

**FINAL PRIVATE LETTER RULING**

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**REQUEST LETTER**

17-008

July 24, 2017

Technical Research Unit  
Utah State Tax Commission  
210 N 1950 W  
Salt Lake City, UT

Re: Letter Ruling Request – Sales and Use Tax  
COMPANY  
ADDRESS  
CITY, STATE AND ZIP CODE  
EIN: #####

Dear Sirs:

We are writing to request a Letter Ruling from the Commission for COMPANY (“COMPANY” or the “Company”) on the proper sales and use tax treatment of transactions involving charges for the service of providing non-transplantable human tissue for research, training and overall medical advancement. The company currently is not under audit by the Commission.

During the past decade, with advancements in medicine and medical technology, there has been a growing need for non-transplantable human tissue. COMPANY is able to meet this essential need by educating the public about the societal and medical research related benefits of whole body donation, and receives these donations from donors at a variety of venues including hospitals, funeral homes, and hospices. These donations are subject to legal consent and authorization from the donor and/or their next of kin. By donating to COMPANY, donors and their families are able to meet their own or loved ones’ wishes to help support and further the advancement of scientific and medical research.

Founded in #####, COMPANY is a non-transplantable human tissue bank that provides services associated with the processing, storage, preparation and transportation of tissue specimen to clients for medical research and training purposes. The Company’s customers include medical facilities, hospitals, universities, academic medical centers, medical training organizations and medical device manufacturers, amongst others. COMPANY receives donated human bodies shortly after the time of death in order to provide the medical community with either complete,

intact cadavers, or portions of human tissue according to its customers' specific needs associated with their training and research requirements. COMPANY makes no payments to a donor's estate or their family for the donated remains. Highly skilled experts are used to remove parts in such a way as to preserve the integrity and usefulness of those bodies and requested tissue for specific training and research purposes. Any tissues that are not recovered for a qualified use are cremated and either disposed of or returned to the next of kin upon request.

In general, public policy and social norms rule out establishing a marketplace for the sale of vital human organs and body tissue. Commodifying the human body and its organs, thereby transforming what should be an act of altruism into a commercial transaction, is viewed as contrary to our basic social values (*Public Policy and the Sale of Human Organs*, Cynthia B. Cohen, Kennedy Institute of Ethics Journal, Vol 12, #1 (2002)). This has resulted in federal and state statutes and regulations outlawing the sale of human tissue. Specifically, the National Organ Transplant Act ("NOTA") of 1984 bans the sale of human organs and tissue for transplant, but allows tissue banks to charge fees for tissue and services associated with procuring and preparing tissue. In addition, 42 U.S. Code § 274e(a) states that "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce." Further, the federal Public Health Service Act prohibits the sale of human fetal tissue as stated in 42 U.S. Code § 289g-2(a), "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce." Additionally, the Uniform Anatomical Gift Act governs both tissue for transplantation into living patients as well as the making of anatomical gifts for the advancement of science. Section 16 of the Uniform Anatomical Gift Act (2006) states that "A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part."

These legal parameters have shaped the manner in which human bodies are gathered and then, in whole or in part, distributed, with no distinction on whether the parts are used for purposes of research or transplanting. As is customary for the industry, the Company charges fees to its customers in order to recover the costs associated with the acquisition, storage, preservation, preparation and distribution of the tissue. Cost-plus pricing, rather than supply-demand metrics, establishes the service charges invoiced to the Company's customers. There are no charges for human tissue. COMPANY is properly following the various longstanding nationwide legal and social norms which provide that there can be no sale of a human body or vital body parts. The fees which COMPANY lists and charges are an aggregate reflection of the services it provides related to its tissue removal, processing, preservation, storage, transportation and disposal.

With this in mind, we believe that COMPANY is not involved in a sale, is not a retailer and should not be taxable under Utah Sec. 59-12-102(108)(a) or similar statutes. We believe COMPANY is a service provider, and should not be required to collect sales or use tax on its charges to its clients. To determine otherwise would contravene public policy and legal designs intent on preventing a marketplace for body parts to develop. Based on the information above, and the fact that COMPANY customers are billed for services on a cost-plus basis, we believe that the transactions involving the provision of a human body or body parts to a third party for research and/or medical advancement purposes should be exempt from the Utah sales tax.

Based on our research, the Utah legislature has not issued an opinion or regulation that adequately addresses the sales tax treatment of the Company's business. We understand that there may be other exemptions from the Utah sales tax available to the services in question, including customer exemptions for transactions involving tissue transfers to hospitals, universities, and medical research facilities, and possible research and development exemptions for sales to medical device manufacturers. In this instance, we are requesting the Commission's opinion on the taxability of these transfers of tissue overall, and the position that COMPANY should be treated as a service provider and not a retailer, without considering customer specific exemptions.

We respectfully request that the Commission review our facts and reliance on previous and current regulations, statutes and precedents and provide a written answer as to the tax treatment of these transactions. Additionally, we ask that the Commission not disclose the name of the Taxpayer, COMPANY, in a published ruling to the public. Should the Commission need additional information in order to make its determination, or would like to discuss any item or issue further, I can be reached at PHONE NUMBER. Thank you for your consideration of this matter. We look forward to your reply.

Sincerely,

NAME-1

Director – Sales and Use Tax

NAME-2

ADDRESS

CITY, STATE AND ZIP CODE

**RESPONSE LETTER**  
**PRIVATE LETTER RULING 17-008**

January 30, 2019

Mr. NAME-1  
Director—Sales and Use Tax  
NAME-2  
ADDRESS  
CITY, STATE AND ZIP CODE

Dear NAME-1:

This letter is in response to your request for a private letter ruling for COMPANY (“Company”). The Company provides its customers with non-transplantable human tissue for research and training, not for human transplant. You have asked whether the Company has a Utah sales and use tax collection and remittance requirement for the Company’s sales to its customers. The Company has asserted that these sales are sales of non-taxable services relating to the non-transplantable human tissue that the Company transfers. This private letter ruling concludes that the Company is selling non-taxable services and is not selling tangible personal property. The analysis for this conclusion is found in Section III. of this private letter ruling.

**I. Facts**

The Company accepts whole-body donations. People donate knowing the Company will remove tissues or other parts from the bodies. The people know that these parts will be used for medical research, scientific use, or education, and not for human transplant.

The Company has clients who need body parts for medical research, scientific use, or education, and not for human transplant. The Company and each client enter into an agreement (“Agreement”). Under this Agreement, the Company will bill the client through an invoice. A sample invoice of the Company shows line items for the following: a service fee for a particular body part, an x-ray charge, and a shipping and handling charge.

Under the Agreement, all service fees invoiced are for removal, testing, processing, preservation, quality control, storage, transportation, and disposal of the tissue. The Agreement describes these fees as being “reasonable.” The Agreement also states that the body parts have no monetary value and cannot be owned, bought, or sold. Similarly, under the Agreement, the client commits to not selling a body part received from the Company to another person, but the

client may charge reasonable fees to another person for the client's services in delivering the body part to that other person.

## 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 that apply to the Sales and Use Tax Act. Subsection 59-12-102(125) defines "tangible personal property" as follows in part:

- (a) . . . "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.
- .....

Utah has enacted a Revised Uniform Anatomical Gift Act in Utah Code Annotated § 26-28-101 to § 26-28-125.

Utah Code Annotated § 26-28-102 provides definitions for the Revised Uniform Anatomical Gift Act. Subsection 26-28-102(3) defines "anatomical gift" as follows in part:

"Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

Utah Code Annotated § 26-28-115 requires hospitals to “enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts,” with § 26-28-115 stating the following:

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Utah Code Annotated § 26-28-116 prohibits the selling of body parts for transplant but allows for the certain charges for services, with § 26-28-116 stating the following:

- (1) Except as otherwise provided in Subsection (2), a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a third degree felony.
- (2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

### III. Analysis

As explained below, for the Company's sales presented for this private letter ruling, the Company is selling non-taxable services and is not selling tangible personal property.

Subsection 59-12-103(1)(a) imposes Utah sales and use taxes on “*amounts paid or charged for . . . retail sales of tangible personal property made within the state*” (emphasis added). Similarly, § 59-12-103(1)(l) imposes Utah sales and use taxes on “*amounts paid or charged for tangible personal property if within this state the tangible personal property is . . . stored; . . . used; or . . . consumed . . .*” (emphasis added). Under § 59-12-102(125), “‘tangible personal property’ means personal property that: . . . may be . . . seen; . . . weighed; . . . measured; . . . felt; or . . . touched; or . . . is in any manner perceptible to the senses.” The body parts for this private letter ruling fit this definition; they are tangible personal property. Thus, if the Company’s clients are *paying for the body parts* within Utah or if the Company is *charging for the body parts* within Utah, then the Company’s sales of those parts would be subject to Utah sales and use taxes under § 59-12-103(1).<sup>1</sup>

As explained in the paragraphs below, the Utah Revised Uniform Anatomical Gift Act provides direction on whether the Company is selling body parts or selling services. Under § 26-28-102(3), “[a]natomical gift’ means a donation of all or part of a human body to take effect after the donor’s death for the purpose of transplantation, therapy, research, or education.” Notably, an anatomical gift includes body parts “for the purpose of transplantation” and also for “research . . . or education.” Thus, the Utah Revised Uniform Anatomical Gift Act covers the type of body parts at issue for this private letter ruling.

Section 26-28-115 requires hospitals to “enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.” Thus, hospitals must make certain arrangements for donated body parts for transplantation and also for research or education. Therefore, the Utah Revised Uniform Anatomical Gift Act regulates the *transfers* of body parts both for transplantation and also for research or education. The analysis of this paragraph shows that the Utah Revised Uniform Anatomical Gift Act covers the *transfers* of the type of body parts at issue for this private letter ruling.

Subsection 26-28-116(1) prohibits the *selling* of body parts for transplantation or therapy; it does not disallow the selling of body parts for other purposes such as for research or education. In connection with the prohibition of selling body parts for transplantation, § 26-28-116(2) *allows a person to charge for certain services* relating to the body parts. Thus, the Utah Revised Uniform Anatomical Gift Act recognizes that a company’s charges for certain services are not charges for the sale of body parts. Under § 26-28-116(2), those charges for services include a “charge [of] a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.”

There is no reason to treat the charges found in § 26-28-116(2) differently based on whether a body part is for transplantation or therapy or for research or education. Thus, if the Company charges its clients “a reasonable amount for the removal, processing, preservation,

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<sup>1</sup> A transaction subject to Utah sales and use taxes under § 59-12-103(1) may still be exempt from tax if the transaction meets an exemption found in Utah Code Ann. § 59-12-104 or found elsewhere in applicable Utah law or federal law.

quality control, storage, transportation, . . . or disposal of a part,” the Company is charging for its services.<sup>2</sup>

A sample invoice of the Company shows line items for the following: a service fee for a particular body part, an x-ray charge, and a shipping and handling charge. Under the Agreement, all service fees invoiced are for removal, testing, processing, preservation, quality control, storage, transportation, and disposal of the tissue. The Agreement describes these fees as being “reasonable.” Thus, the service fee line item is “a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, . . . or disposal of a part” under § 26-28-116(2). Therefore, the service fee line item is a charge for the Company’s services. The x-ray charge line item seems to be a service charge as well; it seems to be part of “processing” or “quality control” under § 26-28-116(2). The shipping and handling charge line item is “a reasonable amount for the . . . transportation . . . of a part” under § 26-28-116(2). Thus, it is a service charge, as well. Therefore, the Company is charging its clients for the Company’s services and not for the sale of tangible personal property.

If the Company were to charge more than “a reasonable amount” for the services listed in § 26-28-116(2), this private letter ruling’s conclusion about the nature of the Company’s sales to its clients could change.

The Utah Code imposes sales and use taxes on certain service transactions connected to tangible personal property. For example, Utah Code Annotated § 59-12-103(1)(g) imposes sales and use taxes on certain sales of “services for repairs or renovations of tangible personal property” and Utah Code Annotated § 59-12-103(1)(h) imposes sales and use taxes on certain sales of “assisted cleaning or washing of tangible personal property.” After reviewing § 59-12-103, this private letter ruling concludes that none of the Company’s services addressed by this private letter ruling are among the services that are enumerated in § 59-12-103 as being taxable.

While the sales of the Company’s services addressed by this private letter ruling are not subject to Utah sales and use taxes, the Company, like other services providers, could potentially incur Utah sales and use taxes. Companies providing nontaxable services to clients can be subject to Utah sales and use taxes in connection with tangible personal property that the companies store, use, or consume in providing their services to their clients. *See* § 59-12-103(1)(l).

#### IV. Conclusion

This private letter ruling concludes that the Company is selling non-taxable services and is not selling tangible personal property when the Company provides its customers with non-transplantable human tissue/parts for research and training.

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

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<sup>2</sup> “[I]mplantation . . . of a part” was removed from the quoted list of services. “[I]mplantation . . . of a part” does not seem to be a service that can apply to a body part transferred for research or education.

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](mailto: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,

Lawrence C. Walters  
Commissioner

LCW/aln  
17-008