

FINAL PRIVATE LETTER RULING

REQUEST LETTER

[The Request Letter has been removed.]

RESPONSE LETTER

PLR 19-001

November 12, 2020

NAME-1
President
COMPANY-2
ADDRESS
CITY, STATE - ZIPCODE

NAME-1:

This letter is in response to your request for a private letter ruling for your client, COMPANY (“Company”) and their lending partner, LENDING PARTNER (“Lending Partner”), concerning sales of PRODUCT (“Product”). Your clients are seeking this ruling on behalf of vehicle dealers (“Dealer(s)"). You have asked the following questions:

1. Whether the Dealers’ sales of the Product are subject to Utah sales and use taxes.
2. Where on the vehicle sales contract should the sales of the Product be reported.

This private letter ruling concludes the following:

1. The Dealers’ sales of the Product are not subject to Utah sales and use taxes.
2. On the vehicle sales contract, dealers’ sales of the Product may be reported on Line 4 of the Retail Installment Contract.
3. In accordance with § 59-12-103(1)(a), Utah sales and use taxes are imposed on any down payment paid as a benefit of the Product, to a dealership for a purchaser’s purchase in Utah of a replacement vehicle. That down payment is part of the taxable “purchase price” of that replacement vehicle.

I. Facts

The facts are based on the following items you provided: your private letter ruling request letter and a copy of the contract (“Contract”) that a purchaser (“Purchaser”) receives from a Dealer when s/he purchases the Product. A Dealer may sell the optional Product to a Purchaser at the time the Purchaser purchases a vehicle (“first vehicle”). When the Dealer sells the Product, the Dealer provides the Contract to the Purchaser.¹ The Contract is between the Customer and the “Obligor,” which is not in the business of selling vehicles. The Product provides that the Purchaser will receive a benefit (“Benefit”) if s/he experiences a constructive total loss of the first vehicle within a limited time period and other terms and conditions are met. The Benefit is a dollar amount, up to a maximum benefit amount, that the Obligor will pay directly to a dealership as a down payment for a replacement vehicle for the Purchaser if the Purchaser claims the Benefit and purchases that replacement vehicle in accordance with the Product’s terms and conditions. To receive the Benefit, a purchaser generally must purchase the replacement vehicle from the same dealership from which s/he purchased the first vehicle.² The Benefit will only be paid to a dealership as a down payment on the replacement vehicle; the Benefit amount will not be paid directly to the Purchaser or any other organization. The Contract provides that the Benefit is not transferable.

II. Applicable Law

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

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

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

.....

Section 59-12-102 provides definitions that apply to the Sales and Use Tax Act. Subsection 59-12-102(104) defines “purchase price” and “sales price” as follows in part:

(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;

¹ You described the Product as a membership. However, that term is not used in the Contract to describe the Product. Whether the Product is a membership does not change the conclusions of this private letter ruling; the taxability of a membership depends on the taxability of its underlying items. See page 14 of Private Letter Ruling 16-005, currently available at <https://tax.utah.gov/commission/ruling/16-005.pdf> (“[T]he Commission “look[s] beyond that label [attached to a product] to examine the underlying nature of the transaction.” What the Utah customer is actually purchasing with a MEMBERSHIP are the benefits [of the membership].”).

² However, if that dealership is out of business or located more than a specific distance from the Purchaser, an administrator acting on behalf of the Obligor can designate another dealership from which the Purchaser may purchase the replacement vehicle and the Purchaser may still obtain the Benefit.

- (B) leased; or
- (C) rented.
- (b) "Purchase price" and "sales price" include:
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 - (iv) consideration a seller receives from a person other than the purchaser if:
 - (A) (I) the seller actually receives consideration from a person other than the purchaser; and
 - (II) the consideration described in Subsection (104)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;
 - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and
 - (D) (I) . . . ;
 - (II) . . . ; or
 - (III) the price reduction or discount is identified as a third party price reduction or discount on the:
 - (Aa) invoice the purchaser receives; or
 - (Bb) certificate, coupon, or other documentation the purchaser presents.
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III. Analysis

This Analysis Section includes the following subsections:

- A. The down payment that the Obligor pays to the dealership for the Purchaser's purchase of the replacement vehicle is part of the taxable purchase price of that vehicle.
 - B. Utah sales and use taxes are not imposed on the sale of the Product when the Purchaser purchases the first vehicle.
 - C. The sale of the Product to the Purchaser may be reported on Line 4 of the Retail Installment Contract for the sale of first vehicle.
 - D. The Product is not a "service plan" for Utah sales tax purposes. Furthermore, this private letter ruling makes no determination about the Product for purposes found in other areas of the Utah Code.
- A. The down payment that the Obligor pays to the dealership for the Purchaser's purchase of the replacement vehicle is part of the taxable purchase price of that vehicle.**

Based on the facts presented and on the explanation below, the dollar amount that the Obligor pays directly to a dealership as a down payment for the purchase of a replacement vehicle is part of the purchase price of the replacement vehicle under § 59-12-102(104)(b)(iv). Subsection 59-12-102(104)(b) states in part the following:

"Purchase price" and "sales price" include:

....

- (iv) consideration a seller receives from a person other than the purchaser if:
 - (A) (I) the seller actually receives consideration from a person other than the purchaser; and
 - (II) the consideration described in Subsection (104)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;
 - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and
 - (D) (I) . . . ;
 - (II) . . . ; or
 - (III) the price reduction or discount is identified as a third party price reduction or discount on the:
 - (Aa) invoice the purchaser receives; or
 - (Bb) certificate, coupon, or other documentation the purchaser presents.

Subsection 59-12-102(104)(b)(iv)(A)(I) states, “[T]he seller actually receives consideration from a person other than the purchaser.” The “seller,” who is the dealership, “receives consideration,” which is the dollar amount from the Obligor who is “a person other than the purchaser” of the replacement vehicle. This subsection is met.

Subsection 59-12-102(104)(b)(iv)(A)(II) states, “[T]he consideration described in Subsection (104)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale.” The consideration paid by the Obligor to the dealership is “directly related to the price reduction or discount on the sale”; specifically, the consideration equals the down payment for the purchase of the replacement vehicle. This subsection is met.

Subsection 59-12-102(104)(b)(iv)(B) states, “[T]he seller has an obligation to pass the price reduction or discount through to the purchaser.” The dealership “has an obligation to pass [the down payment] through to the purchaser.” This subsection is met.

Subsection 59-12-102(104)(b)(iv)(C) states, “[T]he amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser.” The “amount the [down payment] is fixed and determinable by the [dealership] at the time of the sale [of the replacement vehicle] to the purchaser.” This subsection is met.

Subsection 59-12-102(104)(b)(iv)(D)(III) states, “[T]he price reduction or discount is identified as a third party price reduction or discount on the: (Aa) invoice the purchaser receives;

or (Bb) certificate, coupon, or other documentation the purchaser presents.” The down payment is identified as a third party price reduction or discount on the . . . document the purchaser presents [to the dealership].” The Purchaser will be required to present documentation to the dealership showing that the down payment will be paid by the Obligor before the dealership will credit the down payment from the total amount owing for the replacement vehicle. This subsection is met.

Because the above subsections of § 59-12-102(104)(b)(iv) are met, the purchase price of the replacement vehicle includes the down payment the dealership receives from the Obligor. Thus, in accordance with § 59-12-103(1)(a), sales and use taxes are imposed on the full purchase price of the replacement vehicle, including the down payment amount, if the purchase of the replacement vehicle is made within Utah.

B. Utah sales and use taxes are not imposed on the sale of the Product when the Purchaser purchases the first vehicle.

Sales and use taxes are not imposed on the Purchaser’s purchase of the Contract from the Dealer that sells the Purchaser the first vehicle. The purchase of the Contract is not one of the transactions listed in § 59-12-103(1), upon which sales and use taxes are imposed.

C. The sale of the Product to the Purchaser may be reported on Line 4 of the Retail Installment Contract for the sale of first vehicle.

You have asserted that the sale of the Product to the consumer is nontaxable for sales tax purposes. We agree with that position. You asserted that the sale of the Product to the Purchaser should be reported on Line 4 of the Retail Installment Contract. We agree with that position as well.

D. The Product is not a “service plan” for Utah sales tax purposes. Furthermore, this private letter ruling makes no determination about the Product for purposes found in other areas of the Utah Code.

You mentioned that some dealers viewed the Product as being akin to a “service contract,” which is defined in Utah Code Ann. § 31A-6a-101. This private letter ruling does not address whether the Product is a service contract for purposes of the Utah Insurance Code. For purposes of the Utah Sales and Use Tax Act, Utah Administrative Code R865-19S-78 defines “service plan” as including an extended warranty agreement or other prepaid arrangement. The purchase price of a service plan for future taxable repairs is subject to sales and use taxes. This private letter ruling does not find the Product to be a “service plan.” If the Product had been a service plan, sales and use taxes would have been imposed on the Purchaser’s purchase of the Product from the Dealer. As explained previously in this private letter ruling, sales and use taxes are not imposed on the Purchaser’s purchase of the Product, and sales and use taxes are imposed on any later down payment paid by the Obligor to the dealership selling the replacement vehicle; the down payment is part of the taxable purchase price of the replacement vehicle if that vehicle is purchased in Utah.

You quoted and analyzed part of the Utah Code, Title 31A, Insurance Code, in your request letter. This private letter ruling does not interpret any Utah Code section outside of those located in the Utah Sales and Use Tax Act, found in Utah Code, Title 59, Chapter 12. Other government entities, such as the Insurance Department, interpret and administer other areas of the Utah Code.

IV. Conclusion

This private letter ruling concludes the following:

1. The Dealers' sales of the Product are not subject to Utah sales and use taxes.
2. On the vehicle sales contract, dealers' sales of the Product may be reported on Line 4 of the Retail Installment Contract.
3. In accordance with § 59-12-103(1)(a), Utah sales and use taxes are imposed on any down payment paid by the Obligor to a dealership for a Purchaser's purchase in Utah of a replacement vehicle. That down payment is part of the "purchase price" of that replacement vehicle.

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 [WEB ADDRESS REMOVED], and in Utah Administrative Code R861-1A-31, available online at [WEB ADDRESS REMOVED]. [THE UTAH ADMINISTRATIVE CODE IS CURRENTLY AVAILABLE AT <https://adminrules.utah.gov>.]

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
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