FINAL PRIVATE LETTER RULING

RESPONSE LETTER

PRIVATE LETTER RULING 18-001

July 18, 2018

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your request for a private letter ruling for TAXPAYER ("Taxpayer"), about the applicability of the sales and use tax exemption found in Utah Code Ann. § 59-12-104(47)(a). This exemption applies to certain sales and uses of electricity "produced from a new alternative energy source built after January 1, 2016." This private letter ruling concludes that the sales of electricity by the POWER COMPANY ("Power Company") will likely include both sales of electricity meeting the exemption found in § 59-12-104(47)(a) and sales of electricity not meeting that exemption. This private letter ruling also concludes that the taxability of the sales of electricity will be governed by Utah Code Ann. § 59-12-103(2)(e).

You have also asked whether the Taxpayer's assignment of the Taxpayer's rights and obligations under the agreement specified in this private letter ruling to the Taxpayer's related-party payers or assignees would affect the other conclusions of this private letter ruling. This private letter ruling concludes that the Taxpayer's assignment would not affect those other conclusions.

I. Facts

The Taxpayer intends to construct within the United States a facility with high energy needs ("Facility"). The Taxpayer requires that this Facility be powered by electricity generated from alternative, renewable energy resources.

The Taxpayer entered into a renewable energy contract ("Agreement") with the Power Company. The Power Company is an electrical power service company located in Utah.

A. Tariff

The Power Company implemented a tariff for the sale of electricity produced from renewable energy resources ("Tariff").[1] The Tariff's terms plainly require the Taxpayer and the Power Company to enter into a contract for the Tariff to apply. *See* the Tariff's first Condition of Service. The Taxpayer and the Power Company entered into the Agreement in accordance with the terms of the Tariff.

B. Agreement

Explanations and quotations from Articles I, IV, V, and XIV of the Agreement and from Exhibit E of the Agreement are located in this Subsection I.B.

Section 1.1 of the Agreement provides definitions, including for the following terms:

> "[Taxpayer] Renewable Resource" means one or more renewable resources identified by or on behalf of the [Taxpayer] to provide electric power and energy for use at [Taxpayer]'s Facility consistent with Utah Code § 54-17-806. A [Taxpayer] Renewable Resource may be [Power] Company- or [Taxpayer]-owned, procured through a contract between the [Power] Company and a third party, or procured through a separate contract between the [Power] Company and the [Taxpayer].
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> . . . .
>
> "Firm Power and Energy" means Power expressed in kilowatts and associated Energy expressed in kilowatt-hours intended to have assured availability, as provided in Electric Service Regulation No. 4, entitled "Continuity of Service," to meet any agreed-upon portion of [Taxpayer's] load.

"[Taxpayer] Renewable Resource" is used in Article IV of the Agreement. "Firm Power and Energy" is used in a memorandum of understanding ("MOU") dated May 2018.

Article IV of the Agreement provides how the Power Company is to acquire and utilize the new alternative, renewable energy resources. The Taxpayer and the Power Company intend to satisfy fully the electricity needs of the Taxpayer's Facility as soon as practicable using only these resources. *See* Section 1 of the MOU dated May 2018, quoted farther below in this private letter ruling. Section 4.4 of the Agreement provides the following, in part:

> [T]he [Power] Company and the [Taxpayer] shall agree to the material terms and conditions to be included in the contract or other commercial arrangement between the owner of the [Taxpayer] Renewable Resource and the [Power] Company. The terms shall include, but are not limited to:
>
> . . . .

[1] The Utah Legislature authorized this Tariff through Utah Code Ann. § 54-17-801 through § 54-17-806, which the Legislature most recently modified in 2016 by Senate Bill 115 from the 2016 General Session.

(b) resource online date;

. . . .

Thus, by requiring "agree[ment] to the material terms and conditions [for acquiring the] [Taxpayer] Renewable Resource," the Agreement allows, but does not require, the Power Company and the Taxpayer to limit the Taxpayer Renewable Resources to new alternative energy sources built after January 1, 2016.

The Agreement includes Exhibit E: Form of Renewable Resource Appendix, which will include the Power Company and Taxpayer's future agreements for specific Taxpayer Renewable Resources.[2] Similar to the "resource online date" of Subsection 4.4(b) of the Agreement, Exhibit E provides for a "Project in Service Date" and a "Start Date." Thus, similar to Subsection 4.4(b), Exhibit E allows, but does not require, the Power Company and the Taxpayer to limit the Taxpayer Renewable Resources to new alternative energy sources built after January 1, 2016.

Exhibit E will provide the "Price: $[●] per MWh" for each Taxpayer Renewable Resource. Exhibit E is used to determine the CHARGE FOR RENEWABLE SUPPLY. *See* Exhibit 1 of Exhibit E of the Agreement. The CHARGE FOR RENEWABLE SUPPLY is a component of the purchase price of the electricity sold by the Power Company to the Taxpayer. *See* Section 5.1 of the Agreement, which is quoted, in part, in the paragraph below.

Article V of the Agreement is titled "Service Rates and Charges." Section 5.1 includes the components of the "Rates for Power and Energy Delivered to [the Taxpayer]," with that section stating the following:

> Section 5.1 Rates for Power and Energy Delivered to [Taxpayer]. The Rate for all Power and Energy delivered to [Taxpayer] under this Agreement shall be made up of the following rate components summarized below, which components are described in more detail and further defined in Section 5.2.
>
> (a) CHARGE FOR POWER COMPANY SUPPLY – applied to all kWh of Estimated [Power] Company Supply;
>
> (b) CHARGE FOR RENEWABLE SUPPLY– applied to all kWh of Estimated Renewable Supply; [3]
>
> [THE REMAINING SUBSECTIONS OF SECTION 5.1 CONTAIN OTHER RATE COMPONENTS.]

[2] Section 1.1 of the Agreement uses Exhibit E in the Agreement's definition of "Renewable Resource Appendix," which is defined as follows:

> "Renewable Resource Appendix" means an agreement to be attached as an Appendix hereto to specify the terms and conditions applicable to acquiring a [Taxpayer] Renewable Resource in connection with electric service for the Facility, substantially in the form of Exhibit E.

[3] The Agreement further addresses the CHARGE FOR RENEWABLE SUPPLY in Subsection 5.2(b).

Section 5.3 of the Agreement addresses Renewable Energy Certificates ("RECs"), with that section stating the following, in part:

> Section 5.3 REC Procurement. The [Taxpayer] may direct the [Power] Company to acquire unbundled RECs on behalf of the [Taxpayer] by providing written notice to the [Power] Company. If so directed, [Power] Company will acquire Renewable Energy Certificates on a least-cost basis. . . .

Subsection (2)(b) of the MOU dated May 2018, quoted later in this private letter ruling, discusses Section 5.3 of the Agreement.

Section 14.1 of the Agreement allows the Taxpayer to assign its rights and obligations under the Agreement, as follows in part:

> Section 14.1 Assignment by [Taxpayer].
>
> (a) [Taxpayer]'s rights and obligations under this Agreement may be assigned to an Affiliate of [Taxpayer] or in connection with a sale, assignment, lease or transfer of [Taxpayer]'s interest in its Facility, or real or personal property related thereto, or to any Person succeeding to all or substantially all of [Taxpayer]'s assets; in all other cases, [Taxpayer] may not assign this Agreement without [Power] Company's consent, which shall not be unreasonably withheld, conditioned or delayed. Any assignment is subject to (1) such successor's qualification as a customer under [Power] Company's policies and the Electric Service Regulations, and (2) the written agreement of such successor to be bound by this Agreement and the Electric Service Regulations and to assume the obligation of [Taxpayer] from the date of assignment. If [Power] Company consents to any such sale, assignment, lease or transfer, [Taxpayer] shall remain liable for any liabilities and obligation[s] under this Agreement and the Electric Service Regulations through the date of assignment. Commission approval shall not be required for any assignment by [Taxpayer] as permitted hereunder.
>
> . . . .

C. Memorandum of Understanding

You met with Tax Commission personnel about your private letter ruling request. During that meeting, a member of the Tax Commission suggested that the Taxpayer and the Power Company document their commitment to have the electricity sold to the Taxpayer be produced from new alternative energy sources built after January 1, 2016. After that meeting, you submitted the MOU dated May 2018, regarding the Agreement.

Section 3 of the MOU provides the following, in part:[4]

This MOU is not a modification of the Agreement but rather a further elaboration on the intent and expectations of the Parties. Notwithstanding the preceding, it is the express intention of the parties hereto and despite (i) any actions taken hereafter by any party hereto, and/or (ii) any actual or claimed reliance, that this MOU does not create any legally binding contractual obligations of the [Power] Company or [Taxpayer] but rather is a non-binding statement of intent as to how the parties intend to operate under the Agreement. . . .

Sections 1 and 2 of the MOU provide the following, in part:[5]

1. Alternative Energy is to Be Provided.

It is the intent of the Parties that the Firm Power and Energy provided under the Agreement for the operation of the [Taxpayer's] Facility shall be fully satisfied by [Taxpayer] Renewable Resources, and the Parties intend to select and contract for [Taxpayer] Renewable Resources as soon as practicable following announcement of the [Taxpayer]'s Facility.

2. [Taxpayer] Renewable Resources are to Meet the Definition of Alternative Energy Built After January 1, 2016.

It is the intent of the Parties that, to the extent feasible, in addition to the other requirements of the Agreement:

(a) the [Taxpayer] Renewable Resources acquired to provide electric service to [Taxpayer] will (1) generate "alternative energy" as that term is defined in Utah Code 59-12-102(1)[6], and (b) be "built after January 1, 2016" as required by Utah Code 59-12-104(47); and

(b) in the event [Taxpayer] purchases unbundled renewable energy credits (RECs) under Section 5.34 REC Procurement of the Agreement,[7] every unbundled REC obtained for [Taxpayer] pursuant to Section 5.34 of the Agreement should originate from a source that (1) generates "alternative

[4] Section 20.3 of the Agreement limits how the Agreement can be modified, as follows: "Except as otherwise expressly provided, this Agreement may be modified only by a subsequent written amendment or agreement executed by both Parties."

[5] Section 1 of the MOU uses the term "Firm Power and Energy." That term is defined in Section 1.1 of the Agreement. That definition was quoted previously in this private letter ruling.

[6] "Alternative energy" is defined in § 59-12-102(10), not in § 59-12-102(1).

[7] Subsection (2)(b) of the MOU incorrectly references Section 5.34 of the Agreement. There is no Section 5.34. REC Procurement is found in Section 5.3.

> energy" as that term is defined in Utah Code 59-12-102(1),[8] and (2) is "built after January 1, 2016" as required by Utah Code 59-12-104(47). The Parties understand this may impact [Power] Company's ability to procure such RECs within the time frames specified in Section 5.3 of the Agreement, and that the Parties will continue to work together in good faith to meet these intentions if those time frames cannot be met with commercially reasonable efforts.

Subsection (2)(b) of the MOU, quoted directly above, discusses Section 5.3 of the Agreement, which has been quoted previously in this private letter ruling.

II. Applicable Law

This Applicable Law section includes Utah Code sections from Title 59 Chapter 12 and from Title 54 Chapter 17.

A. Applicable Law from Utah Code, Title 59: Revenue and Taxation, Chapter 12: Sales and Use Tax Act

Utah Code Ann. § 59-12-103(1) imposes sales and use taxes 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;
> . . . .
> (c) sales of the following for commercial use:
> . . . .
> (ii) electricity;
> . . . .
> (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:
> . . . .
> (ii) used; or
> (iii) consumed . . .
> . . . .

[8] *See* footnote 6.

Utah Code Ann. § 59-12-103(2) addresses the taxability of items sold together. Subsection 59-12-103(2)(d) addresses bundled transactions as follows, in part:

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

Subsection 59-12-103(2)(e) addresses situations that are not bundled transactions, with § 59-12-103(2)(e) stating the following, in part:

> (e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:
> (A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or
> (B) 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 under this chapter.
> . . . .

(iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

. . . .

Utah Code Ann. § 59-12-104 provides exemptions from sales and use taxes, stating in part:[9]

Exemptions from the taxes imposed by this chapter are as follows:

. . . .

(47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff adopted by the Public Service Commission only for purchase of electricity produced from a new alternative energy source built after January 1, 2016, as designated in the tariff by the Public Service Commission;

(b) for a residential use customer only, the exemption under Subsection (47)(a) applies only to the portion of the tariff rate a customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

. . . .

The above quotation includes the terms, "alternative energy" and "residential use." These terms, along with other terms, are defined in Utah Code Ann. § 59-12-102, which is provided in the paragraph below.

Section 59-12-102 defines various terms, stating in part:

As used in this chapter:

. . . .

(10) "Alternative energy" means:

(a) biomass energy;

(b) geothermal energy;

(c) hydroelectric energy;

(d) solar energy;

(e) wind energy; or

(f) energy that is derived from:

(i) coal-to-liquids;

(ii) nuclear fuel;

(iii) oil-impregnated diatomaceous earth;

(iv) oil sands;

[9] The Utah Legislature last amended this exemption in 2016 by House Bill 242 from the 2016 General Session. The Legislature added "retail" before "tariff" and added "built after January 1, 2016" after "alternative energy source."

(v) oil shale;
(vi) petroleum coke; or
(vii) waste heat from:
(A) an industrial facility; or
(B) a power station in which an electric generator is driven through a process in which water is heated, turns into steam, and spins a steam turbine.

. . . .

(17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the following that is used as the primary source of energy to produce fuel or electricity:
(i) material from a plant or tree; or
(ii) other organic matter that is available on a renewable basis, including:
(A) slash and brush from forests and woodlands;
(B) animal waste;
(C) waste vegetable oil;
(D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of wastewater residuals, or through the conversion of a waste material through a nonincineration, thermal conversion process;
(E) aquatic plants; and
(F) agricultural products.

(b) "Biomass energy" does not include:
(i) black liquor; or
(ii) treated woods.

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

(b) "Bundled transaction" does not include:
(i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

. . . .

(d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price does not include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:
(A) a binding sales document; or
(B) another supporting sales-related document that is available to a purchaser.

(ii) For purposes of Subsection (18)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:
(A) a bill of sale;
(B) a contract;
(C) an invoice;
(D) a lease agreement;
(E) a periodic notice of rates and services;
(F) a price list;
(G) a rate card;
(H) a receipt; or
(I) a service agreement.

. . . .

(22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (56) or residential use under Subsection (106).[10]

. . . .

(52) "Geothermal energy" means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.

. . . .

(55) "Hydroelectric energy" means water used as the sole source of energy to produce electricity.

(56) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:
(a) in mining or extraction of minerals;
(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:
(i) commercial greenhouses;
(ii) irrigation pumps;
(iii) farm machinery;
(iv) implements of husbandry as defined in Section 41-1a-102 that are not registered under Title 41, Chapter 1a, Part 2, Registration; and
(v) other farming activities;
(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;[11]
(d) by a scrap recycler if:

[10] "Residential use" is defined in § 59-12-102(107), not Subsection (106).

[11] Subsection 59-12-102(56)(c) will be superseded effective July 1, 2018. The revised § 59-12-102(56)(c) will include Subsections (56)(c)(i) and (ii).

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:
(A) iron;
(B) steel;
(C) nonferrous metal;
(D) paper;
(E) glass;
(F) plastic;
(G) textile; or
(H) rubber; and
(ii) the new products under Subsection (56)(d)(i) would otherwise be made with nonrecycled materials; or
(e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a cogeneration facility as defined in Section 54-2-1.

. . . .

(77) "Oil sands" means impregnated bituminous sands that:
(a) contain a heavy, thick form of petroleum that is released when heated, mixed with other hydrocarbons, or otherwise treated;
(b) yield mixtures of liquid hydrocarbon; and
(c) require further processing other than mechanical blending before becoming finished petroleum products.

(78) "Oil shale" means a group of fine black to dark brown shales containing kerogen material that yields petroleum upon heating and distillation.

. . . .

(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;
. . . .

(107) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

. . . .

(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.
(b) "Sale" includes:
. . . .

(iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

. . . .

(121) "Solar energy" means the sun used as the sole source of energy for producing electricity.

(125)(a) Except as provided in Subsection (125)(d) or (e), [12] "tangible personal property" means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

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

(b) "Tangible personal property" includes:

(i) electricity;

. . . .

(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.

. . . .

(144) "Wind energy" means wind used as the sole source of energy to produce electricity.

. . . .

B. Applicable Law from Utah Code, Title 54: Public Utilities, Chapter 17: Energy Resource Procurement Act

Utah Code Ann. § 54-17-806 addresses how a renewable energy tariff may be enacted, stating the following:

(1) The commission[13] may authorize a qualified utility to implement a renewable energy tariff in accordance with this section if the commission determines the tariff that the qualified utility proposes is reasonable and in the public interest.

(2) If a tariff is authorized under Subsection (1), a qualified utility customer with an aggregated electrical load of at least five megawatts and who agrees to service that is subject to the renewable energy tariff shall pay:

(a) the customer's normal tariff rate;

[12] Subsections 59-12-102(125)(d) and (e) have not be included in this Applicable Law section because they do not apply to the Taxpayer's situation.

[13] Utah Code Ann. § 54-2-1(4) defines "commission" as the Public Service Commission for purposes of Utah Code Title 54.

(b) an incremental charge in an amount equal to the difference between the cost to the qualified utility to supply renewable generation to the renewable energy tariff customer and the qualified utility's avoided costs as defined in Subsection 54-2-1(1), or a different methodology recommended by the qualified utility; and
(c) an administrative fee in an amount approved by the commission.

(3) The commission shall allow a qualified utility to recover the qualified utility's prudently incurred cost of renewable generation procured pursuant to the tariff established in this section that is not otherwise recovered from the proceeds of the tariff paid by customers agreeing to service that is subject to the renewable energy tariff.

Section 54-17-806 uses the terms "qualified utility," "renewable energy facility," and "renewable energy tariff." These terms are defined in Utah Code Ann. § 54-17-801, which is provided further below.

Utah Code Ann. 54-17-802 requires a "renewable energy contract" in certain situations, with § 54-17-802(1) stating the following:

> Within a reasonable time after receiving a request from a contract customer and subject to reasonable credit requirements, a qualified utility shall enter into a **renewable energy contract** with the requesting contract customer to supply some or all of the contract customer's electric service from one or more renewable energy facilities selected by the contract customer.
>
> (Emphasis added.)

Section 54-17-801 uses the terms "contract customer" and "renewable energy contract." These terms are defined in § 54-17-801, which is provided in the paragraph below.

Section 54-17-801 defines the terms referenced above for § 54-17-806 and § 54-17-802 as follows:

> As used in this part:
> (1) "Contract customer" means a person who executes or will execute a renewable energy contract with a qualified utility.
> (2) "Qualified utility" means an electric corporation that serves more than 200,000 retail customers in the state.
> (3) "Renewable energy contract" means a contract under this part for the delivery of electricity from one or more renewable energy facilities to a contract customer requiring the use of a qualified utility's transmission or distribution system to deliver the electricity from a renewable energy facility to the contract customer.

(4) (a) "Renewable energy facility" means a renewable energy source as defined in Section 54-17-601 that:
(i) is located in the state; or
(ii) (A) is located outside the state; and
(B) provides energy from baseload renewable resources.
(b) "Renewable energy facility" does not include an electric generating facility for which the electric generating facility's costs are included in a qualified utility's rates as a facility that provides electric service to the qualified utility's system.
(5) "Renewable energy tariff" means a tariff offered by a qualified utility that allows the qualified utility to procure renewable generation on behalf of and to serve its customers.

Notably, in § 54-17-801(4)(a) quoted above, the definition of "renewable energy facility" is defined in part as "a renewable energy source as defined in Section 54-17-601." Section 54-17-601 is provided, in part, in the paragraph below.

Utah Code Ann. § 54-17-601(10) defines "renewable energy source," as follows:[14]

"Renewable energy source" means:
(a) an electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995 that derives its energy from one or more of the following:
(i) wind energy;
(ii) solar photovoltaic and solar thermal energy;
(iii) wave, tidal, and ocean thermal energy;
(iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:
(A) organic waste;
(B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
(C) agricultural residues;
(D) dedicated energy crops; and
(E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;
(v) geothermal energy located outside the state;
(vi) waste gas and waste heat capture or recovery whether or not it is renewable, including methane gas from:
(A) an abandoned coal mine; or

[14] Section 54-17-601 further defines the following terms that are used in § 54-17-601(10): "electrical corporation," defined in § 54-17-601(5), and "renewable energy certificate," defined in § 54-17-601(9).

(B) a coal degassing operation associated with a state-approved mine permit;

(vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon which the facility became operational, if the upgrades become operational on or after January 1, 1995;

(viii) compressed air, if:

(A) the compressed air is taken from compressed air energy storage; and

(B) the energy used to compress the air is a renewable energy source; or

(ix) municipal solid waste;

(b) any of the following:

(i) up to 50 average megawatts of electricity per year per electrical corporation from a certified low-impact hydroelectric facility, without regard to the date upon which the facility becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after January 1, 1995, by a national certification organization;

(ii) geothermal energy if located within the state, without regard to the date upon which the facility becomes operational; or

(iii) hydroelectric energy if located within the state, without regard to the date upon which the facility becomes operational;

(c) hydrogen gas derived from any source of energy described in Subsection (10)(a) or (b);

(d) if an electric generation facility employs multiple energy sources, that portion of the electricity generated that is attributable to energy sources described in Subsections (10)(a) through (c); and

(e) any of the following located in the state and owned by a user of energy:

(i) a demand side management measure, as defined by Subsection 54-7-12.8(1), with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent energy saved by the measure;

(ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent kilowatt-hours saved, except to the extent the commission determines otherwise with respect to net-metered energy;

(iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy;

(iv) a hydroelectric or geothermal facility with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the facility, except to the extent the commission determines otherwise with respect to net-metered energy;

(v) a waste gas or waste heat capture or recovery system, other than from a combined cycle combustion turbine that does not use waste gas or waste heat, with the quantity of renewable energy certificates to which the user

is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy; and

(vi) the station use of solar thermal energy, solar photovoltaic energy, hydroelectric energy, geothermal energy, waste gas, or waste heat capture and recovery.

III. Analysis

This Analysis section addresses the application of § 59-12-104(47)(a) to the Taxpayer's purchases of electricity from the Power Company. This private letter ruling concludes that the sales of electricity by the Power Company will likely include both sales of electricity meeting the exemption found in § 59-12-104(47)(a) and sales of electricity not meeting that exemption. This private letter ruling also concludes that the taxability of these sales of electricity will be governed by § 59-12-103(2)(e).

This Analysis section also addresses whether the Taxpayer's assignment of the Taxpayer's rights and obligations under the Agreement would affect the other conclusions of this private letter ruling. This private letter ruling concludes that those other conclusions would be the same if the Taxpayer were to assign the Taxpayer's rights and obligations under the Agreement to the Taxpayer's related-party payers or assignees.

This Analysis section includes the following subsections:

A. The sales of electricity by the Power Company to the Taxpayer are subject to sales and use taxes under § 59-12-103(1), unless an exemption applies.

B. In the future, some of the sales of electricity by the Power Company to the Taxpayer will likely meet the exemption found in § 59-12-104(47)(a), for sales of electricity produced from a new alternative energy source built after January 1, 2016.

C. The sales of electricity by the Power Company will likely include sales of electricity meeting the exemption found in § 59-12-104(47)(a) and sales of electricity not meeting that exemption; the taxability of these sales of two types of electricity will be governed by § 59-12-103(2)(e).

D. The conclusions of Subsections III.A.-III.C. of this private letter ruling would be the same if the Taxpayer were to assign the Taxpayer's rights and obligations under the Agreement to the Taxpayer's related-party payers or assignees.

A. The sales of electricity by the Power Company to the Taxpayer are subject to sales and use taxes under § 59-12-103(1), unless an exemption applies.

Subsection 59-12-103(1) imposes sales and use taxes "on the purchase price or sales price for amounts paid or charged for . . . (a) retail sales of tangible personal property made within the state."[15] Subsection 59-12-102(125)(b)(i) defines tangible personal property to include "electricity." Thus, the Power Company's sales of electricity to the Taxpayer meets § 59-12-103(1)(a).

Subsection 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."[16] Because "electricity" is tangible personal property under § 59-12-102(125)(b)(i), the Taxpayer's use of that electricity within Utah will be taxable under § 59-12-103(1)(l), as well.

Subsection 59-12-103(1)(c)(ii) imposes sales and use taxes on sales of electricity for commercial use. Commercial use is defined in § 59-12-102(23) as not being industrial or residential use. The Taxpayer's use will not meet the definition of industrial use found in § 59-12-102(56) or the definition of residential use found in § 59-12-102(107).[17] Therefore, the Taxpayer's use will be commercial use. Thus, the Power Company's sales of electricity to the Taxpayer will be taxable under § 59-12-103(1)(c)(ii), also.

The focus of this private letter ruling, though, is not whether the Power Company's sales of electricity to the Taxpayer are subject to sales and use taxes. Instead, the focus is on whether these sales are exempt under § 59-12-104(47)(a).

B. In the future, some of the sales of electricity by the Power Company to the Taxpayer will likely meet the exemption found in § 59-12-104(47)(a), for sales of electricity produced from a new alternative energy source built after January 1, 2016.

Subsection 59-12-104(47) provides a sales and use tax exemption for purchases of certain "electricity produced from a new alternative energy source built after January 1, 2016," as follows:

[15] "Retail sale" and "sale" are defined in § 59-12-102(109) and § 59-12-102(110), respectively. "Purchase price" and "sales price" are defined in § 59-12-102(99).

[16] "Use" is defined in § 59-12-102(136).

[17] Sales of electricity for industrial use are exempt under § 59-12-104(39). Sales of electricity for residential use are subject to sales and use taxes at a reduced state sales and use tax rate of 2% plus applicable local sales and use taxes under § 59-12-103(2)(b).

Exemptions from the taxes imposed by this chapter are as follows:

. . . .

(47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff adopted by the Public Service Commission only for purchase of electricity produced from a new alternative energy source built after January 1, 2016, as designated in the tariff by the Public Service Commission;

(b) for a residential use customer only, the exemption under Subsection (47)(a) applies only to the portion of the tariff rate a customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

Subsection 59-12-104(47)(b) does not apply to the Taxpayer's situation because the Taxpayer is not "a residential use customer."[18] Thus, to receive the exemption found in § 59-12-104(47), the Taxpayer must only meet Subsection (47)(a).

Subsection 59-12-104(47)(a) applies to certain "sales or uses of electricity." The Taxpayer's proposed purchases or uses of electricity are the only transactions at issue in this private letter ruling. Thus, this area of § 59-12-104(47)(a) is met for all electricity purchased by the Taxpayer from the Power Company.

Subsection 59-12-104(47)(a) requires that the sales or uses of electricity be "made under a retail tariff adopted by the Public Service Commission." The Taxpayer's proposed purchases will be made under a retail tariff adopted by the Public Service Commission. Thus, this area of § 59-12-104(47)(a) is met for all electricity purchased by the Taxpayer from the Power Company.

Subsection 59-12-104(47)(a) requires that the sales or uses be "only for purchase of electricity produced from a new alternative energy source built after January 1, 2016."[19] As seen by Sections 1 and 2 of the MOU dated May 2018, the parties intend to fully satisfy the electricity needs of the Taxpayer's Facility as soon as practicable using only new alternative energy sources built after January 1, 2016. Thus, until it is practicable to use only new alternative energy

[18] "Residential use" is defined in § 59-12-102(107).

[19] Section 1.1 of the Agreement defines "[Taxpayer] Renewable Resource" in terms of § 54-17-806. Section 54-17-806 uses the term, "renewable energy." Subsection 54-17-801(4) defines "renewable energy facility" in part as "a renewable energy source as defined in Section 54-17-601." Subsection 54-17-601(10) defines "renewable energy source" in part as an energy source deriving its energy through certain means, like wind energy, solar energy, wave energy, etc.

The sales and use tax exemption found in § 59-12-104(47) uses the term, "alternative energy." Subsection 59-12-102(10) defines "alternative energy" as including "biomass energy," "geothermal energy," "hydroelectric energy," etc. Thus, "alternative energy" is defined based on the means by which the energy is produced.

After reviewing the § 54-17-601(10) definition of "renewable energy source" and the § 59-12-102(10) definition of "alternative energy," energy produced from a "renewable energy source" also meets the definition of "alternative energy." This conclusion might change if the Utah Legislature changes either of these definitions.

sources built after January 1, 2016, some purchased electricity will not be from new alternative energy sources built after January 1, 2016. Therefore, some of the purchased electricity will not meet this requirement.

Subsection 59-12-104(47)(a) requires that the "purchase of electricity produced from a new alternative energy source built after January 1, 2016, [be] designated in the tariff by the Public Service Commission." As explained in Subsection I.A. of this private letter ruling, the Tariff requires the Agreement. Similarly, the Utah Code also requires the Agreement. Section 54-17-806 allows the Public Service Commission to authorize the Tariff, and § 54-17-802 requires a "renewable energy contract," which is the "Agreement." Thus, the terms of the Agreement are incorporated into the Tariff. Therefore, the terms of the Agreement are to be considered when determining whether "electricity produced from a new alternative energy source built after January 1, 2016, [has been] designated in the tariff."

As previously explained in Subsection I.B. of this private letter ruling, under Section 4.4 of the Agreement and Exhibit E of the Agreement, the parties may select Taxpayer Renewable Resources that are "new alternative energy source[s] built after January 1, 2016," but the parties are not required to do so. When the parties agree on specific Taxpayer Renewable Resources, the parties will enter into agreements for those resources. Those future agreements will become part of the Agreement, through Exhibit E. By becoming part of the Agreement, they also become part of the Tariff, though incorporation. If in the future the parties select Taxpayer Renewable Resources that are "new alternative energy source[s] built after January 1, 2016," those resources will meet the requirements of § 59-12-104(47)(a), including the requirement that the "electricity [be] produced from a new alternative energy source built after January 1, 2016, as designated in the tariff by the Public Service Commission."

As explained below, the unbundled RECs do not meet the requirement of "electricity produced from a new alternative energy source built after January 1, 2016, **as designated in the tariff**" (emphasis added). As previously explained in Subsection I.B. of this private letter ruling, under Section 5.3 of the Agreement, "[t]he [Taxpayer] may direct the [Power] Company to acquire unbundled RECs on behalf of the [Taxpayer] . . . If so directed, [Power] Company will acquire Renewable Energy Certificates **on a least-cost basis**" (emphasis added). Thus, the Agreement clearly provides that the RECs are to be acquired "on a least-cost basis." The Agreement does not direct the Power Company to acquire the RECs from "a new alternative energy source built after January 1, 2016" and "on a least-cost basis." Therefore, the electricity associated with the unbundled REC will **not** meet the requirement of § 59-12-104(47)(a) because the acquisition is not of "electricity produced from a new alternative energy source built after January 1, 2016, **as designated in the tariff by the Public Service Commission**" (emphasis added). The sales of this electricity will not be exempt under § 59-12-104(47)(a).

The parties' unenforceable intents and expectations for the unbundled RECs as expressed in the MOU does not change the above conclusion. In Section 2 of the MOU, the parties expressed their intent for the unbundled RECs as follows:

> It is the intent of the Parties that, to the extent feasible, in addition to the other requirements of the Agreement:
> . . . .
> (b) . . . every unbundled REC obtained for [Taxpayer] . . . should originate from a source that (1) generates "alternative energy" as that term is defined in Utah Code 59-12-102(1), and (2) is "built after January 1, 2016" as required by Utah Code 59-12-104(47). The Parties understand this may impact [Power] Company's ability to procure such RECs within the time frames specified in Section 5.3 of the Agreement, and that the Parties will continue to work together in good faith to meet these intentions if those time frames cannot be met with commercially reasonable efforts.

This language from Section 2 of the MOU does not require that the "electricity [will be] produced from a new alternative energy source built after January 1, 2016, as designated in the tariff by the Public Service Commission." The MOU is not part of the Agreement; the MOU is not incorporated into the Tariff. Instead, the MOU is unenforceable based on Section 3 of the MOU, which clearly states that "this MOU does not create any legally binding contractual obligations of the [Power] Company or [Taxpayer] but rather is a non-binding statement of intent . . ."

In summary, the sales of electricity produced from future Taxpayer Renewable Resources that are "new alternative energy source[s] built after January 1, 2016" will meet the requirements of § 59-12-104(47)(a). The sales of electricity produced from other sources will not meet all of the requirements of § 59-12-104(47)(a); those sales will remain subject to Utah sales and use taxes.

C. The sales of electricity by the Power Company will likely include sales of electricity meeting the exemption found in § 59-12-104(47)(a) and sales of electricity not meeting that exemption; the taxability of these sales of two types of electricity will be governed by § 59-12-103(2)(e).

The Power Company will likely be selling the Taxpayer two distinct and identifiable items for one price. The first item is the sale of electricity produced from future Taxpayer Renewable Resources that will be "new alternative energy source[s] built after January 1, 2016." If this first item were sold separately, it would be exempt under § 59-12-104(47)(a). The second item is the sale of electricity produced from other sources. This second item will be taxable.

The Utah Code addresses the taxability of two distinct and identifiable items sold for one price. The taxability of that transaction depends on whether the two distinct and identifiable items are sold for one nonitemized price.

As explained below, in general if two distinct and identifiable items are sold for one **nonitemized** price, the sale is a bundled transaction and the sale is taxable according to § 59-12-103(2)(d). Subsection 59-12-102(18)(a) defines "bundled transaction" as follows, in part:

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

The taxability of "bundled transactions" is governed by § 59-12-103(2)(d). Subsection 59-12-103(2)(d) states the following:

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

Bundled transactions do not include the sale of items for an **itemized** price. The taxability of a sale of items for an **itemized** price is governed by § 59-12-103(2)(e), which states the following:

> (i) . . . if a transaction consists of the sale . . . of tangible personal property . . . that is subject to taxation under this chapter, and the sale . . . of tangible personal property . . . that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:
>
> (A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or
>
> (B) 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 under this chapter.
>
> . . . .
>
> (iii) For purposes of Subsections (2)(e)(i) . . . , books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

As explained below, the sales of electricity by the Power Company to the Taxpayer are not bundled transactions because the electricity meeting the exemption and the electricity not

meeting the exemption are not "sold for one nonitemized price," as required by § 59-12-102(18)(a)(ii).

As explained previously in this private letter ruling, a bundled transaction involves two items "sold for one nonitemized price." *See* § 59-12-102(18)(a)(ii). Subsection 59-12-102(18)(d) of the definition of "bundled transaction" instructs **when** "property [is] sold for one nonitemized price," with § 59-12-102(18)(d) stating the following, in part:

> (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price does not include **a price that is separately identified** by tangible personal property . . . on the following . . . :
> (A) a binding sales document; or
> (B) another supporting sales-related document that is available to a purchaser.
> (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:
> (A) a bill of sale;
> (B) a **contract**;
> (C) an invoice;
> (D) a lease agreement;
> (E) a periodic notice of rates and services;
> (F) a price list;
> (G) a rate card;
> (H) a receipt; or
> (I) a service agreement.
>
> (Emphasis added.)

As explained below, the Agreement "separately identifie[s]" "a price" for the electricity produced from Taxpayer Renewable Resources. The details of the Taxpayer Renewable Resources will be provided in Appendix E of the Agreement. The parties intend these future Taxpayer Renewable Resources to meet § 59-12-104(47). The information on Appendix E should be sufficient in the future to determine which Taxpayer Renewable Resources, if not all of them, meet § 59-12-104(47). The information in Appendix E will be used to calculate the CHARGE FOR RENEWABLE SUPPLY, a component of the purchase price. *See* § 5.1 of the Agreement for a list of the components of the service rate. Thus, the Agreement "separately identifies" through the CHARGE FOR RENEWABLE SUPPLY and Appendix E at least part of the purchase price for the electricity meeting the exemption found in § 59-12-104(47).

Because of this separate identification, the electricity sold that meets § 59-12-104(47) and the electricity sold that does not meet § 59-12-104(47) are **not** "sold for one nonitemized price." Because these two types of electricity are not "sold for one nonitemized price," these sales of electricity are not bundled transactions.[20]

[20] This conclusion from the analysis of § 59-12-102(18)(d) is consistent with the conclusion from an analysis of § 59-12-102(18)(b). Subsection 59-12-102(18)(b) of the definition of "bundled transaction" states the following in part:

Because the sales of electricity by the Power Company to the Taxpayer are not bundled transactions, the taxability of the sales are governed by § 59-12-103(2)(e). Subsection 59-12-103(2)(e)(i) provides the following in part:

> [T]he entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:
>
> (A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or
>
> (B) 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 under this chapter.

Next, Subsection 59-12-103(2)(e)(iii) explains that "books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes."

Thus, the taxability of the electricity sold by the Power Company to the Taxpayer will be determined using the Power Company's books and records. To have some of the sales of electricity exempt from sales and use taxes, the Power Company, at the time of the transaction, should do the following:

> "separately state[] the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser."

Alternatively, the Power Company should be able to do the following at the time of the transaction:

> "identify . . . from the books and records the [Power Company] keeps in the [Power Company's] regular course of business, the portion of the transaction that is not subject to taxation . . ."

> "Bundled transaction" does not include: (i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction.

Under the Agreement, the price the Taxpayer will pay for electricity will "var[y] . . . on the basis of the selection by the [Taxpayer] of the [Taxpayer Renewable Resources producing the electricity]." Thus, the sales of electricity by the Power Company to the Taxpayer will not be a bundled transaction based on § 59-12-102(18)(b). This conclusion for § 59-12-102(18)(b) is consistent with the conclusion for § 59-12-102(18)(d), which is that the sales of electricity cannot be a bundled transaction because the sales lack a nonitemized price.

If the Power Company does not separately state the nontaxable portion and is unable to identify the nontaxable portion from the Power Company's books and records, "the entire transaction [will be] subject to taxation," under § 59-12-103(2)(e)(i).

D. The conclusions of Subsections III.A.-III.C. of this private letter ruling would be the same if the Taxpayer were to assign the Taxpayer's rights and obligations under the Agreement to the Taxpayer's related-party payers or assignees.

You have asked whether the conclusions of this private letter ruling would be the same if the Taxpayer were to assign its rights and obligations under the Agreement to the Taxpayer's related-party payers or assignees. This private letter ruling concludes that the conclusions would be the same.

Section 14.1 of the Agreement allows the Taxpayer to assign its rights and obligations under the Agreement, as follows in part:

> Section 14.1 Assignment by [Taxpayer].
>
> (a) [Taxpayer]'s rights and obligations under this Agreement may be assigned to an Affiliate of [Taxpayer] or in connection with a sale, assignment, lease or transfer of [Taxpayer]'s interest in its Facility, or real or personal property related thereto, or to any Person succeeding to all or substantially all of [Taxpayer]'s assets; in all other cases, [Taxpayer] may not assign this Agreement without [Power] Company's consent, which shall not be unreasonably withheld, conditioned or delayed. **Any assignment is subject to** (1) such successor's qualification as a customer under [Power] Company's policies and the Electric Service Regulations, and **(2) the written agreement of such successor to be bound by this Agreement and the Electric Service Regulations** and to assume the obligation of [Taxpayer] from the date of assignment. If [Power] Company consents to any such sale, assignment, lease or transfer, [Taxpayer] shall remain liable for any liabilities and obligation under this Agreement and the Electric Service Regulations through the date of assignment. **Commission approval shall not be required for any assignment by [Taxpayer] as permitted hereunder.**
>
> (Emphasis added.)

Based on Section 14.1 quoted above, any future contract with a successor is presently contemplated by the Agreement. Additionally, after an assignment, the Agreement will continue to apply, as seen by the following:

> "Any assignment is subject to . . . (2) the written agreement of such successor to be bound by this Agreement and the Electric Service Regulations."

And

> "[Public Service] Commission approval shall not be required for any assignment by [Taxpayer] as permitted hereunder."

Based on the language found in Section 14.1, the conclusions of this private letter ruling would be the same if the Taxpayer were to assign its rights and obligations under the Agreement to the Taxpayer's related-party payers or assignees.

IV. Conclusion

This private letter ruling concludes that, in the future, some of the sales of electricity by the Power Company to the Taxpayer will likely meet the exemption found in § 59-12-104(47)(a), for sales of electricity produced from a new alternative energy source built after January 1, 2016. These future sales of electricity will be produced from future Taxpayer Renewable Resources that will be built after January 1, 2016. The taxability of the sales of electricity will be governed by § 59-12-103(2)(e) when those sales include both sales of electricity meeting the exemption found in § 59-12-104(47)(a) and sales of electricity not meeting that exemption.

This private letter ruling also concludes that the Taxpayer's assignment of the Taxpayer's rights and obligations under the Agreement to the Taxpayer's related-party payers or assignees will not affect the other conclusions of this private letter ruling.

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
18-001