

FINAL PRIVATE LETTER RULING

REQUEST LETTER

18-004

June 21, 2018

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

RE: Letter of Request for Private Letter Ruling / COMPANY)

Dear Commissioners:

In accord with the provisions of Utah Admin. Code R861-1A-34 (2005), please accept this letter and the accompanying submission as our Request for a Private Letter Ruling on the questions set forth herein, submitted to the Commission on behalf of COMPANY (hereinafter, "COMPANY"). Because time is a factor for COMPANY in the transactions underlying these questions, we respectfully request that the Commission expedite its Private Letter Ruling to the greatest reasonable extent.

We sincerely appreciate your consideration of this Request. If you require any further information, or if you have any questions regarding the contents of this Request, please do not hesitate to contact me directly at your earliest convenience using the contact information provided below.

Best regards,

NAME-1

NAME TITLE

Office Direct: PHONE NUMBER

Email: ADDRESS

Enclosure - *Request for Private Letter Ruling*

I. Facts

A. Operational Background of COMPANY

COMPANY (“COMPANY”) is a national retail seller of used motor vehicles. COMPANY was founded in YEAR, and is headquartered in CITY-1, STATE-1. COMPANY currently maintains over ##### employees across ##### local markets in ##### states.

COMPANY makes vehicle sales via its online eCommerce platform,¹ where prospective customers can perform research to identify a vehicle of interest, visually inspect that vehicle using COMPANY’s proprietary vehicle imaging technology, obtain financing and warranty coverage, purchase the vehicle, and schedule a time and location for delivery or pick-up of the vehicle.

COMPANY holds its vehicle inventory at various TYPE-1 facilities across the U.S., all of which are licensed dealerships. Currently, none of these facilities are located in Utah.

When purchasing a vehicle, customers complete certain vehicle pre-purchase steps online. The customer then receives the car in one of the following manners:

- 1. *Delivery.*** If the customer’s delivery location is within ##### miles of a COMPANY logistics facility, then the delivery is typically made with a COMPANY-owned truck operated by COMPANY employees. Deliveries outside the ##### mile radius are typically made through an insured third-party common carrier.
- 2. *Pick-up at COMPANY’S TYPE-2 FACILITY.*** Alternatively, a customer can travel to one of COMPANY’s TYPE-2 facilities to pick up the vehicle, which provides an entertaining purchase experience for the customer.

Upon delivery or pick-up of the vehicle, the customer will sign all necessary title and registration documents to complete the title and registration process. Typically, all other aspects of the sale, including signing purchase agreements, are completed online by the customer prior to the delivery or pick-up of the vehicle.

B. Planned Utah Facility and CITY-2 Discussions

COMPANY currently has no physical locations in Utah. COMPANY would now like to construct a new TYPE-2 facility in CITY-2, Utah to facilitate vehicle sales to Utah resident customers. COMPANY identified a desired facility site within CITY-2, and in the course of preliminary planning discussions with CITY-2 authorities, the CITY-2 Attorney raised questions

¹ CORPORATION eCommerce platform is located at WEB ADDRESS.

regarding the application and operation of Utah tax laws with regard to COMPANY's proposed TYPE-2 facility and operations. In the course of addressing these questions raised by CITY-2, COMPANY was asked to seek formal guidance from the Utah State Tax Commission ("USTC") in the form of a Private Letter Ruling, which provided the impetus for this request. Based on discussions with Motor Vehicle Enforcement Division, it is our understanding that the TYPE-2 facility will be granted a Utah dealer's license.

II. Questions Presented

We respectfully request that the USTC provide its written Private Letter Ruling in response to the questions set forth below.

Given that COMPANY's planned sales of vehicles to Utah customers will originate online, and because the subject vehicles will routinely come from COMPANY locations in other states, CITY-2 has raised the following issues:

- Question 1.** Once COMPANY receives a Utah dealer license for its TYPE-2 facility, will all vehicles sold to Utah customers be sourced to the CITY-2 facility for purposes of the Utah sales tax on vehicle sales; including sales of vehicles originating from out-of-state and delivered directly to the Utah customer?
- Question 2.** For each taxable sale of a vehicle sourced to the proposed CITY-2 facility, what percentage of the sales taxes collected on each sale would CITY-2 ultimately receive, and at what intervals?

III. Analysis

A. Questions 1

We believe that all vehicles sold to Utah customers would be sourced to the CITY-2 licensed dealer TYPE-2 facility for vehicle sales and use tax purposes. Utah Code § 59-12-213 provides the following regarding the location of a transaction involving the sale of a motor vehicle:

- (1)(a) Except as provided in Subsection (1)(b) or (4), the location of a sale of the following tangible personal property is determined as provided in this section:

...

- (v) a motor vehicle;

...

- (2) If an item of tangible personal property described in Subsection (1)(a) is sold by a dealer of that tangible personal property, the location of the sale of that tangible personal property is the business location of the dealer.

While the statutory language above does not leave much unanswered, we are unclear on which elements, if any, of the vehicle sales must physically occur at the proposed CITY-2 TYPE-2 facility to establish that facility as the “business location of the dealer” under subsection (2) of the above statute. Given the language of the statute, we believe that, after COMPANY has established a physical location and obtained a Motor Vehicle Dealer License, all COMPANY sales to Utah customers would be sourced to the CITY-2 TYPE-2 location, including those sales to Utah customers that originate outside of the State of Utah and are delivered directly to the customer (rather than picked up at the TYPE-2 FACILITY). We respectfully request that the USTC’s Private Letter Ruling contain guidance on this point.

B. Question 2

For question 2 above, we were unable to ascertain the appropriate answer from the contents of Utah Code, Title 41 (Motor Vehicles) or Title 59 (Revenue and Taxation). In the attached *Exhibit B*, we provide the text from our preliminary discussions over email with NAME-2² of the USTC’s Technical Research Unit, in the hope that this will enable the USTC to more fully answer Question 3 in its Private Letter Ruling.

² NAME-2 was also instrumental in helping us to clarify the issues and the scope of the first two questions presented, and we are grateful for her prompt and professional assistance.

RESPONSE LETTER
PRIVATE LETTER RULING 18-004

October 30, 2018

NAME-1
NAME TITLE
ADDRESS
CITY, STATE ZIP CODE

Dear NAME-1:

This letter is in response to your request for a private letter ruling for COMPANY("Company"). You have asked where certain proposed sales by the Company of used motor vehicles would be sourced for purposes of the Utah Sales and Use Tax Act.¹ This private letter ruling concludes that the Company's proposed Utah sales both at the proposed Utah facility and at the customers' Utah locations would be sourced to the Company's Utah facility for Utah sales and use tax purposes.

In addition to sourcing for sales tax purposes, this private letter ruling also addresses the applicability of the Utah Motor Vehicle Business Regulation Act to your proposed transactions. This private letter ruling concludes that some of the Company's proposed sales appear to violate § 41-3-210(1)(n). These proposed sales would occur when the Company delivers used motor vehicles to customers at the customers' Utah locations, and upon delivery, the customers sign all necessary title and registration documents to complete the title and registration processes. These sales would occur at the customers' Utah locations, which are not licensed places of business of the Company.

However, the Company could adjust how the Company makes these proposed sales so that these sales do not violate § 41-3-210(1)(n). Instead of the customers signing all necessary title and registration documents *upon delivery*, the customers could sign those documents at the Company's Utah facility, which is a licensed place of business of the Company. If a customer does not sign at the Company's Utah facility and the Company's computer servers for online sales are located outside of Utah and the used motor vehicle is located outside of Utah before delivery, then the customer and the Company could complete the sale outside of Utah by signing *all* necessary documents online before the delivery of the vehicle to the customer's Utah location. Under this scenario, the sale of the vehicle would occur outside of Utah for purposes of the Utah Motor Vehicle Business Regulation Act. However, the sale of the vehicle would still be subject to Utah

¹ You also asked, "What percentage of the sales taxes collected on each sale would [the city of the proposed Utah facility] ultimately receive, and at what intervals?" The city attorney, who raised the question, may contact NAME-3 at ##### for answers to those questions.

sales and use taxes and would be sourced to the Company's Utah facility for purposes of the Utah Sales and Use Tax Act.

This private letter ruling does not address the Company's possible current sales to Utah customers.

I. Facts

In your request letter, you stated the facts as follows:

I. Facts

A. Operational Background of [the Company]

[The Company] is a national retail seller of used motor vehicles. [The Company] . . . is headquartered in [a state other than Utah]. [The Company] currently maintains over . . . employees across [many] local markets in [multiple] states.

[The Company] makes vehicle sales via its online eCommerce platform,¹ where prospective customers can perform research to identify a vehicle of interest, visually inspect that vehicle using [the Company]'s proprietary vehicle imaging technology, obtain financing and warranty coverage, purchase the vehicle, and schedule a time and location for delivery or pick-up of the vehicle.

[The Company] holds its vehicle inventory at various inspection and reconditioning . . . facilities across the U.S., all of which are licensed dealerships. Currently, none of these facilities are located in Utah.

When purchasing a vehicle, customers complete certain vehicle pre-purchase steps online. The customer then receives the car in one of the following manners:

1. ***Delivery.*** If the customer's delivery location is within ##### miles of a [Company] logistics facility, then the delivery is typically made with a [Company]-owned truck operated by [Company] employees. Deliveries outside the ##### mile radius are typically made through an insured third-party common carrier.
2. ***Pick-up at [the COMPANY'S] TYPE-2 FACILITY.*** Alternatively, a customer can travel to one of [the Company]'s TYPE-2 facilities to pick up the vehicle, which provides an entertaining purchase experience for the customer.

Upon delivery or pick-up of the vehicle, the customer will sign all necessary title and registration documents to complete the title and registration process. Typically,

all other aspects of the sale, including signing purchase agreements, are completed online by the customer prior to the delivery or pick-up of the vehicle.

B. Planned Utah Facility and CITY-2 Discussions

[The Company] currently has no physical locations in Utah. [The Company] would now like to construct a new TYPE-2 facility in CITY-2, Utah to facilitate vehicle sales to Utah resident customers. [The Company] identified a desired facility site within CITY-2, and in the course of preliminary planning discussions with CITY-2 authorities, the CITY-2 Attorney raised questions regarding the application and operation of Utah tax laws with regard to [the Company]’s proposed TYPE-2 facility and operations. In the course of addressing these questions raised by CITY-2, [the Company] was asked to seek formal guidance from the Utah State Tax Commission (“USTC”) in the form of a Private Letter Ruling, which provided the impetus for this request. Based on discussions with Motor Vehicle Enforcement Division, it is our understanding that the TYPE-2 facility will be granted a Utah dealer’s license.

¹ [The Company]’s eCommerce platform is located at [www.\[Company\].com](http://www.[Company].com).

In Exhibit A of the Company’s private letter ruling request, the Company provided a picture of a TYPE-2 facility currently operating in another state. You explained in your private letter ruling request letter that this picture is a representation of the planned Utah facility. In the picture, the Company’s facility appears to include a uniquely styled building with the Company’s name prominently displayed. This building appears to hold at least eighteen cars. Additionally, the building appears to be large enough to accommodate an office and to provide a safe place for the Company’s books and records. Based on the picture, the building might have public parking adjacent to one side of the building.

After you submitted your letter requesting a private letter ruling, you also clarified through a phone call that the Company does not have franchisees.

II. Applicable Law

This Applicable Law section includes selected Utah code sections for the Motor Vehicle Business Regulations Act and for the Sales and Use Tax Act.

A. Applicable Law for the Motor Vehicle Business Regulation Act

Utah Code Annotated § 41-3-102 defines multiple terms that are used throughout the Motor Vehicle Business Regulation Act. Section 41-3-102 includes the following definitions, in part:

(1) "Administrator" means the motor vehicle enforcement administrator.

....

- (9) (a) "Dealer" means a person:
 - (i) whose business in whole or in part involves selling new, used, or new and used motor vehicles or off-highway vehicles; and
 - (ii) who sells, displays for sale, or offers for sale or exchange three or more new or used motor vehicles or off-highway vehicles in any 12-month period.
- (b) "Dealer" includes a representative or consignee of any dealer.

....

- (29) "Principal place of business" means a site or location in this state:
 - (a) devoted exclusively to the business for which the dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop is licensed, and businesses incidental to them;
 - (b) sufficiently bounded by fence, chain, posts, or otherwise marked to definitely indicate the boundary and to admit a definite description with space adequate to permit the display of three or more new, or new and used, or used motor vehicles and sufficient parking for the public; and
 - (c) that includes a permanent enclosed building or structure large enough to accommodate the office of the establishment and to provide a safe place to keep the books and other records of the business, at which the principal portion of the business is conducted and the books and records kept and maintained.

....

The above definition of "dealer" includes the term "person." Utah Code Annotated § 68-3-12.5(17) broadly defines "person" to include "a limited liability company," along with individuals and other organizations. The above definition of "dealer" also includes the term "used motor vehicles." Utah Code Annotated § 41-3-102(24) defines "motor vehicle," and Utah Code Annotated § 41-3-102(40) defines "used motor vehicle." For this private letter ruling, the Company is clearly a dealer selling used motor vehicles.

Utah Code Annotated § 41-3-201(2) requires a person to have a dealer license to sell used motor vehicles in Utah, with § 41-3-201(2) stating the following in part:

A person may not act as any of the following without having procured a license issued by the administrator:

- (a) a dealer;

....

For purposes of § 41-3-201(2), the "administrator" is the motor vehicle enforcement administrator. See § 41-3-102(1).

Utah Code Annotated § 41-3-105 addresses applications for licenses. Subsection 41-3-105(4)(c)(iv) requires an applicant to list the applicant’s principal place of business and any other places of business, with § 41-3-105(4)(c)(iv) stating the following in part:

- (c) Each application for a license shall contain:
 -
 - (iv) a complete description of the principal place of business, including:
 - (A) the municipality, with the street and number, if any;
 - (B) if located outside of any municipality, a general description so that the location can be determined; and
 - (C) any other places of business operated and maintained by the applicant in conjunction with the principal place of business . . .

Under Utah Code Annotated § 41-3-204, a dealer is required to “maintain a principal place of business,” with § 41-3-204 stating the following, in part:

- (1) (a) The following licensees must maintain a principal place of business:
 - (i) dealers . . .
 -
 - (b) The administrator may not issue a license under Subsection (1)(a) to an applicant who does not have a principal place of business.
 - (c) If a licensee changes the location of the licensee's principal place of business, the licensee shall immediately notify the administrator and the administrator shall issue a new license for the unexpired portion of the term of the original license at no additional fee.
 -
- (2) (a) If a licensee loses possession of a principal place of business, the license is automatically suspended and he shall immediately notify the administrator and upon demand by the administrator deliver the license, pocket cards, special plates, and temporary permits to the administrator.
 - (b) The administrator shall hold the licenses, cards, plates, and permits until the licensee obtains:
 - (i) a principal place of business . . .
 -

Utah Code Annotated § 41-3-201(8) requires a dealer to have a supplemental license for “each additional place of business,” with § 41-3-201(8) stating the following in part:

A dealer . . . shall obtain a supplemental license, in accordance with Section 41-3-201.7 for each additional place of business maintained by the licensee.

Utah Code Annotated § 41-3-201.7, which is referenced in the quotation above, provides the requirements for the issuance of supplemental licenses for “a permanent additional place of business” and for “a temporary additional place of business.”

Under Utah Code Annotated § 41-3-202(2), a licensee with a used motor vehicle dealer's license may sell used motor vehicles, with § 41-3-202(2)(a) stating the following:

A used motor vehicle dealer's license permits the licensee to:

- (a) offer for sale, sell, or exchange used motor vehicles . . .

Utah Code Annotated § 41-3-210(1) prohibits licensees from taking certain actions. These prohibited actions include selling motor vehicles from a location other than “the principal place of business or additional places of business licensed under this chapter.” Section 41-3-210(1)(n) states the following:

- (1) The holder of any license issued under this chapter may not:

. . . .

- (n) sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations . . .

B. Applicable Law for the Sales and Use Tax Act

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

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

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

. . . .

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

. . . .

Utah Code Annotated § 59-12-102 defines multiple terms that are used in § 59-12-103(1), quoted above, including “purchase price” and “sales price,” “purchaser,” “retail sale,” “sale,” “storage,” “tangible personal property,” and “use.” The definition of “purchase price” and “sales price” is provided below. The definitions of the other terms are not quoted in this private letter ruling.

Section 59-12-102 provides definitions that apply to the Sales and Use Tax Act, with § 59-12-102 stating the following, in part:

(85) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

....

(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;

....

....

(c) "Purchase price" and "sales price" do not include:

- (i)
 - (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later, as demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:
 - (A) the following from credit extended on the sale of tangible personal property or services:
 - (I) a carrying charge;
 - (II) a financing charge; or
 - (III) an interest charge;
 - (B) a delivery charge;
-
- (D) a manufacturer rebate on a motor vehicle; or
 - (E) a tax or fee legally imposed directly on the consumer.

....

(138)(a) Subject to Subsection (138)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

....

- (ii) a vehicle as defined in Section 41-1a-102;

....

(139) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection (138).

For purposes of the definition of "vehicle" found in § 59-12-102(138), Utah Code Annotated § 41-1a-102(70) defines "vehicle" to "include[] a motor vehicle," and Utah Code Annotated

§ 41-1a-102(32) defines “motor vehicle.” The Company clearly meets the definition of “vehicle dealer” found in § 59-12-102(139); the Company is “a person engaged in the business of buying, selling, or exchanging a vehicle as defined in [§ 59-12-102(138)].”

Utah Code Annotated § 59-12-211 provides the sourcing for many taxable transactions, but § 59-12-211 does not apply to retail sales of motor vehicles that are not transportation equipment, with § 59-12-211 stating in part the following:

- (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 . . .
 -

Utah Code Annotated § 59-12-213 provides the sourcing for retail sales of motor vehicles that are not transportation equipment, with § 59-12-213 stating in part the following:

- (1) (a) Except as provided in Subsection (1)(b) or (4), the location of a sale of the following tangible personal property is determined as provided in this section:
 -
 - (v) a motor vehicle;
- (b) The location of the sale of tangible personal property described in Subsection (1)(a) is determined in accordance with Sections 59-12-211 and 59-12-212 if the tangible personal property described in Subsection (1)(a) is transportation equipment as defined in Section 59-12-211.
- (2) If an item of tangible personal property described in Subsection (1)(a) is sold by a dealer of that tangible personal property, the location of the sale of that tangible personal property is the business location of the dealer.
 -
- (4) This section does not apply to the lease or rental of tangible personal property described in Subsection (1)(a).

For purposes of § 59-12-213, § 59-12-102, quoted previously, defines “vehicle” and “vehicle dealer.”

Utah Code Annotated § 59-12-107(2)(a)(i) requires certain sellers to “pay or collect and remit [Utah] sales and use taxes,” stating the following in part:

Except as provided in Subsection (2)(e), Section 59-12-107.1, or Section 59-12-123, and subject to Subsection (2)(f), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:

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

Utah Administrative Code R865-19S-44 addresses sales involving in interstate commerce, with R865-19S-44 D. stating the following:

If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

III. Analysis

This private letter ruling addresses only the prospective Utah sales you presented. It does not address the Company’s possible current sales to Utah customers.

This Analysis section analyzes how the Motor Vehicle Business Regulation Act found in Utah Code, Title 41, Chapter 3, applies to the Company’s proposed Utah sales. This private letter ruling concludes that some of the Company’s proposed sales appear to violate § 41-3-210(1)(n). These proposed sales will occur when the Company delivers motor vehicles to customers at Utah locations, and upon delivery, the customers sign all necessary title and registration documents to complete the title and registration processes. These sales would occur at the customers’ Utah locations, which are not licensed places of business of the Company.

However, the Company could adjust how the Company makes these proposed sales so that these sales do not violate § 41-3-210(1)(n). Instead of the customers signing all necessary title and registration documents *upon delivery*, the customers could sign those documents at the Company’s Utah facility, which is a licensed place of business of the Company. If a customer does not sign at the Company’s Utah facility and the Company’s computer servers for online sales are located outside of Utah and the used motor vehicle is located outside of Utah before delivery, then the customer and the Company could complete the sale outside of Utah by signing *all* necessary documents online before the delivery of the vehicle to the customer’s Utah location. Under this

scenario, the sale of the vehicle would occur outside of Utah for purposes of the Utah Motor Vehicle Business Regulation Act.

Additionally, this Analysis section also analyzes where the Company's proposed Utah sales will be sourced under § 59-12-213(2) for Utah sales and use tax purposes. This private letter ruling concludes that the Company's proposed Utah sales would be sourced to the Company's proposed Utah facility. This conclusion matches your conclusion that "after [the Company] has established a physical location and obtained a Motor Vehicle Dealer License, all [Company] sales to Utah customers would be sourced to the [Utah facility] location, including those sales to Utah customers that originate outside of the State of Utah and are delivered directly to the customer (rather than picked up at the [Utah facility])."

This Analysis section includes the following subsections:

- A. Application of the Motor Vehicle Business Regulation Act to the Company's proposed Utah sales.
 - B. Application of the Sales and Use Tax Act to the Company's proposed Utah sales.
- A. Application of the Motor Vehicle Business Regulation Act to the Company's proposed Utah sales.**

The Company is a "dealer," as defined in § 41-3-102(9). Thus, under § 41-3-201(2) the Company must have "a license issued by the [motor vehicle enforcement] administrator" to act as "a dealer" in Utah. The Company has explained that the Company will obtain that license.

Under § 41-3-105(4)(c)(iv), § 41-3-204(1)(b), and § 41-3-204(2), the Company must have a principal place of business to have a dealer license, with that place meeting the definition of "principal place of business" found in § 41-3-102(29). Section § 41-3-102(29) defines "principal place of business" as follows, in part:

"Principal place of business" means a site or location in this state:

- (a) devoted exclusively to the business for which the dealer . . . is licensed, and businesses incidental to them;
- (b) sufficiently bounded by fence, chain, posts, or otherwise marked to definitely indicate the boundary and to admit a definite description with space adequate to permit the display of three or more new, or new and used, or used motor vehicles and sufficient parking for the public; and
- (c) that includes a permanent enclosed building or structure large enough to accommodate the office of the establishment and to provide a safe place to keep the books and other records of the business, at which the principal portion of the business is conducted and the books and records kept and maintained.

The Company has explained that the Company's principal place of business will be the Utah facility that the Company plans to build in CITY 2, Utah. The Company provided Exhibit A as a representation of that planned Utah facility. Based on that exhibit, the planned Utah facility appears capable of meeting all of the requirements of § 41-3-102(29), as discussed below. The future use of the planned Utah facility seems to be exclusively for the sale of used cars, as required by § 41-3-102(29)(a). The planned Utah facility will have adequate space to display three or more cars, as required by § 41-3-102(29)(b). The Company appears to be able to sufficiently mark the boundary of the planned Utah facility and to include sufficient parking for the public, as required by § 41-3-102(29)(b). The planned Utah facility will include a permanent building that appears to be large enough for an office and for the keeping of the Company's books and records, as required by § 41-3-102(29)(c). The Company seems to be capable of both conducting a principal portion of its business at its planned Utah facility and of keeping its books and records at that facility, as required by § 41-3-102(29)(c).

Once the Company obtains a used motor vehicle dealer's license, under § 41-3-202(2)(a) the Company may "offer for sale, sell, or exchange used motor vehicles."² The Company plans to take these actions in Utah.

Subsection 41-3-210(1) of the Utah Code Annotated places a number of restrictions on the Company's use of its Utah dealer's license. Under § 41-3-210(1)(n), the Company may not do the following:

sell . . . motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers . . . from selling . . . from . . . unlicensed locations . . .

Subsection (1)(n) should be considered when analyzing the Company's planned Utah sales.

The Company plans to transfer the motor vehicles to its Utah customers through two alternative ways, each of which are analyzed separately, below.

Under the first way, the customer travels to the Company's Utah facility, picks up the motor vehicle, and signs all necessary title and registration documents to complete the title and registration process. Under this first scenario, the Company sells that motor vehicle at the Company's principal place of business, as allowed by § 41-3-210(1)(n).

Under the second way, the Company delivers the motor vehicle to the customer in Utah, and upon delivery, the customer signs all necessary title and registration documents to complete the title and registration process. Under this second scenario, the Company does not sell the motor vehicle at the Company's principal place of business or additional place of business. Instead, the Company sells the motor vehicle at the Utah delivery location, which is a place other than a

² Consistent with § 41-3-202(2)(a), Utah Code Annotated § 41-1a-705(2) states the following in part:

- (a) A person may not sell, offer for sale, or display for sale or exchange any vehicle, vessel, or outboard motor unless the person is:
 - (i) a person licensed under Chapter 3, Motor Vehicle Business Regulation Act;
 -

licensed place of business of the Company. Under this second scenario, the Company appears to violate § 41-3-210(1)(n) for these proposed Utah sales.

However, the Company could adjust how the Company makes these proposed sales so that they do not violate § 41-3-210(1)(n). Instead of the customers signing all necessary title and registration documents *upon delivery*, the customers could sign those documents at the Company's Utah facility. By changing the location for the completion of the title and registration documents, the Company would also be changing the locations of the sales from unlicensed locations to a licensed place of business of the Company. If a customer does not sign the title and registration documents at the Company's Utah facility, the Company might be able to structure the transaction to occur outside of Utah. A sale occurring outside of Utah does not violate § 41-3-210(1)(n). To structure the transaction to occur outside of Utah, the Company's computer servers for online sales must be located outside of Utah, the used motor vehicle must be located outside of Utah before delivery, and the customer and the Company must sign *all* necessary documents online before the delivery of the vehicle to the customer's Utah location. Under this scenario, the sale of the vehicle would occur outside of Utah for purposes of the Utah Motor Vehicle Business Regulation Act.

B. Application of the Sales and Use Tax Act to the Company's proposed Utah sales.

Subsection 59-12-103(1) imposes sales and use taxes on the following:

[O]n the purchase price or sales price for amounts paid or charged for . . .

- (a) retail sales of tangible personal property made within the state [and for]
- (l) amounts paid or charged for tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) consumed.

The Company proposes to sell vehicles to customers at its Utah facility. These sales will be subject to sales and use taxes under § 59-12-103(1)(a) and (l). Additionally, the Company proposes to sell vehicles to Utah customers, with the Company delivering the vehicles to the customers' Utah locations and with those customers completing all necessary title and registration documents upon that delivery. These sales will also be subject to sales and use taxes under § 59-12-103(1)(a) and (l).³

Subsection 59-12-107(2)(a)(i) will apply to the Company's proposed transactions. Under § 59-12-107(2)(a)(i), the Company will be required to collect and remit Utah sales and use taxes imposed by § 59-12-103(1)(a) and (l) because the Company will have "an office," "sales house," or "a place of business similar to [an office or sales house]" in Utah. This "place of business" will be the proposed Utah facility.

³ Subsection 59-12-102(99) defines "purchase price" and "sales price." When certain conditions are met, "a delivery charge" and a few other enumerated charges can be excluded from the "purchase price" or "sales price." See § 59-12-102(99)(c). Besides defining "purchase price" and "sales price," § 59-12-102 also defines the following terms used in § 59-12-103(1): "purchaser," "retail sale," "sale," "storage," "tangible personal property," and "use."

Section 59-12-213 applies to sales of motor vehicles that are not transportation equipment. See § 59-12-213(1). Subsection 59-12-213(2) states:⁴

If [a motor vehicle that is not transportation equipment] is sold by a dealer of that tangible personal property, the location of the sale of that tangible personal property is the business location of the dealer.

Applying 59-12-213(2), the Company proposes to sell motor vehicles. Furthermore, the Company is a dealer of motor vehicles. Thus, the location of the sales of those motor vehicles will be the “business location of the [Company].” The Company’s only proposed business location in Utah is the Utah facility; the customers’ locations are not business locations of the Company.⁵ Therefore, under § 59-12-213(2), both the Company’s sales of vehicles transferred at the Company’s Utah facility and the Company’s sales of vehicles delivered to the customers at the customers’ Utah locations will be sourced to the Company’s Utah facility. Below, this private letter ruling further discusses the Company’s sales of vehicles delivered to customers’ Utah locations.

Your private letter ruling request includes the following scenario: the Company sells a motor vehicle to a Utah customer and delivers that vehicle from outside of Utah directly to the customer in Utah. Upon delivery, the customer signs all necessary title and registration documents to complete the title and registration process. The customer does not pick up the vehicle at the Utah facility. Based on § 59-12-213(2), that sale is sourced to the Utah facility for Utah sales and use tax purposes *even though the vehicle does not pass through that Utah facility*.^{6,7}

⁴ The Sales and Use Tax Act does not define “business location.” Section 59-12-102 includes definitions for “vehicle” and “vehicle dealer.” Section 59-12-102 defines “vehicle” in terms of § 41-1a-102, which further defines “vehicle” to include a “motor vehicle.”

⁵ Although the Sales and Use Tax Act does not define “business location,” Subsection 59-12-107(2)(a)(i) uses “place of business,” which is a similar term. Under 59-12-107(2)(a)(i) a seller has a collection and remittance obligation if in Utah the seller “has or utilizes: (A) an office; (B) a distribution house; (C) a sales house; (D) a warehouse; (E) a service enterprise; or (F) a place of business similar to . . . (A) through (E).” As explained previously in this private letter ruling, the proposed Utah facility will be an office, sales house, or similar “place of business.” The customers’ locations would not be such places of business. Thus, if “business location” were interpreted to mean “place of business,” the conclusions for this private letter ruling would be the same: the Utah facility is the business location of the Company, and the customers’ Utah locations would not be business locations of the Company.

⁶ The taxability of the proposed sale under this scenario is consistent with R865-19S-44 D., which states the following:

If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

⁷ Subsection 59-12-213(2) sources sales for Utah sales and use tax purposes. Nothing in Utah law suggests that § 59-12-213(2) determines the location of sales for other purposes, such as for the Motor Vehicle Business Regulation Act. Subsection 59-12-213(2) is found in Utah Code Annotated, Title 59, Chapter 12, Sales and Use Tax Act. The Motor Vehicle Business Regulation Act is found in a different title of the Utah Code Annotated, i.e., Title 41, Chapter 3. No language found in the Utah Code Annotated applies § 59-12-213(2) to the Motor Vehicle Business Regulation Act.

IV. Conclusion

This private letter ruling addresses only the prospective Utah sales you presented. It does not address the Company's possible current sales to Utah customers.

This private letter ruling concludes that some of the Company's proposed sales appear to violate § 41-3-210(1)(n). These proposed sales will occur when the Company delivers motor vehicles to customers' Utah locations, and upon delivery, those customers sign all necessary title and registration documents to complete the title and registration processes. These sales would occur at the customers' Utah locations, which are not licensed places of business of the Company.

However, the Company could adjust how the Company makes these proposed sales so that these sales do not violate § 41-3-210(1)(n). Instead of the customers signing all necessary title and registration documents *upon delivery*, the customers could sign those documents at the Company's Utah facility, which is a licensed place of business of the Company. If a customer does not sign at the Company's Utah facility and the Company's computer servers for online sales are located outside of Utah and the used motor vehicle is located outside of Utah before delivery, then the customer and the Company could complete the sale outside of Utah by signing *all* necessary documents online before the delivery of the vehicle to the customer's Utah location. Under this scenario, the sale of the vehicle would occur outside of Utah for purposes of the Utah Motor Vehicle Business Regulation Act. However, the sale of the vehicle would still be subject to Utah sales and use taxes and would be sourced to the Company's Utah facility for purposes of the Utah Sales and Use Tax Act.

This private letter ruling also concludes that the Company's proposed Utah sales both at the Company's Utah facility and at the customers' Utah locations would be sourced to the Company's Utah facility for Utah sales and use tax purposes.

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
18-004