

FINAL PRIVATE LETTER RULING

REQUEST LETTER

18-003

June 4, 2018

Office of the Commission
Utah State Tax Commission
210 N 1950 W
Salt Lake City UT 84134
taxplr@utah.gov

Dear Commissioners,

We are seeking a private letter ruling to confirm if an out of state buyer with multiple companies may hire his common carrier business to ship his purchase out of state in order to claim interstate commerce tax exemption.

Background:

Auctioneer is in the business of selling new and used tangible personal property through unreserved public auctions. Auctioneer regularly sells [WORDS REMOVED] tangible personal property. The auctions take place throughout the year at a location within the state. The owner of the tangible personal property (hereinafter “the Consignor”) consigns the tangible personal property to Auctioneer for the auction process while retaining the title to the tangible personal property. Auctioneer acts as a selling agent for the Consignor and acquires a power of attorney for the limited purpose of executing all documents required for a title transfer and registration, without any further action of the Consignor. In addition to selling property that is owned by a Consignor, Auctioneer also purchases tangible personal property in its own name to auction.

Auctioneer charges all buyers sales tax on the selling price of the auctioned tangible personal property and remits the sales tax to the State unless the buyer produces the applicable resale certificate, exemption certificate, or other acceptable documentation.

Potential buyers may bid on items at the auction in person, bid by submitting a proxy, or bid for the items over the internet through the Auctioneer’s website. Buyers could be resident of the state of the auction, resident of a different state, or resident of a different country.

Issue:

Auctioneer regularly sells new and used non-titled items to non-resident buyers. Recently one buyer, PURCHASER, provided a Bill of Lading from his common carrier business, TRANSPORTER, as evidence of third party transport to Montana in order to claim the interstate commerce sales tax exemption. When auctioneer questioned the legitimacy of third party status

of transporter, buyer provided individual Federal Employment Identification Numbers (FEINs) for each company as proof of separate legal status.

We are requesting clarification on the following:

1. Can buyers who own multiple companies, including a common carrier, “hire” their common carrier business to transport purchases for one of their other businesses out of state and claim interstate commerce exemption or is the fact that both companies have the same owner qualify as the buyer taking possession in state?
2. If buyers can hire their common carrier business for exemption, is evidence of separate FEINs enough proof to confirm third party status or is there other proof that needs to be provided by the buyer?

These questions were initially addressed to the General Tax Questions section, however their replies lacked a definitive answer the above questions. For your reference, I have included the email history of these exchanges.

Thank you for your assistance. If there are any questions, please contact me at PHONE NUMBER.

Best regards,

SELLER

NAME-1

TITLE-1

SELLER

ADDRESS-1

CITY-1, STATE-1, and ZIP CODE-1

PHONE NUMBER-1

EMAIL ADDRESS-1

RESPONSE LETTER

May 8, 2019

NAME-1
TITLE-1
SELLER
ADDRESS-1
CITY-1, STATE-1, and ZIP CODE-1
EMAIL ADDRESS-1

Dear NAME-1:

This letter is in response to your request for a private letter ruling for SELLER (“Seller”), which “regularly sells new and used non-titled items to non-resident buyers.” You have asked the following question:

[May] an out-of-state buyer with multiple companies . . . hire his common carrier business to ship his purchase out of state in order to claim [the] interstate commerce tax exemption.

You also asked the following enumerated questions:

1. Can buyers who own multiple companies, including a common carrier, “hire” their common carrier business to transport purchases for one of their other businesses out of state and claim interstate commerce exemption or is the fact that both companies have the same owner qualify as the buyer taking possession in state?
2. If buyers . . . hire their common carrier business for exemption, is evidence of separate FEINs enough proof to confirm third party status or is there other proof that needs to be provided by the buyer?

This private letter ruling concludes the following. Under the Utah Code, the sale of tangible personal property can be sourced to a location outside of Utah, and thus not be subject to Utah sales and use taxes. The transaction you presented is sourced to a location outside of Utah, in accordance with Utah Code Ann. § 59-12-211(3). The transaction is not taxable under Utah Code Ann. § 59-12-103(1) because it is sourced to a location outside of Utah. Furthermore, since the transaction is not taxable under § 59-12-103(1), this private letter ruling does not apply the Commerce Clause found in the U.S. Constitution, art. I, § 8, cl. 3 to that transaction.

Moreover, since this private letter ruling does not apply the Commerce Clause, it likewise does not apply Utah Administrative Code R865-19S-44 to the transaction.^{1,2}

When § 59-12-211(3) applies, as it does for the transaction you presented, an out-of-state buyer can hire his common carrier business to ship his purchase out of state and have the transaction sourced to that out of state location. When § 59-12-211(3) applies, the common carrier, or “shipping company” as used in § 59-12-211(1)(a)(ii), must be a separate entity from the purchaser, but the common carrier or shipping company is not required to have a different owner than the purchaser. Separate Federal Employer Identification Numbers (“FEIN(s)”) can show that the purchaser and the common carrier or shipping company are separate entities. This private letter ruling further explains these conclusions in Section III. below.

I. Facts

You explained the following, in part, about the Seller and the sales transaction at issue.

[Seller] regularly sells [WORDS REMOVED] tangible personal property. . . .

. . . .

[Seller] regularly sells new and used non-titled items to non-resident buyers. Recently one buyer, PURCHASER, provided a Bill of Lading from his common carrier business, TRANSPORTER, as evidence of third party transportation to Montana in order to claim the interstate commerce sales tax exemption. When [the Seller] questioned the legitimacy of third party status of transporter, buyer provided individual Federal Employment Identification Numbers (FEINs) for each company as proof of separate legal status.

This private letter ruling will refer to the items sold as “Property”; will refer to PURCHASER as “Purchaser”; will refer to the bill of lading from TRANSPORTER as “Bill of Lading”; and will refer to TRANSPORTER as “Transporter.”

In response to follow-up questions, you provided an invoice showing the Seller sold the Property to the Purchaser on March 26, 2018, for \$\$\$\$ plus sales taxes. The Property on the

¹ R865-19S-44 covers “[s]ales made in interstate commerce.” The Utah Code contains no exemption in § 59-12-104 that specifically covers sales made in interstate commerce. R865-19S-44 does not provide an interpretation of specific language found in § 59-12-104. Instead, R865-19S-44 provides direction on the application of the U.S. Constitution’s Commerce Clause to Utah’s sales and use taxes.

For background, a prior version of § 59-12-104 contained an exemption that addressed sales made in interstate commerce. Subsection 59-12-104(12) (1987) exempted “sales or use of property which the state is prohibited from taxing under the Constitution or laws of the United States or under the laws of this state.” However, this provision was removed in the mid-1990’s. See page 10 of “Findings of Fact, Conclusions of Law, and Final Decision” for Appeal No. 05-0317, signed 01/11/2007, available online through the search field on the tax.utah.gov website.

² If a transaction is located in Utah in accordance with the sourcing statutes found in Utah Code Ann. § 59-12-211 through § 59-12-215 and the transaction is described in § 59-12-103(1) as being subject to Utah sales and use tax, that transaction can still be excluded from taxation based on the Commerce Clause of the U.S. Constitution and on R865-19S-44.

invoice includes a portable air compressor and two 20-ft. storage containers. The invoice lists the auction location as UTAH CITY and the Purchaser's contact name as NAME-2. The invoice calculates sales tax. The invoice also shows a wire transfer payment on March 30, 2018, of \$\$\$\$\$, which is the sales price, without sales tax. The invoice includes a note stating, "Bill of Lading Required." You explained that the purpose of "Bill of Lading Required" is to communicate between the Seller's auction site and Seller's office location that a purchaser is claiming an exemption. You explained that sales tax is calculated on all sales and is not removed until a purchaser provides sufficient paperwork showing that the purchaser qualifies for an exemption.

Along with the invoice, you also provided a copy of the Bill of Lading. The Bill of Lading shows the "from" location to be the Transporter's name. You explained that this is an error by the Transporter who prepared the Bill of Lading. The "from" location should be the auction site. You explained that you could probably get a corrected bill of lading showing the correct "from" location. The Bill of Lading shows the "to" location to be a Montana address for the Purchaser. The Bill of Lading lists the Property sold as one "sullair compressor" and two "20' storage containers," which information is consistent with the description of the Property on the invoice. The Bill of Lading includes a signature for an individual with the first name NAME-3 and a last name which is difficult to read. NAME-3 signed on behalf of the Transporter. The Bill of Lading does not have the date and time of pickup, the date and time of delivery, or a point of delivery acceptance signature. You explained that the pickup date and time can generally be found on the release ticket. You explained that the delivery acceptance signature and the date and time of delivery are generally not included on the copies of the bills of lading the Seller receives from its purchasers. You explained that the Seller generally receives bills of lading when the transporters pick up the property from the Seller for the purchasers, which is before the transporters' deliveries are completed. You explained that your primary concern with the Bill of Lading is that the Transporter does not appear to be an unrelated third party to the Purchaser.

In addition to the Bill of Lading, you provided a copy of the release ticket. The release ticket shows the Property sold and states, "Bill of Lading Required." The release ticket also shows the "Transportation" name as "[NAME REMOVED]," the driver's first name as NAME-4, the driver's license plate as being from Montana, and the pickup date as March 30, 2018. The driver's last name is difficult to read.

The driver's name for the release ticket, which is NAME-4, does not match the signer of the Bill of Lading, who was NAME-3. You explained that you think the Seller received the Bill of Lading after the Property was picked up.

In your request letter for this private letter ruling, you explained that you sought guidance from the Tax Commission but did not get definitive answers to your questions. You attached a copy of an email chain between you and the Taxpayer Services Division of the Tax Commission.

In the email chain, you explained the following:

Upon investigation [the Seller] discovered both companies[,] [Purchaser and Transporter,] are owned by the same person . . .

At a glance, it seems the only real difference between these companies is cosmetic and mostly applicable to IRS filing status, not necessarily as wholly separate businesses. So my concern is can [the Seller] accept this Bill of Lading as proof of interstate commerce exemption or since both companies are owned by the same person, does this equate into the buyer (or his agent) taking possession in state?

Also in the email chain, the Taxpayer Services Division provided, in part, the following guidance:

Administrative Rule R865-19S-44 outlines the exemption for interstate [c]ommerce . . .

And

If a purchaser physically picks up the product in [Utah] and arranges for the product to be shipped from [Utah] to another state, sales tax would be due.

In response to follow up questions, you sent a copy of a “Company Snapshot” document for the Transporter. Based on that document, the Transporter has a USDOT number. The Company Snapshot lists a physical address and a mailing address for the Transporter. The Transporter’s mailing address is the same as the Purchaser’s address on the invoice and as the Purchaser’s delivery address on the Bill of Lading. The Transporter’s physical address on the Company Snapshot differs from the Purchaser’s address on the invoice and Bill of Lading.

II. Applicable Law

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

A tax is imposed on the purchaser . . . on the purchase price or sales price for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

. . . .

Utah Code Ann. § 59-12-211 is a sourcing statute. It addresses when a sale is “made within the state” for purposes of § 59-12-103(1). It states the following, in part:³

- (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.
-
- (2) Except as provided in Subsections (8) and (14), if tangible personal property[] . . . that is subject to taxation under this chapter is received by a purchaser at a business location of a seller, the location of the transaction is the business location of the seller.
- (3) Subject to Subsection (10), and except as provided in Subsections (7), (8), (9), (11), and (14), if tangible personal property[] . . . that is subject to taxation under this chapter 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:
 - (a) amounts charged by a seller for:
 -
 - (ii) the retail sale or transfer of:
 - (A) a motor vehicle other than a motor vehicle that is transportation equipment;
 - (B) an aircraft other than an aircraft that is transportation equipment;
 - (C) a watercraft;
 - (D) a modular home;
 - (E) a manufactured home; or
 - (F) a mobile home; . . .
-

The term “shipping company” is used in § 59-12-211(1)(a)(ii) to define “receipt” and “receive.” Utah Code Ann. § 59-12-102 and other areas of the Utah Code do not define “shipping company.”

³ Subsections (7)-(11) do not apply to the situation presented in this private letter ruling. The subjects of Subsections (7)-(11) are described in the sentences that follow. Subsection (7) concerns a shared ZIP Code, local taxing jurisdictions, and lowest agreement combined tax rate. Subsection (8) concerns a direct payment permit. Subsection (9) concerns direct mail. Subsection (10) concerns determining the local taxing jurisdiction based on ZIP Codes. Subsection (11) concerns a florist delivery transaction.

III. Analysis

As explained previously in this private letter ruling, you have asked about whether Utah sales and use taxes apply to a particular sale of Property by the Seller to the Purchaser when, in conjunction with that sale, the Purchaser hires a related Transporter to ship the Property from the Seller's location to the Purchaser's out of state location.

This private letter ruling concludes that the sale presented is not subject to Utah sales and use taxes because it is sourced to a location outside of Utah, in accordance with § 59-12-211(3). The Transporter and Purchaser are separate companies. The Transporter is a shipping company. The fact that the Transporter and Purchaser are related does not change these conclusions. The analysis supporting these conclusions is below.

This Analysis Section includes the following subsections:

- The sales transaction you presented is not subject to Utah sales and use taxes because the transaction is located outside of Utah, in accordance with § 59-12-211(3).
- The related party status of the Transporter does not change the conclusion that the transaction is sourced out of the state, in accordance with § 59-12-211(3).

A. The sales transaction you presented is not subject to Utah sales and use taxes because the transaction is located outside of Utah, in accordance with § 59-12-211(3).

Subsection 59-12-103(1)(a) imposes Utah sales and use taxes on “retail sales of tangible personal property made within the state.” For the transaction at issue, the Property the Seller sold to the Purchaser was tangible personal property. Thus, that transaction would be subject to Utah sales and use taxes **if** that sale were “made within the state”

Section 59-12-211 is a sourcing statute that addresses when a sale is made within the state. According to § 59-12-211(14), § 59-12-211 does **not** apply to the retail sales of the following:

- (A) a motor vehicle other than a motor vehicle that is transportation equipment;
- (B) an aircraft other than an aircraft that is transportation equipment;
- (C) a watercraft;
- (D) a modular home;
- (E) a manufactured home; or
- (F) a mobile home; . . .

§ 59-12-211(14)(a)(ii).

The Property sold includes an air compressor and two storage containers. Thus, the Property is not among the items listed in § 59-12-211(14)(a)(ii). Therefore, the transaction is sourced under § 59-12-211.

Section 59-12-211 sources a transaction based on where a purchaser takes receipt of the tangible personal property. Under § 59-12-211(2), if a purchaser **receives** tangible personal property “at a business location of a seller, the location of the transaction is the business location of the seller.” Thus, if the Purchaser had received the Property at the Seller’s location, the sale would have been “made within the state” for purposes of § 59-12-103(1)(a) and would be subject to Utah sales and use taxes under § 59-12-103(1)(a).

Under § 59-12-211(3), if a purchaser **does not receive** the tangible personal property “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 . . .” Thus, if the Purchaser did not receive the Property at the Seller’s location, then the sale was made where the Purchaser took receipt of the Property. If the place where the Purchaser took receipt was outside of Utah, the sale would **not** be subject to Utah sales and use taxes.

Subsection 59-12-211(1)(a) defines “receipt” and “receive” as including “taking possession of tangible personal property” and “not includ[ing] possession by a shipping company on behalf of a purchaser.” The Utah Code does **not** define “shipping company.” Thus, whether the Purchaser took receipt of the Property at the Seller’s location depends on whether the Transporter was a “shipping company.”

Dictionaries provide ordinary, usual, and accepted meanings of words. Webster’s New Universal Unabridged Dictionary (1st ed. 2003), does not include a definition for “shipping company.” However, Webster’s New Universal Unabridged Dictionary includes definitions for “ship” (verb), “shipment,” “shipper,” and “shipping.” *Id.* at 1766. Definition 8 of “ship” means “to send or transport by ship, rail, truck, plane, etc.” Definition 1 of “shipment” means “an act or instance of shipping freight or cargo.” “Shipper” means “a person who ships goods or makes shipments,” Definition 1 of “shipping” means “the act or business of a person or thing that ships.” Based on the above definitions, an ordinary meaning of “shipping company” would include a company whose primary business is shipping freight or cargo for customers.

Online dictionaries include definitions for “shipping company.” The Collins English Dictionary defines “shipping company in British” as “a company that transports of [sic] shipments of goods (by ship or other means of transport).” See <https://www.collinsdictionary.com/us/dictionary/english/shipping-company>. The Cambridge English Dictionary includes the following definition for “shipping” when used in the context of “commerce” and “transport”: “the process or business of sending or transporting goods: . . . *He runs a big shipping company.*” See <https://dictionary.cambridge.org/dictionary/english/shipping>. The Free Dictionary defines “shipping company” as “a company that provides shipping services.” See <https://www.thefreedictionary.com/shipping+company>. Similar to the definitions of Webster’s New Universal Unabridged Dictionary, the online definitions discussed above also

show “shipping company” would include a company whose primary business is shipping goods for customers.

Based on the facts provided, the Transporter appears to be a shipping company. You have described the Transporter as being a “common carrier business.”⁴ The Transporter has a USDOT Number. The Transporter issued the Bill of Lading. The Transporter has a different FEIN than the Purchaser. The individuals signing on behalf of the Transporter differ from the contact name for the Purchaser on the invoice. While the mailing address of the Transporter and the Purchaser are the same, the physical address of the Transporter is different. You have not presented facts showing the Transporter is not a shipping company. This private letter ruling concludes the Transporter is a shipping company.⁵

As stated previously in this private letter ruling, under § 59-12-211(2) if a purchaser **receives** the tangible personal property “at a business location of a seller, the location of the transaction is the business location of the seller.” Under § 59-12-211(1)(a), “receive” does “not include possession by a shipping company on behalf of a purchaser.” For your transaction, the

⁴ “Common carrier” is defined in Utah Code Ann. § 59-12-102(24) as follows:

- (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.
- (b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.
- (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.
- (c) "Common carrier" does not include a person that provides transportation network services, as defined in Section 13-51-102.

The definition of common carrier is consistent with, but not necessarily identical to, the dictionary definitions discussed for “shipping company.”

The Transporter appears to be a “common carrier” because the Transporter seems to be “a person engaged in or transacting the business of transporting . . . freight, merchandise, or other property for hire within this state.” *See* § 59-12-102(24)(a).

Utah Administrative Code R865-19S-44 C. uses the term “common carrier” as follows:

Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

This private letter ruling does not definitively determine whether Transporter meets the definition of “common carrier” because R865-19S-44 C. does not apply to the transaction. As explained previously in this private letter ruling, R865-19S-44 C. does not apply because the transaction is not taxable under § 59 12-103(1), so this private letter ruling does not analyze either the U.S. Commerce Clause or R865-19S-44 C. to determine whether the transaction must be excluded from taxation based on federal law.

⁵ As explained in Section IV. Conclusion, should the facts be different, a different conclusion may be warranted.

Purchaser did not receive the Property at the Seller’s Utah location because the Transporter, a shipping company, took possession of the Property at that location on behalf of the Purchaser.

As stated previously in this private letter ruling, under § 59-12-211(3) if a purchaser **does not receive** the tangible personal property “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 . . .” For your transaction, the Purchaser took receipt of the Property at the location the Purchaser received the Property from the Transporter. Based on the Bill of Lading, this location was in Montana. This private letter ruling concludes that the location of the transaction was in Montana, based on the facts presented.

As stated previously in this private letter ruling, § 59-12-103(1)(a) imposes Utah sales and use taxes on “retail sales of tangible personal property **made within the state**” (emphasis added). Because the location of the transaction is in Montana, the transaction does not meet § 59-12-103(1)(a). Thus, the transaction is not subject to Utah sales and use taxes.

B. The related party status of the Transporter does not change the conclusion that the transaction is sourced out of the state, in accordance with § 59-12-211(3).

You explained that you primarily question the legitimacy of the third party status of the Transporter. However, no language in § 59-12-211(1)(a), which defines “receipt,” requires the shipping company to be an unrelated third party. Furthermore, as explained previously in this private letter ruling, interpreting “shipping company” to include related third parties is consistent with the ordinary, usual, and accepted meaning of “shipping company.” The ordinary meaning of “shipping company” does not preclude that entity from being related to a purchasing entity. Moreover, as explained below, § 59-12-211(1)(a) can be reasonably applied **without** requiring the “shipping company” to be an unrelated third party.

The fact that § 59-12-211(1)(a) can be reasonably applied **without** requiring the “shipping company” to be an unrelated third party is shown by analyzing Washington’s sourcing statutes and rules. The State of Washington has sourcing statutes similar to Utah’s.⁶

⁶ The following paragraphs explain how Washington’s sourcing statutes are similar to Utah’s sourcing statutes.

Both Utah’s and Washington’s statutes follow the Streamlined Sales and Use Tax Agreement (“SSUTA”) of the Streamlined Sales Tax Governing Board, Inc. A copy of the SSUTA is available through the “Library” section of the website of the Streamlined Sales Tax Governing Board, Inc., located at <https://www.streamlinedsalestax.org>. Furthermore, both Utah and Washington are Full Member States for purposes of the SSUTA. See the “State Information” under the “About Us” tab of the website of the Streamlined Sales Tax Governing Board, Inc., located at <https://www.streamlinedsalestax.org> (explaining the meaning of “a Streamlined Full Member State”).

Washington’s code has language similar to the Utah Code for the sourcing of transactions. Revised Code of Washington § 82.32.730(1)(a) states the following in part:

When tangible personal property . . . defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

Revised Code of Washington § 82.32.730(1)(b) states the following in part:

Washington has interpreted “shipping company” to **include** a company affiliated with a purchaser.⁷ Thus, a sourcing statute very similar to Utah Code Ann. § 59-12-211 has been reasonably applied without requiring the “shipping company” to be an unrelated third party. No facts suggest Utah’s sourcing statute cannot be reasonably applied in a similar way.

When the tangible personal property . . . defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

Revised Code of Washington § 82.32.730(9)(f) defines “receive” and “receipt” as follows, in part:

"Receive" and "receipt" mean taking possession of tangible personal property . . . "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

⁷ The following paragraphs explain how Washington has interpreted “shipping company” to include a company affiliated with a purchaser.

Unlike Utah, Washington has enacted a definition of “shipping company.” This definition is found in Washington Administrative Code (“WAC”) § 458-20-193(202)(b)(ii), which states the following:

A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

Washington has provided the following examples in WAC § 458-20-193(203)(a):

Example 3. An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

Example 4. The same **purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser)** to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, **the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location** and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O tax or retail sales tax.

(Emphasis added.)

In Example 4 quoted above, Washington interprets “shipping company” to include “a wholly owned affiliated shipping company (a legal entity separate from the purchaser).” In Example 4, although the shipping company is related to the purchaser, the transaction is still sourced to the out of state location where the purchaser receives the goods from the shipping company. The transaction is not sourced to the location the shipping company picks up the goods.

IV. Conclusion

This private letter ruling concludes that the sale presented is not subject to Utah sales and use taxes because it is sourced to a location outside of Utah, in accordance with § 59-12-211(3). Transporter and Purchaser are separate entities. The fact that they are related does not change this private letter ruling's conclusion about the taxability of that transaction.

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,

Lawrence C. Walters
Commissioner

LCW/aln
18-003