valuable; and they were for business use or other non-personal use. Unlike the property discussed above, the installed STORAGE solutions are relatively small and are for personal, rather than business use.

The specific factors the Utah Supreme Court identified in its decisions for large pumps, cement, and large tanks do not easily apply to the installed STORAGE solutions because the large pumps, cement, and large tanks are unlike the installed STORAGE solutions of this private letter ruling.[5] The Utah Supreme Court decisions, though, are still instructive. These decisions direct decision makers to consider the unique facts of each situation, as explained below.

[5] In a previous, unrelated Commission decision for Appeal No. 13-488, the Commission synthesized nine factors from the Utah Supreme Court decisions listed above. This Commission decision can be downloaded from http://tax.utah.gov/commission/decision/13-488.pdf. After synthesizing the nine factors, the Commission applied those nine factors to the sale of certain business signs and concluded "that transactions that involve the taxpayer

In *Nickerson Pump*, the Utah Supreme Court explained that whether an item is real property or tangible personal property depends on "the facts peculiar to each case," with the Court stating the following:

> Whether and when personalty becomes realty is a very difficult question to determine and *the facts peculiar to each case* must usually determine that question.

Nickerson Pump, 361 P.2d at 522 (emphasis added).

In *B.J. Titan*, the Court considered the overall transaction and not a set of numbered factors or facts when the Court determined that the cement was tangible personal property and not real property. *B.J. Titan*, 842 P.2d at 829.

In *Chicago Bridge*, the Court again explained the factual nature of its determinations in this area of law, stating the following:

> Whether the subject matter of a sales transaction is deemed real property or tangible personal property will depend on *the facts of each case*. The weighing of the various relevant factors leading to the ultimate decision of whether a taxpayer is a real property contractor is a ruling that is based in part on law and in part on fact.

Chicago Bridge, 839 P.2d at 307 (emphasis added).

The Court similarly stated:

> Whether a taxpayer is a real property contractor for sales tax purposes usually is *fact sensitive*. The issue in this case turned on facts that reasonably support either party's position.

Id. at 309 (emphasis added).

J. The Factors the Commission used in PLR 03-003 and in PLR 05-007 Better Apply to the Installed STORAGE Solutions.

The Commission previously considered the tax treatment of sales of installed window coverings in the unrelated Commission decisions of PLR 03-003 and PLR 05-007. The installed

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installing new signs like those at issue are sales of real property." The Commission's application of the nine factors was appropriate for the situation of the signs, which were relatively large and valuable and for business use.

The Commission's application of the nine factors has been appropriate in other situations as well, including in Appeal No. 15-761 (for items installed in the building or rebuilding of freeways or highways) and in Appeal No. 11-1774 (for completed, underground water or sewer pipelines for government entities). Like the Commission decision for Appeal No. 13-488, these other decisions also involved large, valuable items for non-personal use. The Commission's decisions for Appeal Nos. 15-761 and 11-1774 are available through the webpage at https://tax.utah.gov/commission-office/decisions.

window coverings are similar to the installed STORAGE solutions because the installed window coverings are relatively small and are often for personal use, rather than business use. The factors the Commission previously considered for PLR 03-003 and 05-007 for installed window coverings are instructive for the installed STORAGE solutions of this private letter ruling, as discussed in Subsections III.K. and L. below.

K. The Factors the Commission used in PLR 03-003 and in PLR 05-007 Include the Extent of the Attachment Between the Item and the Underlying Realty, the Likelihood that an Item will Remain with an Underlying Realty, and the Amount of Customization of the Item.

In PLR 03-003 and PLR 05-007, the Commission addressed the issue of whether various window coverings sold and installed by sellers remained tangible personal property or became part of the realty.

In PLR 03-003, the Commission explained that for window coverings, the Commission decision "depend[ed] on a number of factors, including how the covering is *affixed* to the underlying realty, whether it is *likely to remain in place* for the life of the product, and the *degree of customization* required for it to be produced" (emphasis added).

In PLR 03-003, the Commission ruled that "[c]ustom-built plantation shutters would generally be deemed part of the realty after their installation"; curtain, drapes, and rods would remain tangible personal property; and "[o]ther non-customized blinds and shades would . . . remain personal property after installation." Additionally, the Commission provided guidance, but not a clear ruling on "custom-made pleated shades and blinds," with respect to which the Commission stating the following:

> The classification of custom-made pleated shades and blinds is more difficult to determine, depending upon how much customization is required to produce them, how likely it is that the items will be moved to another window, and how difficult it is to install and remove them after installation. . . .

After PLR 03-003, the Commission issued PLR 05-007. In PLR 05-007, the Commission analyzed the specific, custom-made shades and blinds presented in PLR 05-007, and the Commission concluded that "the custom-made blinds, shutters, and shades . . . described [in PLR 05-007] became part of the underlying realty upon installation." In reaching its conclusion, the Commission relied on factors similar to those of PLR 03-003; namely customization, likelihood of transference between locations, method of attachment, and whether the window covering remained with a home in a typical residential real estate contract. These factors the Commission relied on for PLR 05-007 are explained in more detail below.

In PLR 05-007, the Commission found the blinds, shutters, and shades were *customized* because they were built to within $1/16^{th}$ of an inch for each window. The Commission found that the blinds, shutters, and shades were *likely to remain with the underlying realty* based on the following facts provided for the ruling: the window coverings were "fitted to within $1/16^{th}$ of an

inch of the . . . window openings, "no one takes their blinds with them when they move because they will not fit any of the windows in the new home," "it is difficult to alter the window coverings . . . to move them to other windows," "removing these [window coverings] results in damage to the underlying realty requiring repair." The Commission found that *attachment* with screws was "for more than temporary purposes," but "[t]he Commission would not consider such attachment sufficient for a window covering to be considered part of the underlying realty in and of itself." Lastly, the Commission found that "*typical residential real estate contracts* require venetian blinds to remain with the home upon sale" (emphasis added).

L. The Factors the Commission used in PLR 03-003 and in PLR 05-007, Applied to the Facts of the Installed STORAGE Solutions of this Private Letter Ruling, Suggest the Installed STORAGE Solutions of this Private Letter Ruling Remain Tangible Personal Property and are not Converted to Real Property.

The factors used by the Commission for PLR 03-003 and PLR 05-007 can be applied to the facts of the installed STORAGE solutions. These factors include the following: (i) the amount of customization of the installed STORAGE solutions to the underlying residences, (ii) the extent of the attachment between the installed STORAGE solutions and the underlying residences, and (iii) the likelihood that the installed STORAGE solutions will remain with the underlying real property.

i. The amount of customization of the installed STORAGE solutions to the underlying residences

The amount of customization of the installed STORAGE solutions to the underlying residences is low. The horizontal top tracks and vertical standards come in a limited number of standard lengths. All component parts are predesigned. A person could uninstall a STORAGE solution and reinstall it in another STORAGE ROOM of the same size with few new parts, such as with new wall anchors. Furthermore, a person could uninstall a STORAGE solution and reinstall it IN A STORAGE ROOM of a different size by obtaining a few new, standard parts, such as other standard lengths of top tracks and vertical standards. The customization of the installed STORAGE solutions is far less than the customization of the custom-built plantation shutters of PLR 03-003 and the customization of the custom-built blinds, shutters, and shades of PLR 05-007. The customization of the installed STORAGE solutions is more similar to the non-customized blinds and shades of PLR 03-003, which remain personal property after installation. Non-customized blinds and shades come in a limited number of standard dimensions; similarly, the horizontal top tracks and vertical standards of the installed STORAGE solutions come in a limited number of standard lengths.

ii. The extent of the attachment between the installed STORAGE solutions and the underlying residences

The extent of the attachment between the installed STORAGE solutions and the underlying residences is minimal. Only the horizontal top tracks or the vertical standards of the STORAGE solutions are attached directly to the STORAGE ROOM'S walls. Furthermore, this attachment is

only with a relatively few wall anchors and screws. The other components of the STORAGE solutions are attached to the vertical standards; and these other components are designed to be easily removed and reattached whenever.

iii. The likelihood that the installed STORAGE solutions will remain with the underlying real property

The likelihood that the installed STORAGE solutions will remain with underlying residences is unknown based on the facts presented. An original owner or a new owner of a residence relatively easily could move, remove, or reconfigure a STORAGE solution to meet his or her changing needs. Additionally, an installed STORAGE solution is relatively inexpensive to replace, reconfigure, or move.

Overall, the installed STORAGE solutions of this private letter ruling remain tangible personal property after their installation based on the three factors of customization, attachment, and likelihood of being transferred, which were analyzed above.

M. The Separately Stated Installation Charges are not Subject to Utah Sales and Use Taxes.

Under § 59-12-103(1), a purchaser is subject to sales and use taxes "on the purchase price or sales price for amounts paid or charged for . . . (a) retail sales of tangible personal property made within the state." Under § 59-12-102(99)(c)(ii), "purchase price" or "sales price" excludes "an installation charge" if the following applies:

> if [the installation charge is] separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale . . . as demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business . . . by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction[.]

Installation charge is defined in § 59-12-102(57) to include "a charge for installing . . . tangible personal property." The Taxpayer's separately stated installation charge meets the requirement of § 59-12-102(99)(c)(ii). Thus, the separately stated installation charge is not subject to Utah sales and use taxes.

IV. Conclusion

The Taxpayer is selling tangible personal property to its Customers when the Taxpayer sells STORAGE solutions and their installation to the Customers. The Customers' Utah purchases of installed STORAGE solutions are subject to Utah sales and use taxes. The separately stated installation charges are not subject to Utah sales and use taxes.

The Tax Commission's conclusions are based on the facts as you described them 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, you have additional facts that may be relevant, or you have any other questions, please feel free to contact the Commission.

Additionally, you may also appeal the private letter ruling in the following two ways.

First, you may file a petition for declaratory order, which would serve to challenge the Commission's interpretation of statutory language or authority under a statute. This petition must be in written form, and submitted within thirty (30) days after the date of this private letter ruling. You may submit your petition by any of the means given below. **Failure to submit your petition within the 30-day time frame could forfeit your appeal rights and will be deemed a failure to exhaust your administrative remedies.** Declaratory orders are discussed in Utah Administrative Code R861-1A-34 C.2., available online at http://tax.utah.gov/commission/effective/r861-01a-034.pdf, and in Utah Administrative Code R861-1A-31, available online at http://tax.utah.gov/commission/effective/r861-01a-031.pdf.

Second, you may file a petition for redetermination of agency action if your private letter ruling leads to an audit assessment, a denial of a claim, or some other agency action at a division level. This petition must be written and may use form TC-738, available online at http://tax.utah.gov/forms/current/tc-738.pdf. Your petition must be submitted by any of the means given below, within thirty (30) days, generally, of the date of the notice of agency action that describes the agency action you are challenging.

You may access general information about Tax Commission Appeals online at http://tax.utah.gov/commission-office/appeals. You may file an appeal through any of the means provided below:

- **Best way**—by email: taxappeals@utah.gov
- By mail: Tax Appeals
  USTC
  210 North 1950 West
  Salt Lake City, UT 84134
- By fax: 801-297-3919

For the Commission,

Rebecca L. Rockwell
Commissioner

RLR/aln
17-002