

FINAL PRIVATE LETTER RULING

REQUEST LETTER

17-004

April 20, 2017

VIA E-MAIL

taxplr@utah.gov

Office of the Commission
Utah State Tax Commission
210 North 1950 West
Salt Lake City, UT 84134

Re: Private Letter Ruling Request Concerning the Taxability of COMPANY Property and Service Charges

Dear Commissioners:

Pursuant to Utah Administrative Code R861-1A-34, we hereby request a Private Letter Ruling, asking the Tax Commission to confirm our conclusion as to how COMPANY (COMPANY) should be collecting and remitting Utah sales tax on COMPANY's sales of property and services.

COMPANY sells ITEM to customers throughout Utah. COMPANY buys the ITEM from various sources. COMPANY incurs costs to prepare the ITEM and to have the ITEM transported from the SUPPLIER'S LOCATION to LOCATION A where COMPANY assumes responsibility for the ITEM. COMPANY then delivers the ITEM from LOCATION A to the customer's address.

On its invoices to its customers, an example of which is attached as Exhibit A, COMPANY charges customers one price labeled "LINE ITEM CHARGE." This price is \$ AMOUNT 1 on Exhibit A, with an average cost per MEASURE OF AMOUNT of \$ AMOUNT 2."

On its publicly available web-site, COMPANY publishes AN ONLINE DOCUMENT which breaks out and shows three components of the cost per MEASURE OF AMOUNT "LINE ITEM CHARGE" on the bill (the \$ AMOUNT 2 on the bill in Exhibit A). These three components are (1) the "OTHER RATE A" (the charge to the customer for THE ITEM), (2) the "OTHER RATE B" (the charge to the customer for the preparation of the ITEM, and transportation of the ITEM from the SUPPLIER'S LOCATION to LOCATION A), and (3) the "DISTRIBUTION RATE" (the charge for COMPANY to deliver ITEM from LOCATION A to the customer's address). This ONLINE DOCUMENT is attached hereto as Exhibit B.

It is our conclusion that, for sales to CUSTOMERS, COMPANY (1) should collect Utah sales tax on the “OTHER RATE A” as this a charge for a sale of THE ITEM [TAXABLE UNDER] Utah Code section 59-12-103(1)***; (2) should collect Utah sales tax on the “OTHER RATE B” as this is a “cost of transportation to the seller,” which is includable within the tax base under the definition of “purchase price” in Utah Code section 59-12-102(99)(b)(ii)(F); and (3) should not collect Utah sales tax on the “DISTRIBUTION RATE” because this constitutes a delivery charge which is excluded from the tax base by being excluded from the definition of purchase price under Utah Code section 59-12-102(99)(c)(ii)(B). We are requesting a private letter ruling confirming that our conclusion is correct.

We believe the first and second conclusions are fairly straight-forward. On the third conclusion, some additional statutory provisions must be analyzed because the delivery charge in question is listed on the invoice in Exhibit A as part of one non-itemized price. We have analyzed these provisions below, and request the Commission to confirm that our conclusions below are correct.

The Utah Code specifies that “purchase price” does “not include . . . a “delivery charge” if the delivery charge is “separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later” so long as such delivery charge is “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 the parties to the transaction.” *Id.* at § 59-12-102(99)(c)(ii).

Another Utah statute, Utah Code section 59-12-103(2)(e)(i), consistently provides that “if a transaction consists of the sale . . . of tangible personal property, a product, or a service that is subject to taxation” (the ITEM in this case) and “the sale . . . of tangible personal property, other property, a product, or a service that is not subject to taxation” (the “DISTRIBUTION RATE” delivery charge in this case) then the non-taxable portion of the transaction may be purchased tax free if “the seller at the time of the transaction . . . is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller’s regular course of business, the portion of the transaction that is not subject to taxation.”

In COMPANY’s situation, it is our conclusion that, under these statutes, the DISTRIBUTION RATE delivery charge is excludable from the tax base as a delivery charge because it satisfies the statutory standards for the following reasons.

First, the DISTRIBUTION RATE delivery charge is separately stated on COMPANY’s ONLINE DOCUMENT.

Second, the ONLINE DOCUMENT is part of COMPANY’s books and records kept at the time of the transaction in the regular course of business.

Third, the ONLINE DOCUMENT is a document similar to an invoice or bill of sale. The ONLINE DOCUMENT provides the same information that would be found on an invoice or bill of sale which enables the customer to understand how its bill is calculated. *See* USTC PLR 2001-12 (allowing a letter which contained similar information to an exemption certificate as

sufficient documentation for exempt sales); *Mannes-Vale, Inc. v. Vale*, 717 P.2d 709 (Utah 1986) (holding that notice to the Industrial Commission was a sufficiently similar document to an official claim to give jurisdiction to the Industrial Commission).

Lastly, the ONLINE DOCUMENT is provided to the customer through COMPANY publicly posting the ONLINE DOCUMENT on its website. By posting the ONLINE DOCUMENT on its web-site, COMPANY made the ONLINE DOCUMENT available to everyone and thus provided the ONLINE DOCUMENT to its customers. See Dictionary.com (defining “provide” as “to make available; furnish”); Merriam-webster.com (defining “provide” as “to supply or make available”); *Salt Lake Corporation v. Jordan River Restoration Network*, 2012 UT 84, ¶ 23, 299 P.3d 990 (holding that due process was satisfied by providing proper notice, which included posting information on a website).

For these reasons, it is our conclusion that, for sales to CUSTOMERS, COMPANY (1) should collect Utah sales tax on the “OTHER RATE A,” (2) should collect Utah sales tax on the “OTHER RATE B,” and (3) should not collect Utah sales tax on the “DISTRIBUTION RATE.” We are requesting a private letter ruling confirming that our conclusion is correct.

Sincerely,

NAME
POSITION
COMPANY

RESPONSE LETTER
PRIVATE LETTER RULING 17-004

August 23, 2018

NAME
POSITION
COMPANY
ADDRESS
[EMAIL ADDRESS](#)

Dear NAME:

This letter is in response to your request for a private letter ruling for COMPANY (“Company”), which sells ITEM to CUSTOMERS.¹ You asked about the sales and use taxability of the Company’s sales of the ITEM to those customers. You discussed three component rates that comprise the TOTAL RATE ITEM found in the Company’s ONLINE DOCUMENT. These three component rates are the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A. You asserted that the TOTAL RATE ITEM of these three component rates is the rate used to calculate the LINE ITEM CHARGE found on customers’ bills. Your letter particularly focused on whether part of the amount of the LINE ITEM CHARGE would qualify as a “delivery charge,” and thus, be non-taxable. This private letter ruling concludes that no part of the LINE ITEM CHARGE found on customers’ bills is a delivery charge.² Section III of this private letter ruling includes the analysis for this conclusion.

I. Facts

- A. You have provided the following facts through your request letter, your exhibits, and the ONLINE DOCUMENT VERSION A (“ONLINE DOCUMENT VERSION A”).**

¹ [WORDS REMOVED.]

² The LINE ITEM CHARGE on the customers’ bills generally corresponds to the amount associated with the TOTAL RATE ITEM found in the Company’s ONLINE DOCUMENT. However, for COMPONENT 1 OF DISTRIBUTION RATE, the LINE ITEM CHARGE differs from the TOTAL RATE ITEM. In the Company’s ONLINE DOCUMENT, the TOTAL RATE ITEM includes COMPONENT 1 OF DISTRIBUTION RATE. On the customers’ bills, the LINE ITEM CHARGE does not include COMPONENT 1 OF DISTRIBUTION RATE; COMPONENT 1 OF DISTRIBUTION RATE is listed on a separate line on the bills. On the bills, the Company seems to treat the LINE ITEM CHARGE as taxable and COMPONENT 1 OF DISTRIBUTION RATE as nontaxable.

Through your request letter, you provided us with the following facts:

[The Company] sells ITEM to customers throughout Utah. [The Company] buys the ITEM from various sources. [The Company] incurs costs to prepare the ITEM and to have the ITEM transported from the SUPPLIER'S LOCATION to LOCATION A where [the Company] assumes responsibility for the ITEM. [The Company] then delivers the ITEM from LOCATION A to the customer's address.

On its invoices to its customers, an example of which is attached as Exhibit A, [the Company] charges customers one price labeled "LINE ITEM CHARGE." This price is \$ AMOUNT 1 on Exhibit A, with an average cost per MEASURE OF AMOUNT of \$ AMOUNT 2."

Exhibit A, referenced above, is a redacted copy of the Company's bill [WORDS REMOVED] for the sale of THE ITEM for a particular CUSTOMER ADDRESS. The Company's bill references a particular AGREEMENT: "AGREEMENT: #####." The bill is based on 8 MEASURE OF AMOUNT of THE ITEM used by the customer, as measured by a particular PIECE OF EQUIPMENT: "EQUIPMENT ID: #####." The bill also shows the following:

[WORDS REMOVED]

| | |
|---|-------------------|
| <i>LINE ITEM CHARGE (COST PER MEASURE OF AMOUNT</i> | <i>AMOUNT 3</i> |
| <i>\$ (AMOUNT 2))</i> | |
| <i>[OTHER LINE ITEMS]</i> | <i>\$\$\$\$\$</i> |
| <i>COMPONENT 1 OF DISTRIBUTION RATE</i> | <i>AMOUNT 4</i> |
| <hr/> | <hr/> |
| <i>Current ITEM BILL</i> | <i>AMOUNT 1</i> |
| <i>.....</i> | |

(Italics for emphasis added.)

The 8 MEASURE OF AMOUNT of THE ITEM used, multiplied by the \$ AMOUNT 2 of "COST PER MEASURE OF AMOUNT" equals the \$ AMOUNT 3 LINE ITEM CHARGE, found in the table above.

The bill also [DIRECTS THE CUSTOMER TO VISIT THE COMPANY'S WEBSITE FOR MORE INFORMATION ABOUT THE BILL].

Through your request letter, you also provided us with the following facts about the Company's ONLINE DOCUMENT ("ONLINE DOCUMENT"):

On its publicly available web-site, [the Company] publishes AN ONLINE DOCUMENT which breaks out and shows three components of the cost per MEASURE OF AMOUNT "LINE ITEM CHARGE" on the bill (the

\$ AMOUNT 2 on the bill in Exhibit A). These three components are (1) the “OTHER RATE A” (the charge to the customer for THE ITEM), (2) the “OTHER RATE B” (the charge to the customer for the preparation of the ITEM, and transportation of the ITEM from the SUPPLIER’S LOCATION to LOCATION A), and (3) the “DISTRIBUTION RATE” (the charge for [the Company] to deliver ITEM from LOCATION A to the customer’s address). This ONLINE DOCUMENT is attached hereto as Exhibit B.

Exhibit B, referenced above, includes five pages of the ONLINE DOCUMENT VERSION A (“ONLINE DOCUMENT VERSION A”), namely pages ###, ###, ###, ###, and ###. Page ### of ONLINE DOCUMENT VERSION A includes a SPECIFIC TABLE. [WORDS REMOVED] One column of the table includes the following rates:

| | COLUMN HEADING |
|-------------------------------|-------------------------|
| DISTRIBUTION RATE | \$\$\$\$\$ |
| OTHER RATE B | \$\$\$\$\$ |
| OTHER RATE A | \$\$\$\$\$ |
| <hr/> TOTAL RATE ITEM | <hr/> \$ AMOUNT 5 <hr/> |

The above TOTAL RATE ITEM of \$ AMOUNT 5 is within one cent of the \$ AMOUNT 2 per MEASURE OF AMOUNT rate for the LINE ITEM CHARGE found on the BILL of Exhibit A. The rate on the BILL of Exhibit A is close, but not equal, to the TOTAL RATE ITEM found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A; the rates discussed above do not completely coincide.³

³ COMPONENT 1 OF DISTRIBUTION RATE seems to be treated differently by the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A and by the BILL of Exhibit A. COMPONENT 1 OF DISTRIBUTION RATE is included in the TOTAL RATE ITEM found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A. COMPONENT 1 OF DISTRIBUTION RATE is listed separately from the LINE ITEM CHARGE in the BILL of Exhibit A.

The different treatments of COMPONENT 1 OF DISTRIBUTION RATE can be reconciled as explained in the paragraph below. When the different treatments are reconciled, there is over a two-cent difference in the TOTAL RATE ITEM found in the SPECIFIC TABLE and the rate for the LINE ITEM CHARGE.

The TOTAL RATE ITEM of \$ AMOUNT 5 found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A includes COMPONENT 1 OF DISTRIBUTION RATE of \$\$\$\$\$. Unlike that TOTAL RATE ITEM, the LINE ITEM CHARGE of the BILL does not seem to include COMPONENT 1 OF DISTRIBUTION RATE. Instead, the BILL lists COMPONENT 1 OF DISTRIBUTION RATE of \$ AMOUNT 4 separately from the LINE ITEM CHARGE. Thus, to better compare the TOTAL RATE ITEM of \$ AMOUNT 5 to the amounts on the BILL, one combined rate for

As discussed previously, the BILL of Exhibit A referred the customer to the Company's website, where ONLINE DOCUMENT VERSION A was found. The BILL of Exhibit A, though, did not more specifically refer the customer to the TOTAL RATE ITEM found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A for a breakdown of the rate for the LINE ITEM CHARGE on the BILL.

B. The ONLINE DOCUMENT that is currently in effect is ONLINE DOCUMENT VERSION B.

The Company's ONLINE DOCUMENT ONLINE DOCUMENT VERSION B ("ONLINE DOCUMENT VERSION B") superseded ONLINE DOCUMENT VERSION A. ONLINE DOCUMENT VERSION B is currently available on the following webpage of the Company: [WORDS REMOVED].

C. ONLINE DOCUMENT VERSION B provides additional facts about the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A.

The subsections below explain the information found in ONLINE DOCUMENT VERSION B about the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A and their component parts.

1. *ONLINE DOCUMENT VERSION B's glossary and rate tables contain information about the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A.*

COMPONENT 1 OF DISTRIBUTION RATE and LINE ITEM CHARGE should be calculated for the BILL. That combined rate can be calculated as follows:

| | |
|--|--------------------------------------|
| LINE ITEM CHARGE (COST PER MEASURE OF AMOUNT \$AMOUNT 3 \$ (AMOUNT 2)) | |
| COMPONENT 1 OF DISTRIBUTION RATE | |
| Total amount charged for the above items | <u>AMOUNT 4</u> |
| Price per MEASURE OF AMOUNT: the above number divided by the 8 MEASURE OF AMOUNT of THE ITEM used | <u>\$\$\$\$</u> <u>\$AMOUNT 6</u> |

The combined rate of \$ AMOUNT 6 from the BILL is over two cents more than the TOTAL RATE ITEM of \$ AMOUNT 5 found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A.

Overall, though, the combined rate on the BILL of Exhibit A still seems to be consistent with the TOTAL RATE ITEM found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A. However, the combined rate of the BILL and the TOTAL RATE ITEM still do not completely coincide.

Section ### of ONLINE DOCUMENT VERSION B contains a glossary. The glossary and other areas of ONLINE DOCUMENT VERSION B do not define DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A.

[WORDS REMOVED]

ONLINE DOCUMENT VERSION B contains various rate tables. These rate tables contain the different components comprising the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A. ONLINE DOCUMENT VERSION B contains a SPECIFIC TABLE that is similar to the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A, which was discussed previously. The components comprising the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A are the same for ONLINE DOCUMENT VERSION A and ONLINE DOCUMENT VERSION B; however, the rate amounts differ. The SPECIFIC TABLE OF ONLINE DOCUMENT VERSION B shows the following, in part:

| | COLUMN HEADING |
|----------------------------------|-------------------|
| COMPONENT 2 OF DISTRIBUTION RATE | \$\$\$\$\$ |
| COMPONENT 3 OF DISTRIBUTION RATE | \$\$\$\$\$ |
| COMPONENT 4 OF DISTRIBUTION RATE | \$\$\$\$\$ |
| COMPONENT 1 OF DISTRIBUTION RATE | \$\$\$\$\$ |
| COMPONENT 5 OF DISTRIBUTION RATE | \$\$\$\$\$ |
| DISTRIBUTION RATE | \$\$\$\$\$ |
| [WORDS REMOVED] | \$\$\$\$\$ |
| OTHER RATE B | \$\$\$\$\$ |
| [WORDS REMOVED] | \$\$\$\$\$ |
| OTHER RATE A | \$\$\$\$\$ |
| TOTAL RATE ITEM | \$\$\$\$\$ |

2. *ONLINE DOCUMENT VERSION B provides information about the component parts of the DISTRIBUTION RATE.*

Based on the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION B provided above, the DISTRIBUTION RATE may include the following components:

- COMPONENT 2 OF DISTRIBUTION RATE
- COMPONENT 3 OF DISTRIBUTION RATE
- COMPONENT 4 OF DISTRIBUTION RATE
- COMPONENT 1 OF DISTRIBUTION RATE
- COMPONENT 5 OF DISTRIBUTION RATE

ONLINE DOCUMENT VERSION B contains additional information about most of these components listed above.

For **COMPONENT 2 OF DISTRIBUTION RATE**, the ABBREVIATION of its name means [WORDS REMOVED]. This is the only description found. For the remaining components, ONLINE DOCUMENT VERSION B contains the following information.

According to § ### of ONLINE DOCUMENT VERSION B, **COMPONENT 3 OF DISTRIBUTION RATE** relates to the [WORDS REMOVED]. Section ### states, [WORDS REMOVED].

According to § ### of ONLINE DOCUMENT VERSION B, **COMPONENT 4 OF DISTRIBUTION RATE** relates to [WORDS REMOVED]. Section ### explains [WORDS REMOVED].

According to § ### of ONLINE DOCUMENT VERSION B, “**COMPONENT 1 OF DISTRIBUTION RATE** [WORDS REMOVED].”

According to § ###, **COMPONENT 5 OF DISTRIBUTION RATE** [ALLOWS THE COMPANY TO CHARGE CUSTOMERS THE COMPANY’S COSTS TO REPLACE THE COMPANY’S PROPERTY USED FOR DISTRIBUTION.]

3. *ONLINE DOCUMENT VERSION B provides information about the OTHER RATE B, OTHER RATE A, and [WORDS REMOVED].*

[QUOTATIONS FROM ONLINE DOCUMENT VERSION B ABOUT OTHER RATE B AND ABOUT OTHER RATE A.]

a. OTHER RATE B

[QUOTATIONS FROM ONLINE DOCUMENT VERSION B ABOUT OTHER RATE B.]

Thus, the OTHER RATE B seems to exclude the costs of the Company’s suppliers to purchase the ITEM and to include other costs of the Company’s suppliers, such as the suppliers’ costs for transporting the ITEM to the Company’s system and other non-transportation costs as well.

b. OTHER RATE A

[WORDS REMOVED] For OTHER RATE A costs, § ### of ONLINE DOCUMENT VERSION B further explains [WORDS REMOVED] the following:

[T]he OTHER RATE A will be determined by *** adding [WORDS REMOVED] ITEM costs from all supply sources [WORDS REMOVED] less the OTHER RATE B costs and other revenue credits, [WORDS REMOVED].

(Emphasis added.)

Thus, based on the above quoted material, the OTHER RATE A is defined, in part, to exclude the OTHER RATE B.

D. ONLINE DOCUMENT VERSION B explains how a customer purchases ITEM from the Company.

A customer wanting ITEM submits an application [WORDS REMOVED]. If the Company accepts that application, an account [WORDS REMOVED] is established. [WORDS REMOVED]

A customer submits AN [WORD REMOVED] application by any of the following methods: submitting a written application, making a verbal request either in person or by telephone, or electronically transmitting the request. [WORDS REMOVED]

[WORDS REMOVED]

The Company charges state sales taxes BY APPLYING THE SALES TAX RATE TO THE TOTAL CUSTOMER CHARGES FOR THE ITEM. [WORDS REMOVED]

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;

. . . .

[WORDS REMOVED]

. . . .

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

. . . .

(ii) used; or

(iii) consumed; . . .

As used in the language quoted above, “retail sale” is defined in Utah Code Ann. § 59-12-102(109); “sale,” in Utah Code Ann. § 59-12-102(110); [WORDS REMOVED].

Utah Code Ann. § 59-12-102 defines various terms, stating in part:

As used in this chapter:

.....

- (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.

.....

- (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;
-
- (b) "Purchase price" and "sales price" include:
- (i) the seller's cost of the tangible personal property, a product transferred electronically, or services sold;
 - (ii) expenses of the seller, including:
 - (A) the cost of materials used;
 - (B) a labor cost;
 - (C) a service cost;
 - (D) interest;
 - (E) a loss;
 - (F) the cost of transportation to the seller; or
 - (G) a tax imposed on the seller;
 - (iii) a charge by the seller for any service necessary to complete the sale;
- or

.....

- (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;

....

(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.

[WORDS REMOVED]

III. Analysis

As explained previously in this private letter ruling, you asked about the sales and use taxability of the Company's sales of THE ITEM to CUSTOMERS. In particular, you asked whether the amount associated with the DISTRIBUTION RATE found in the ONLINE DOCUMENT would qualify as a "delivery charge," and thus, be non-taxable. This private letter ruling concludes that no part of the LINE ITEM CHARGE found on customers' bills is a delivery charge.

A. Section 59-12-103(1) imposes sales and use taxes on sales of THE ITEM.

Section 59-12-103(1)(a) imposes sales and use taxes on "retail sales of tangible personal property made within the state." [WORDS REMOVED] Thus, the Company's sales of THE ITEM to CUSTOMERS meets § 59-12-103(1)(a).

Section 59-12-103(1)(l) imposes sales and use taxes on "amounts paid or charged for tangible personal property if within this state the tangible personal property is . . . used[] or . . . consumed." Because ITEM is tangible personal property [WORDS REMOVED], the CUSTOMERS' use of that ITEM within Utah will be taxable under § 59-12-103(1)(l), as well.

[WORDS REMOVED]

The focus of this private letter ruling, though, is not whether the Company's sales of THE ITEM are subject to sales and use taxes. Instead, the focus is on the amount of the purchase price or sales price of the ITEM the Company sells to its customers.

B. In general, § 59-12-103(1) imposes sales and use taxes “on the purchase price or sales price” of taxable transactions.

Section 59-12-103(1) imposes tax “on the purchase price or sales price for the amounts paid or charged for the [transactions enumerated in § 59-12-103(1)].” Utah Code Annotated § 59-12-102(99) defines “purchase price” and “sales price.” Section 59-12-102(99)(a)-(b) provides the items that are generally included in “purchase price” and “sales price”; and § 59-12-102(99)(c) provides items that are specifically excluded from the definition of “purchase price” and “sales price.”

C. The LINE ITEM CHARGE on the BILL of Exhibit A meets Subsection (99)(a) of the definition of “purchase price” and “sales price,” found in § 59-12-102.

The LINE ITEM CHARGE on the BILL of Exhibit A meets § 59-12-102(99)(a). Section 59-12-102(99)(a) states the following:

"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 . . .

The LINE ITEM CHARGE of the BILL of Exhibit A of \$ AMOUNT 3 is the amount the Company charged the customer for the ITEM the customer used. Thus, the full LINE ITEM CHARGE will be subject to sales and use taxes unless a part of the LINE ITEM CHARGE is excluded from “purchase price” by meeting the exclusion found in subsection (99)(c) of § 59-12-102.

D. In general, a separately stated delivery charge may be excluded from a purchase price or sales price if that charge meets the requirements found in both § 59-12-102(32) and § 59-12-102(99)(c).

You have argued that a part of the LINE ITEM CHARGE is excluded from the definition of purchase price because that part is a separately stated delivery charge under § 59-12-102(99)(c).

To be a separately stated delivery charge excludable under § 59-12-102(99)(c), a charge must meet multiple requirements. First, the charge must meet the definition of delivery charge

found in § 59-12-102(32). Second, the charge must meet the requirements found in § 59-12-102(99)(c), under which the charge must be separately stated.

The requirements of § 59-12-102(32) are discussed below in Subsections III.E. through III.I. The requirements of § 59-12-102(99)(c) are discussed below in Subsections III.J. through III.K.

E. For the Company's charge to be a "delivery charge," § 59-12-102(32) requires that the Company's charge be "for preparation and delivery" and "to a location designated by the [Customer]."

Section 59-12-102(32) defines "delivery charges" as follows.

- (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.

(Emphasis added.)

Based on the above definition, to be a delivery charge, a charge must be "for preparation and delivery" of the tangible personal property, product transferred electronically, or services sold. For this private letter ruling, the tangible personal property sold is the ITEM the Company sells to CUSTOMERS [WORDS REMOVED ABOUT HOW COMPANY DELIVERS ITEM].

Additionally to be a delivery charge, a charge must also be a charge for preparation and delivery "to a location designated by the purchaser." For this private letter ruling, the Company's CUSTOMER must designate the location where the ITEM is received for the charge to be a delivery charge.

The analysis below in Subsections III.F. through III.I. addresses whether the facts provided show any part of the LINE ITEM CHARGE is a "delivery charge," as defined in § 59-12-102(32). This private letter ruling concludes that the facts provided do not show that any part of the LINE ITEM CHARGE is a "delivery charge."

F. The analysis for this private letter ruling will use the meanings found in the ONLINE DOCUMENT for the terms DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A.

You have asserted that the LINE ITEM CHARGE on the BILL of Exhibit A includes a delivery charge. You explained that the LINE ITEM CHARGE is comprised of the three component parts of the TOTAL RATE ITEM found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A. The three component parts of the TOTAL RATE ITEM found in the SPECIFIC TABLE are the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A. In your request letter, you stated that the three component parts of TOTAL RATE ITEM have the following meanings:

DISTRIBUTION RATE: “the charge for [the Company] to deliver ITEM from LOCATION A to the customer’s address”

OTHER RATE B: “the charge to the customer for the preparation of the ITEM, and transportation of the ITEM from the SUPPLIER’S LOCATION to LOCATION A”

OTHER RATE A: “the charge to the customer for THE ITEM”

The ONLINE DOCUMENT does not include the meanings you stated in your request letter for DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A. This private letter ruling uses the information found in the ONLINE DOCUMENT for the meanings of the DISTRIBUTION RATE, OTHER RATE B, and OTHER RATE A, instead of relying on the meanings you provided in your request letter.

G. The ONLINE DOCUMENT does not show that the DISTRIBUTION RATE meets the “preparation and delivery” requirement of the definition of delivery charge.

You asserted that the DISTRIBUTION RATE meets the definition of delivery charge. This Subsection III.G. explains why this private letter ruling reaches a different conclusion.

As explained in this private letter ruling’s Subsection I.C.2, the DISTRIBUTION RATE may include the following components:

- COMPONENT 2 OF DISTRIBUTION RATE
- COMPONENT 3 OF DISTRIBUTION RATE
- COMPONENT 4 OF DISTRIBUTION RATE
- COMPONENT 1 OF DISTRIBUTION RATE
- COMPONENT 5 OF DISTRIBUTION RATE

For **COMPONENT 2 OF DISTRIBUTION RATE**, the ABBREVIATION of its name means [WORDS REMOVED]. This is the only description found in ONLINE DOCUMENT VERSION B. This description is too limited to conclude that **COMPONENT 2 OF DISTRIBUTION RATE** is a charge “for [the] preparation and delivery” of the ITEM and not a charge for other purposes, as well.

COMPONENT 3 OF DISTRIBUTION RATE relates to the [WORDS REMOVED]. Section ### of ONLINE DOCUMENT VERSION B states [WORDS REMOVED]. ONLINE DOCUMENT VERSION B does not show that **COMPONENT 3 OF DISTRIBUTION RATE** is “for preparation and delivery” of THE ITEM; thus, ONLINE DOCUMENT VERSION B does not show **COMPONENT 3 OF DISTRIBUTION RATE** is a delivery charge.

COMPONENT 4 OF DISTRIBUTION RATE relates to [WORDS REMOVED]. **COMPONENT 4 OF DISTRIBUTION RATE** is not “for preparation and delivery” of THE ITEM; it is not a delivery charge.

COMPONENT 1 OF DISTRIBUTION RATE relates to [WORDS REMOVED]. According to § ### of ONLINE DOCUMENT VERSION B, “[WORDS REMOVED].” **COMPONENT 1 OF DISTRIBUTION RATE** is not “for preparation and delivery” of THE ITEM; it is not a delivery charge.

COMPONENT 5 OF DISTRIBUTION RATE allows the Company to charge customers the Company’s costs to replace the Company’s PROPERTY USED FOR DISTRIBUTION. Replacing the Company’s PROPERTY USED FOR DISTRIBUTION relates to the Company’s ability to provide THE ITEM to CUSTOMERS. However, a charge by the Company to replace its PROPERTY USED FOR DISTRIBUTION is not clearly a charge to the customer “for preparation and delivery” of THE ITEM to the customer’s location.

In summary, the ONLINE DOCUMENT does not show that the component parts of the DISTRIBUTION RATE are charges for the “preparation and delivery” of the ITEM to the customer’s location. Thus, the DISTRIBUTION RATE is not a delivery charge.

H. The ONLINE DOCUMENT does not show that the OTHER RATE B and OTHER RATE A meet the “preparation and delivery” requirement of the definition of delivery charge.

You asked about the taxation of the OTHER RATE B and the OTHER RATE A. Unlike the DISTRIBUTION RATE, you did not assert that the OTHER RATE B and the OTHER RATE A were delivery charges. The paragraphs below analyze the OTHER RATE B and the OTHER RATE A, and they conclude that the ONLINE DOCUMENT does not show these rates are delivery charges. Thus, this conclusion is consistent with your analysis.

As explained in this private letter ruling’s Subsection I.C.3.a., the **OTHER RATE B** seems to reflect the suppliers’ costs other than those costs specifically for the ITEM. Furthermore, these OTHER RATE B costs seem to include costs for transporting the ITEM, but

also include other costs as well. Thus, ONLINE DOCUMENT VERSION B does not show that the OTHER RATE B is for “preparation and delivery” only.⁴

As explained in this private letter ruling’s Subsection I.C.3.b., the **OTHER RATE A** includes ITEM costs from all supply sources and excludes both OTHER RATE B costs and [WORDS REMOVED]. Based on the above description, ONLINE DOCUMENT VERSION B does not show that the OTHER RATE A is for “preparation and delivery”; it is not a delivery charge.

I. In summary, the “preparation and delivery” requirement of the definition of delivery has not been shown.

As explained above, the ONLINE DOCUMENT does not show the Company charges a delivery charge because the ONLINE DOCUMENT does not show the “preparation and delivery” requirement of the definition of “delivery charge” has been met.

J. For a seller’s charge to be an excludable delivery charge, the charge must also be meet the requirements found in § 59-10-102(99)(c).

Section 59-12-102(99)(c) excludes from “purchase price” and “sales price” the following, in part:

"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;

....

⁴ Additionally, the language of “to a location designated by the purchaser” found in § 59-12-102(32)(a)(ii) is also unmet. The Company’s CUSTOMERS do not designate the ITEM delivery locations associated with the OTHER RATE B. The Company and/or the suppliers determine those delivery locations. Thus, for the Company’s sales of THE ITEM to the CUSTOMERS, no part of the OTHER RATE B meets the definition of “delivery charge.”

Thus, to be excluded from “purchase price” or “sales price” as a delivery charge, § 59-12-102(99)(c) requires that the charge be all of the following:

1. “a delivery charge.”
2. “separately stated on an invoice, bill of sale, or similar document provided to the purchaser.
3. “demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business.”
4. “demonstrated . . . by a preponderance of the facts and circumstances at the time of the transaction.”
5. “demonstrated . . . by the understanding of all of the parties to the transaction”

As explained previously in Subsections III.E. through III.I. of this private letter ruling, the BILL and ONLINE DOCUMENT do not show that any part of the Company’s LINE ITEM CHARGE is a delivery charge. However, even assuming that part of the TOTAL RATE ITEM found in the SPECIFIC TABLE OF ONLINE DOCUMENT was shown to be a delivery charge, the BILL and ONLINE DOCUMENT still do not show that this part of the TOTAL RATE ITEM was “separately stated on an invoice, bill of sale, or similar document provided to the purchaser,” as required by § 59-12-102(99)(c), as explained below.

K. The BILL and ONLINE DOCUMENT do not show the Company’s charge for THE ITEM to CUSTOMERS includes a delivery charge “separately stated on an invoice, bill of sale, or similar document provided to the purchaser.”

The BILL of Exhibit A, considered alone, does not separately state any part of the LINE ITEM CHARGE as a delivery charge.

The ONLINE DOCUMENT, considered alone, is not a document similar to an invoice or bill of sale. The ONLINE DOCUMENT does not address the specific purchase of THE ITEM by a Customer as an invoice or bill of sale does.

Considering the BILL and THE ONLINE DOCUMENT together, there is a question as to which parts of the ONLINE DOCUMENT are incorporated into the BILL. The BILL of Exhibit A refers the customer to the Company’s website, but the BILL does not directly refer the Customer specifically to the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A for a breakdown of the LINE ITEM CHARGE on the BILL. Furthermore, the BILL’s term of LINE ITEM CHARGE is not used in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A. Finally, the rate for the LINE ITEM CHARGE on the BILL of Exhibit A does not completely coincide with the TOTAL RATE ITEM found in the SPECIFIC TABLE OF ONLINE DOCUMENT VERSION A.

For these reasons, the BILL and THE ONLINE DOCUMENT do not show a delivery charge “separately stated on an invoice, bill of sale, or similar document provided to the purchaser.”

IV. Conclusions

The Company’s sales of THE ITEM to CUSTOMERS are subject to Utah sales and use taxes. The full LINE ITEM CHARGE on the BILL is subject to taxes. No part of the LINE ITEM CHARGE is excluded from the purchase price or sales price as a separately stated delivery charge.

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
17-004