

FINAL PRIVATE LETTER RULING

REQUEST LETTER

17-005

June 30, 2017

**VIA CERTIFIED MAIL
AND EMAIL TO TAXPLR@UTAH.GOV**

Office of the Commission
Utah State Tax Commission
210 N 1950 W
Salt Lake City, UT 84134

Re: Request for Private Letter Ruling Pursuant to UT ADC R861-1A-34 to on Behalf of COMPANY.

To the Commissioners:

On behalf of COMPANY. (“COMPANY”), COMPANY-2 requests a private letter ruling, pursuant to UT ADC R861-1A-34, as to whether COMPANY is a seller “within the state” under Utah Code § 59-12-107(2)(a) or a seller considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state under Utah Code section 59-12-107(2)(b), and is, therefore, required to collect and remit sales and use tax on sales to Utah customers.

The subject of this request is not currently a concern in any administrative matter before the Utah State Tax Commission and is not currently an object of any litigation involving COMPANY.

Brief Statement of Facts

COMPANY is incorporated and headquartered in STATE-1, [WORDS REMOVED]. COMPANY sells nutritional supplements and health foods online from COMPANY’s website and through COMPANY’s catalogs to customers in ##### states, including Utah.

COMPANY does not have any permanent or temporary locations (an office, a distribution house, a sales house, a warehouse, a service enterprise, or other similar place of business) in Utah, and it does not engage in activities related to the leasing and/or servicing of property located within the state. COMPANY does not maintain a stock of goods in Utah. COMPANY also does not have any representatives, agents, salespersons, canvassers, independent contractors, or solicitors operating in the state for the purpose of selling, delivering, installing, assembling or taking orders for COMPANY. Indeed, COMPANY does not regularly

solicit orders in the state, other than by and exclusively through solicitation by the Internet and catalogs. COMPANY products are transported and delivered to customers via common carrier from distribution centers, all of which are located outside Utah. Moreover, COMPANY does not hold a substantial ownership interest in, and is not owned in whole or in substantial part by, a related seller. Because COMPANY has not had any locations or representatives in Utah, it has not collected sales or use tax on its sales to Utah customers, and it has not held a Utah sales or use tax permit.

In MONTH YEAR, COMPANY hired a research and development employee who is a resident of Utah. This employee (whose title is “Director of Innovation”) telecommutes from her in-home office in Utah. She does not solicit sales or orders; she does not maintain a stock of COMPANY goods; she does not take customer orders or otherwise service customer accounts for COMPANY; and she does not engage in leasing or servicing property located in Utah on behalf of COMPANY. Rather, her work is directed towards the innovation and improvements of health food and other nutritional products for the company. Her in-home office is not held out to the public as an office or other permanent or temporary place of business for COMPANY, and she does not advertise or promote her home as a place of business for COMPANY (e.g., through a sign, letterhead, or business card). In short, COMPANY does not have a Utah location, stock or a sales representative within the state; however, it seeks confirmation from the Commission in this request that the presence of its R&D developer working in a non-sales role from her in-home office in Utah will not trigger any sales or use tax collection obligations on sales to COMPANY’s Utah customers.

Requested Written Advice

COMPANY requests written advice from the Commission on the following questions:

Under Utah Code section 59-12-107, is COMPANY a seller “within the state” or a seller required to “pay or collect and remit sales and use taxes” solely because of the presence of its R&D developer in the state, who has a non-sales role and works from her in-home office? Is COMPANY required to collect and remit Utah sales or use taxes under any other Utah statute on these facts?

Relevant Law and Analysis

It does not appear that the Commission has previously opined on facts analogous to the facts here. The relevant statutory provisions governing whether a COMPANY must collect sales and use tax are Utah Code sections 59-12-107(2)(a) and (2)(b).

Utah Code section 59-12-107(2)(a) provides that a seller must pay or collect and remit sales and use taxes if within the state the seller:

(i) has or utilizes: (A) an office; (B) a distribution house; (C) a sales house; (D) a warehouse; (E) a service enterprise; or (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

(ii) maintains a stock of goods;

(iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is: (A) advertising; or (B) solicitation by: (I) direct mail; (II) electronic mail; (III) the Internet; (IV) telecommunications service; or (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

(iv) regularly engages in the delivery of property in the state other than by: (A) common carrier; or (B) United States mail; or

(v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.

Utah Code section 59-12-107(2)(b) provides that a seller is considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state, and shall pay or collect and remit the sales and use taxes imposed by this chapter if:

(i) the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and

(ii)(A) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; or (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.

“Related seller” is defined as a seller that:

(i) meets one or more of the criteria described in Subsection (2)(a)(i); and

(ii) delivers tangible personal property, a service, or a product transferred electronically that is sold: (A) by a seller that does not meet one or more of the criteria described in Subsection (2)(a)(i); and (B) to a purchaser in the state.

Id. § 59-12-107(1)(b).

COMPANY’s R&D developer is a non-sales employee who does not sell, deliver, install, assemble, or take orders with respect to any goods within Utah, and does not solicit orders and or advertise in the state. Furthermore, as noted above, COMPANY does not have any other employees, representatives, or other persons in the state for the purposes of soliciting, selling, delivering, installing, assembling, or taking orders with respect to goods sold by COMPANY. Moreover, COMPANY’s R&D developer home office is not a place of business for COMPANY, COMPANY does not have any other permanent or temporary location within the state that could be regarded as a “place of business” for COMPANY, and COMPANY does not lease or service property located within Utah. COMPANY and COMPANY’s R&D developer also do not maintain a stock of goods in Utah. Accordingly, because COMPANY does not have a location or stock of goods that would create nexus, and because COMPANY does not regularly engage in the other activities that would create nexus under Section 59-12-107(2)(a), the presence of COMPANY’s R&D developer in Utah should not make COMPANY a seller “within the state”

under that provision, and COMPANY should not have any obligation to collect/remit Utah sales and use taxes under subsection (2)(a).

Moreover, COMPANY does not hold a substantial interest in, and is not in owned whole or in substantial part by, a related seller as defined by Utah Code section 59-12-107(1)(b). Accordingly, the presence of COMPANY's R&D developer in Utah should not make COMPANY a seller considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state, for purposes of Utah Code section 59-12-107(2)(b), and COMPANY should not have any obligation to collect/remit Utah sales and use taxes under that section.

Utah Code § 59-12-103.1(1) also provides that a seller shall remit a tax to the commission as provided in Section 59-12-107 if:

(a) the Supreme Court of the United States issues a decision authorizing a state to require the following sellers to collect a sales or use tax: (i) a seller that does not meet one or more of the criteria described in Subsection 59-12-107(2)(a); or (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); or

(b) Congress permits the state to require the following sellers to collect a sales or use tax: (i) a seller that does not meet one or more of the criteria described in Subsection 59-12-107(2)(a); or (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b).

That statute does not affect the application of Section 59-12-107 to the facts presented by COMPANY, for the U.S. Supreme Court has neither ruled in a way that changes the requirements of Section 59-12-107 nor held that the mere presence of a non-sales employee within a state constitutes "substantial nexus" for purposes of the commerce clause of the United States Constitution. *See, e.g., Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Moreover, based on our informal conversations with State Tax Commission personnel, we understand that the Commission's position is that COMPANY's non-sales activities within the state do not give rise to a tax collection obligation.

Conclusion

For all the reasons discussed herein, COMPANY requests that the Commission provide a legal ruling pursuant to Utah ADC R861-1A-34 to confirm (i) that the presence of COMPANY's R&D employee in Utah does not make COMPANY a seller "within the state" for purposes of Utah Code section 59-12-107(2)(a) or a seller considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state, for purposes of Utah Code section 59-12-107(2)(b); and (ii) that COMPANY is not required to collect sales or use tax on sales to Utah customers for any other reason. COMPANY would be happy to provide additional facts at the Commission's request. Please contact me with any questions, concerns, or requests for clarification or elaboration on this request. Thank you.

Sincerely,
/s/
NAME-1

RESPONSE LETTER
PRIVATE LETTER RULING 17-005

August 23, 2018

NAME-1
COMPANY-2
ADDRESS
CITY, STATE & ZIP CODE
EMAIL ADDRESS

Dear NAME-1:

This letter is in response to your request for a private letter ruling for COMPANY. (“Company”).

The Company sells nutritional supplements and health foods online from the Company’s website and through the Company’s catalogs to customers in ##### states. The Company is incorporated and headquartered outside of Utah. The Company has one non-sales employee in Utah, who telecommutes from her in-home office.

You have asked about whether the Company is a seller with a Utah sales tax collection and remittance requirement under Utah Code § 59-12-107(2). This private letter ruling concludes that the Company is a seller that is required to collect and remit sales taxes as required by § 59-12-107(2)(a). Additionally, under § 59-12-107(2)(e), the Company is required to pay Utah use taxes on any storage, use, or consumption of tangible personal property or products transferred electronically if that storage, use, or consumption occurs in Utah. Section III. of this private letter ruling includes analyses for these conclusions.

I. Facts

As mentioned previously in this private letter ruling, the Company sells nutritional supplements and health foods online from the Company’s website and through the Company’s catalogs to customers in ##### states. The Company is incorporated and headquartered outside of Utah.

The facts did not explain how the Company sends its catalogs into Utah. This private letter ruling assumes the Company delivers the catalogs directly to Utah customers through the U.S. Mail or by common carrier.

You further stated in your request letter the following about the Company. The Company “does not have any permanent or temporary locations . . . in Utah.” The Company “does not engage in activities related to leasing and/or servicing of property located within [Utah].” The Company “does not maintain a stock of goods in Utah.” The Company “does not have any representatives, agents, salespersons, canvassers, independent contractors, or solicitors operating in [Utah] for the purpose of selling, delivering, installing, assembling or taking orders for [the Company].” The Company only regularly solicits orders in Utah through the Internet and catalogs. The Company transports and delivers the products into Utah to the customers via common carrier.

Additionally, you explained in your request letter that the Company “does not hold a substantial ownership interest in, and is not owned in whole or in substantial part by, a related seller.”

Furthermore, you explained in your request letter that the Company “has not collected sales or use tax on its sales to Utah customers, and . . . has not held a Utah sales and use tax permit.”

In your request letter, you also explained the following about the employee located in Utah and about her in-home office:

In MONTH YEAR, [the Company] hired a research and development employee who is a resident of Utah. This employee (whose title is “Director of Innovation”) telecommutes from her in-home office in Utah. She does not solicit sales or orders; she does not maintain a stock of [Company’s] goods; she does not take customer orders or otherwise service customer accounts for [the Company]; and she does not engage in leasing or servicing property located in Utah on behalf of [the Company]. Rather her work is directed towards the innovation and improvement of health food and other nutritional products for the [C]ompany. Her in-home office is not held out to the public as an office or other permanent or temporary place of business for [the Company], and she does not advertise or promote her home as a place of business for [the Company] (e.g., through a sign, letterhead, or business card). In short, [the Company] does not have a Utah location, stock or a sales representative within the state; however, [the Company] seeks confirmation from the Commission in this request that the presence of its R&D developer working in a non-sales role from her in-home office in Utah will not trigger any sales or use tax collection obligations on sales to [the Company’s] Utah customers.

Based on the facts presented, the Company’s Utah employee only seems to regularly work from her in-home office and not from any other locations. Additionally, it is unclear what Company

supplies, equipment, other personal property, or products transferred electronically the Utah employee might use in the in-home office.

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 as provided in this part 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;
.....
- (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) consumed;

Utah Code Annotated § 59-12-102 provides definitions, as follows, in part:

- (109) “Retail sale” or “sale at retail” means a sale, lease, or rental for a purpose other than:
 - (a) resale;
 - (b) sublease; or
 - (c) subrent.
- (110)(a) “Sale” means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.
.....
- (124) “Storage” means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.
- (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......

- (136)(a) “Use” means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.
- (b) “Use” does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

....

Utah Code Annotated § 59-12-211 provides the sourcing of certain transactions, stating in part the following:¹

- (1) As used in this section:
 - (a) (i) “Receipt” and “receive” mean:
 - (A) taking possession of tangible personal property;
 -
 - (ii) “Receipt” and “receive” do not include possession by a shipping company on behalf of a purchaser.

....

- (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), if tangible personal property . . . is not received by a purchaser at a business location of a seller, the location of the transaction is the location where the purchaser takes receipt of the tangible personal property . . .

....

- (14) This section does not apply to:

....

- (b) a tax a person pays in accordance with Subsection 59-12-107(2)(e); . . .

....

¹ Subsections (7), (8), (9), (10), (11), and (14) of § 59-12-211 are not directly at issue for this private letter ruling. Subsections (10) and (7) explain how a location is determined using ZIP Codes. Subsection (8) addresses how a location is determined when a transaction is made with a direct payment permit. Subsection (9) applies to purchases of direct mail. Subsection (11) applies to florist delivery transactions. Subsection (14)(a) explains that § 59-12-211 does not apply to retail sales or transfers of certain telecommunications services, motor vehicles, aircraft, watercraft, modular homes, manufactured homes, mobile homes, and rentals of tangible personal property. Subsection (14)(b) explains that § 59-12-211 does not apply to Utah use taxes a person pays. Subsection (14)(c) explains that § 59-12-211 does not apply to certain retail sales of tangible personal property if the seller receives the order in Utah.

For more direction on the application of § 59-12-211 to particular situations, people may contact the Taxpayer Services Division’s Technical Research Unit by phone at 801-297-7705, by email at taxmaster@utah.gov, or by mail at 210 N 1950 W, Salt Lake City, UT 84134.

Thus, under § 59-12-211(3), sales of tangible personal property are sourced to the locations where the purchasers receive the property when the purchasers do not receive the property at the sellers' locations.

Utah Code Annotated § 59-12-107 requires certain sellers to “pay or collect and remit” Utah sales and use taxes, stating the following in part:

- (1) As used in this section:
 - (a) “Ownership” means direct ownership or indirect ownership through a parent, subsidiary, or affiliate.
 - (b) “Related seller” means a seller that:
 - (i) meets one or more of the criteria described in Subsection (2)(a)(i); and
 - (ii) delivers tangible personal property, a service, or a product transferred electronically that is sold:
 - (A) by a seller that does not meet one or more of the criteria described in Subsection (2)(a)(i); and
 - (B) to a purchaser in the state.
 - (c) “Substantial ownership interest” means an ownership interest in a business entity if that ownership interest is greater than the degree of ownership of equity interest specified in 15 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.
- (2) (a) Except as provided in Subsection (2)(e), Section 59-12-107.1, or Section 59-12-123, and subject to Subsection (2)(f), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:
 - (i) has or utilizes:
 - (A) an office;
 - (B) a distribution house;
 - (C) a sales house;
 - (D) a warehouse;
 - (E) a service enterprise; or
 - (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);
 - (ii) maintains a stock of goods;
 - (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is:
 - (A) advertising; or
 - (B) solicitation by:
 - (I) direct mail;
 - (II) electronic mail;
 - (III) the Internet;
 - (IV) telecommunications service; or
 - (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

- (iv) regularly engages in the delivery of property in the state other than by:
 - (A) common carrier; or
 - (B) United States mail; or
 - (v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.
- (b) A seller is considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state, and shall pay or collect and remit the sales and use taxes imposed by this chapter if:
- (i) the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and
 - (ii) (A) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; or
 - (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.
- (c) A seller that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection (2)(b):
-
- (ii) . . . shall collect a tax on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
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Utah Code Annotated § 59-12-103.1(1) requires sellers to collect Utah sales and use taxes in certain situations even if those sellers do not meet § 59-12-107(2)(a), with § 59-12-103.1(1) stating the following in part:²

- [A] seller shall remit a tax to the commission as provided in Section 59-12-107 if:
- (a) the Supreme Court of the United States issues a decision authorizing a state to require the following sellers to collect a sales or use tax:

² As explained in this private letter ruling, the Company has nexus by meeting § 59-12-107(2)(a). Because the Company meets § 59-12-107(2)(a), § 59-12-103.1 does not apply to the Company's situation. If the Company had not met § 59-12-107(2)(a), this private letter ruling would have analyzed the U.S. Supreme Court's decisions to apply § 59-12-103.1(1) to the Company's situation. However, because the Company meets § 59-12-107(2)(a), this private letter ruling does not analyze the U.S. Supreme Court's decisions. Thus, the recent U.S. Supreme Court decision in *South Dakota v. Wayfair, Inc., et al.*, 585 U.S. ____ (2018), does not affect the conclusions of this private letter ruling.

- (i) a seller that does not meet one or more of the criteria described in Subsection 59-12-107(2)(a); or
- (ii) a seller that is not a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); . . .

. . . .

Utah Code Annotated § 59-12-107(2)(e) requires a person to pay Utah use taxes in certain situations, stating the following:

A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:

- (i) the seller did not collect a tax imposed by this chapter on the transaction; and
- (ii) the person:
 - (A) stores the tangible personal property or product transferred electronically in the state;
 - (B) uses the tangible personal property or product transferred electronically in the state; or
 - (C) consumes the tangible personal property or product transferred electronically in the state.

III. Analysis

Subsections III.A. through III.E. of this Analysis Section explains the Company’s Utah sales tax collection and remittance requirement. Subsection III.F. explains the Company’s use tax requirement. Subsection III.G. explains that prospective enforcement is appropriate for your situation.

A. The Company’s retail sales of health products to purchasers located in Utah are subject to Utah sales and use taxes.

Subsection 59-12-103(1)(a) imposes sales and use taxes on “retail sales of tangible personal property made within the state.”³ The Company’s retail sales of health products to Utah customers are “retail sales of tangible personal property.”

Section 59-12-211 is a sourcing statute; it addresses whether a transaction is “within the state” for purposes of § 59-12-103(1)(a). Under § 59-12-211(3), generally “if tangible personal property . . . is not received by a purchaser at a business location of a seller, the location of the transaction is the location where the purchaser takes receipt of the tangible personal property.” Section 59-12-211 includes exceptions that do not apply to the situation of this private letter ruling. Under § 59-12-211(1)(a)(i), “receipt” includes “taking possession of tangible personal property.” Thus, the Company’s retail sales of health products to Utah customers are sourced to

³ “Retail sale,” “sale,” and “tangible personal property” are defined in § 59-12-102(109), (110), and (125), respectively.

the Customer's addresses; these are "the location[s] where the purchaser[s] take[] receipt of the tangible personal property."

Thus, the Company's retail sales of health products to Utah customers are taxable under § 59-12-103(1)(a). The focus of this appeal, though, is not whether the retail sales of health products to Utah customers are taxable, but instead, whether the Company has a Utah sales tax collection and remittance requirement under § 59-12-107. As explained below, the Company has that requirement.

B. The Company has a Utah sales tax collection and remittance requirement under both § 59-12-107(2)(a)(i) and (iii).

The Company has a Utah sales tax collection and remittance requirement under § 59-12-107(2)(a)(i) and § 59-12-107(2)(a)(iii), as explained below in Subsections III.C. and III.D. of this private letter ruling.

C. The Company has a Utah sales tax collection and remittance requirement under § 59-12-107(2)(a)(i) because the Company utilizes an office or similar place of business.

Subsection 59-12-107(2)(a)(i) requires the Company to "pay or collect and remit [Utah] sales and use taxes . . . if within [Utah] [the Company] . . . utilizes . . . an office [or] a place of business similar to [an office]." The Company "utilizes" in Utah "an office" or "a place of business similar to [an office]" by utilizing the Utah employee's in-home office when she regularly telecommutes from this location. This conclusion does not change even if the Company does not hold out the in-home office to the public as a place of business for the Company.

D. The Company has a Utah sales tax collection and remittance requirement under § 59-12-107(2)(a)(iii) because the Company's Utah activities include more than just certain advertising and solicitation through direct mail, the Internet, etc.

Subsection 59-12-107(2)(a)(iii) requires the Company to "pay or collect and remit [Utah] sales and use taxes . . . if within [Utah] [the Company] . . . regularly solicits orders . . . unless the [Company's] only activity in [Utah] is . . . advertising; or . . . solicitation by . . . direct mail[,] . . . electronic mail[,] . . . the Internet[,] . . . telecommunications service[,] or . . . a [similar means]."

The Company regularly solicits orders in Utah. Thus, under § 59-12-107(2)(a)(iii), the Company must collect and remit sales taxes "*unless* the [Company's] only activity in [Utah] is advertising . . . or solicitation by direct mail[,] . . . Internet[, etc.]" (emphasis added). The Company's only activity in Utah, though, is not limited to advertising or solicitation by direct mail, Internet, etc. Instead, the Company's activities in Utah also include having a Utah

employee who regularly researches and develops products for the Company at her in-home office located in Utah. Thus, the exception found within § 59-12-107(2)(a)(iii) is unmet, and the Company must collect and remit Utah sales and use taxes under § 59-12-107(2)(a)(iii).

E. This private letter ruling does not reach the issue of whether the Company also has a Utah sales tax collection and remittance requirement under § 59-12-107(2)(b).

Subsection 59-12-107(2)(b) requires the Company to “pay or collect and remit [Utah] sales and use taxes” if a seller and a related seller have certain ownership relationships and engage in certain activities. One of the requirements for § 59-12-107(2)(b) to apply is found in § 59-12-107(2)(b)(i), which states the following:

[T]he seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller . . .

Subsection 59-12-107(1) defines “ownership,” “related seller,” and “substantial ownership interest.”

You explained in your request letter that the Company “does not hold a substantial ownership interest in, and is not owned in whole or in substantial part by, a related seller.” Thus, you have directly asserted that § 59-12-107(2)(b)(i), quoted above, is not met. You have not provided more facts to apply § 59-12-107(2)(b) further.

While § 59-12-107(2)(b) does not seem to apply to the Company’s situation, this private letter ruling does not reach a conclusion for § 59-12-107(2)(b) because a determination under § 59-12-107(2)(b) is unnecessary. The Company already has a Utah sales tax collection and remittance requirement under § 59-12-107(2)(a).

F. The Company is subject to Utah use taxes on items it utilizes in Utah.

Under § 59-12-103(1)(l), Utah imposes use taxes as follows:⁴

A tax is imposed on the purchaser as provided in this part on the purchase price or sales price for amounts paid or charged for the following transactions:

. . . .

- (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
 - (i) stored;
 - (ii) used; or
 - (iii) consumed; . . .

. . . .

⁴ “Storage” and “use” are defined in § 59-12-102(124) and (136), respectively.

For use taxes, the Company has a payment requirement under § 59-12-107(2)(e) as follows:

[The Company] shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:

- (i) [the Company's vendor] did not collect a tax imposed by this chapter on the transaction; and
- (ii) [the Company]:
 - (A) stores the tangible personal property or product transferred electronically in the state;
 - (B) uses the tangible personal property or product transferred electronically in the state; or
 - (C) consumes the tangible personal property or product transferred electronically in the state.

For this private letter ruling, the Company likely stores, uses, and/or consumes tangible personal property or products transferred electronically at the in-home office located in Utah. The tangible personal property the Company uses or consumes in Utah may also include catalogs the Company mails or otherwise sends into Utah. Under § 59-12-107(2)(e), if the Company's vendor did not already collect Utah sales and use taxes on the Company's purchases of the tangible personal property or products transferred electronically that the Company stores, uses, or consumes in Utah, the Company must pay Utah use taxes on the amounts the Company paid for the tangible personal property or products transferred electronically.

G. Prospective enforcement is appropriate for your situation.

Based on the facts and circumstances of your unique situation, the Commission finds that prospective enforcement of the Company's Utah sales tax collection and remittance requirement and the Company's requirement to pay Utah use taxes is appropriate. Thus, as of thirty (30) days from the date of this private letter ruling, the Company is obligated to collect Utah sales and use taxes on the Company's mail-order sales to Utah customers and to pay any Utah use taxes that the Company incurs.

IV. Conclusions

In summary, the Company is a seller that is required to collect and remit Utah sales tax as required by § 59-12-107(2)(a). Additionally, under § 59-12-107(2)(e), the Company is required to pay Utah use taxes on any storage, use, or consumption of tangible personal property or products transferred electronically if that storage, use, or consumption occurs in Utah.

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
17-005