

**FINAL PRIVATE LETTER RULING**

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**REQUEST LETTERS**

21-001

[THE REQUEST LETTER HAS BEEN REMOVED]

**RESPONSE LETTER**

December 22, 2021

NAME-1, President  
COMPANY-1  
ADDRESS  
CITY, STATE - ZIP  
EMAIL-1

Dear NAME-1:

This letter is in response to your request for a private letter ruling for COMPANY-1 (“Company”). Your request concerns the Company’s sales of prefabricated home packages. You have asked about the Utah sales and use tax treatment of your sales when those packages are later installed onto permanent foundations in Utah. The Technical Research Unit (“TRU”) has issued a written answer dated December 6, 2021, addressing many of the issues presented by your request letter. A copy of the TRU’s written answer is enclosed. In that written answer, the TRU concluded the following:

1. The prefabricated home packages are tangible personal property until they are permanently affixed to real property.
2. The prefabricated home packages meet the definition of “modular home” as defined in Utah Code Ann. § 59-12-102(80).
3. The Company does not meet the requirements of Utah Code Ann. § 59-12-107(2)(a) or (2)(b), but does meet the requirements of Utah Code Ann. § 59-12-107(2)(c).<sup>1</sup>

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<sup>1</sup> The Tax Commission has provided a brief explanation of § 59-12-107(2)(c) on its webpage <https://tax.utah.gov/sales/remote-sellers>. You asked about that website in your DATE email. That webpage states the following:

**Out-of-State Sellers**

Based on the above answers from the TRU, the Company’s prefabricated home packages are tangible personal property and the Company is subject to the remote seller guidelines found in § 59-12-107(2)(c) for collecting and remitting Utah sales and use taxes.

This private letter ruling focuses on the issue of which of the Company’s sales would be sourced to Utah. The Company has Utah tax collection and remittance requirements for Utah taxes imposed on “retail sales of tangible personal property **made within the state**” (*see* § 59-12-103(1)(a) (emphasis added)). The Utah sourcing statutes, generally found in § 59-12-211 through § 59-12-217, determine whether a sale is “made within [Utah].” This private letter ruling concludes that the Company’s sales of prefabricated home packages would be sourced to Utah when the purchasers reside in Utah and that this sourcing is in accordance with § 59-12-213(3)(b), applying to sales of modular homes.

This private letter ruling includes the following sections: I. Facts, II. Issue, III. Applicable Law, IV. Analysis, and V. Conclusion.

## I. Facts

This Facts Section includes facts from your emails requesting this private letter ruling and from the TRU’s written answer.

### **A. Facts from your emails requesting this private letter ruling.**

The following are facts quoted from your email requesting the private letter ruling:

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#### **Also see: Non-Nexus Sellers**

Utah requires a remote seller to collect and pay Utah sales tax if, in either the previous or the current calendar year, the remote seller:

1. receives gross revenue of more than \$100,000 from the sale of tangible personal property, any product transferred electronically, or services for storage, use, or consumption in Utah; or
2. sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in Utah in 200 or more separate transactions.

These requirements became effective for sales occurring on or after January 1, 2019.

Remote sellers can register for a Utah sales tax license using any of the following methods:

- Use Taxpayer Access Point at [tap.utah.gov](http://tap.utah.gov) and choose “*Apply Online, Apply for tax accounts(s) – TC-69*”
- Mail or fax paper form [TC-69, Utah State Business and Tax Registration](#).
- Register for Streamlined Sales Tax member states, including Utah, at [sstregister.org](http://sstregister.org).

My company manufactures prefabricated homes in the state of STATE. We have customers who purchase our home packages that will be installing them on their permanent foundation on land within your state. They are loaded right off the truck (all sales are F.O.B. CITY, STATE and the customers arrange for their own shipping with 3rd party shippers) right on to the customer's foundation.

The customer or their independent builder will have arranged for the building permits etc. prior to their home being delivered to their site-our home packages are not able to be moved from the customer's building site as they are permanently affixed to the foundation. So even though without a doubt I know that as far as real estate taxes go the home packages our customers buy will be classified as real property (real estate) not "tangible personal property," in reading through your Economic Nexus guidance documents it doesn't directly address this type of transaction.

We manufacture prefabricated home packages-we have one location and the customer picks up the package (via their 3rd party shipper or themselves) from our location in CITY, STATE.

In the following are facts quoted from your email sent shortly after your first email requesting a private letter ruling;

Our prefabricated homes are first designed, then engineered to the build site, then the construction plans are turned into the building dept. for approval and permitting, then we manufacture the home package, next it's delivered to the build site and placed on the customer's permanent foundation utilizing a crane. Our prefabricated homes are often over 40 ft. in length and always over 400 sq. ft.

**B. Facts from the TRU's written answer.**

The TRU explained in its written answer that the prefabricated home packages do not incorporate a permanent chassis and they must be affixed to a permanent foundation to be a dwelling. The prefabricated home packages are manufactured in accordance with the Utah State Construction Code and are intended to be transported to a building site for the purpose of human habitation, occupancy, or use. The TRU concluded that the Company does not have physical nexus or affiliate nexus in Utah, but does have economic nexus in Utah in accordance with § 59-12-107(2)(c). These conclusions are based on the TRU's conversations with the Company.

**II. Issue**

The issue for this private letter ruling is which of the Company's sales would be sourced to Utah. For the sales sourced to Utah, the Company has Utah tax collection and remittance requirements in accordance with § 59-12-107(2)(c). This private letter ruling concludes that the

Company's sales of prefabricated home packages would be sourced to Utah when the purchasers reside in Utah and that this sourcing is in accordance with § 59-12-213(3)(b), applying to sales of modular homes. The analysis for this conclusion is located in the IV. Analysis Section of this ruling.

III. Applicable Law

Utah Code Ann. § 59-12-103(1) imposes Utah sales and use taxes on 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; [and]

....

(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 Ann. § 59-12-104 provides exemptions from Utah sales and use taxes imposed, stating the following, in part:

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

....

(26) a product upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act; [and]

....

(58)(a) subject to Subsection (58)(b), sales of tangible personal property or a product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state; and

(b) the exemption under Subsection (58)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter;

....

Utah Code Ann. § 59-12-107(2)(c) imposes on certain sellers Utah sales and use tax collection and remittance requirements, with that subsection stating the following:

Subject to Section 59-12-107.6, each seller that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit the sales and use taxes imposed by this chapter under Subsection (2)(b) shall pay or collect and remit the sales and use tax imposed by this chapter if the seller:

- (i) sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state; and
- (ii) in either the previous calendar year or the current calendar year:
  - (A) receives gross revenue from the sale of tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state of more than \$100,000; or
  - (B) sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state in 200 or more separate transactions.

Utah Code Ann. § 59-12-107(2)(f) imposes on purchasers the requirement to pay Utah use taxes in certain situations, with that subsection stating the following:

A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:

- (i) the seller did not collect a tax imposed by this chapter on the transaction; and
- (ii) the person:
  - (A) stores the tangible personal property or product transferred electronically in the state;
  - (B) uses the tangible personal property or product transferred electronically in the state; or
  - (C) consumes the tangible personal property or product transferred electronically in the state.

Utah Code Ann. § 59-12-211 through § 59-12-217 provide where transactions are sourced for Utah sales and use tax purposes. Subsection 59-12-211(14) states the following in part:

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; or

.....  
 (b) a tax a person pays in accordance with Subsection 59-12-107(2)(f) . . .  
 .....

Section 59-12-213 applies to a modular home and states the following in part:

(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:

- (i) aircraft;
- (ii) a manufactured home;
- (iii) a mobile home;
- (iv) a modular home;
- (v) a motor vehicle; or
- (vi) watercraft.

.....  
 (2) (a) Except as provided in Subsection (2)(b), 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.

(b) If an item of tangible personal property described in Subsection (1)(a) is sold by a dealer of that tangible personal property that does not have a business location in the state, the location of the sale of that tangible personal property is the location where the purchaser takes receipt of the tangible personal property.

(3) If an item of tangible personal property described in Subsection (1)(a) is sold by a person other than a dealer of that tangible personal property, the location of the sale of that tangible personal property is:

- (a) if the tangible personal property is required to be registered with the state before the tangible personal property is used on a public highway, on a public waterway, on public land, or in the air, the location of the street address at which the tangible personal property is registered; or
- (b) if the tangible personal property is not required to be registered as provided in Subsection (3)(a), the location of the street address at which the purchaser of the tangible personal property resides.

.....

Section 59-12-211.1, which applies to a purchaser paying Utah use taxes, states the following:

- (1) Subject to Subsection (2), a person that is required by Subsection 59-12-107(2)(f) to pay a use tax on a transaction shall report the location of that transaction at the person's location.
- (2) For purposes of Subsection (1), if a person has more than one location in this state, the person shall report the location of the transaction at the location at which tangible personal property, a product transferred electronically, or a service is received.

Both § 59-12-211(14)(a)(ii) and § 59-12-213(1)(a) use the terms “aircraft,” “motor vehicle,” and “watercraft.” Utah Code Ann. § 59-12-102 defines those terms as follows:

As used in this chapter:

- (8) "Aircraft" means the same as that term is defined in Section 72-10-102.  
 . . . .
- (81) "Motor vehicle" means the same as that term is defined in Section 41-1a-102.  
 . . . .
- (148) "Watercraft" means a vessel as defined in Section 73-18-2.  
 . . . .

For aircraft, Utah Code Ann. § 72-10-102 defines that term along with the related term of “dealer,” as follows in part:

As used in this chapter:

- (4) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.  
 . . . .
- (17) "Dealer" means any person who is actively engaged in the business of flying for demonstration purposes, or selling or exchanging aircraft, and who has an established place of business.  
 . . . .

For a motor vehicle, Utah Code Ann. § 41-1a-102 defines that term along with the related term of “dealer,” as follows in part:

As used in this chapter:

- (17) "Dealer" means a person engaged or licensed to engage in the business of buying, selling, or exchanging new or used vehicles, vessels, or outboard motors either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise or who has an established place of business for the sale, lease, trade, or display of vehicles, vessels, or outboard motors.  
 . . . .

- (40)(a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.
- (b) "Motor vehicle" does not include:
  - (i) an off-highway vehicle; or
  - (ii) a motor assisted scooter as defined in Section 41-6a-102.

.....

Utah Code, Title 41 contains two other definitions of dealer. For motor vehicle business regulation, Utah Code Ann. § 41-3-102(9) defines “dealer” as follows:

- (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.

For off-highway vehicles, Utah Code Ann. § 41-22-2(7) defines “dealer” as follows:

"Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

For a watercraft, Utah Code Ann. § 73-18-2 defines the term “vessel” along with the related term of “dealer,” as follows in part:

As used in this chapter:

- (7) "Dealer" means any person who is licensed by the appropriate authority to engage in and who is engaged in the business of buying and selling vessels or of manufacturing them for sale.

.....

- (19) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

.....

#### IV. Analysis

This Analysis Section includes the following subsections:

- A. Summary of this Analysis Section’s conclusions.



- B. The Company's sales of prefabricated home packages are subject to Utah sales and use taxes when the sales are made within Utah or when the prefabricated home packages are later stored, used, or consumed in Utah.
- C. The Company has Utah sales and use tax collection and remittance requirements in accordance with § 59-12-107(2)(c).
- D. Because the Company's prefabricated home packages are modular homes, the sales of those packages are sourced to Utah or to other locations in accordance with § 59-12-213.
- E. Because the Company is not a "dealer," the Company's sales of prefabricated home packages are sourced in accordance with § 59-12-213(3)(b).
- F. When the Company sells prefabricated home packages to purchasers in Utah, those sales would be sourced to the street addresses where the purchasers reside.
- G. Purchasers may be subject to Utah use taxes when the Company has not collected Utah sales and use taxes.
- H. Prospective enforcement is appropriate for the Company's situation to the extent described in this subsection.

The analysis for this private letter ruling is provided below.

**A. Summary of this Analysis Section's conclusions.**

The issue for this private letter ruling is which of the Company's sales would be sourced to Utah. For the sales sourced to Utah, the Company has Utah tax collection and remittance requirements in accordance with § 59-12-107(2)(c). This private letter ruling concludes that the Company's sales of prefabricated home packages would be sourced to Utah when the purchasers reside in Utah and that this sourcing is in accordance with § 59-12-213(3)(b), applying to sales of modular homes.

**B. The Company's sales of prefabricated home packages are subject to Utah sales and use taxes when the sales are made within Utah or when the prefabricated home packages are later stored, used, or consumed in Utah.**

In general, sales of tangible personal property are subject to Utah sales and use taxes in accordance with § 59-12-103(1). When sales of tangible personal property are "made within [Utah]," the sales are subject to Utah sales and use taxes under § 59-12-103(1)(a). When tangible personal property is stored, used, or consumed in Utah, the sales of the tangible personal property are subject to tax under § 59-12-103(1)(l). The Company's prefabricated home packages are tangible personal property, and remain so until the purchasers later assemble and

affix them to real property. Thus, the Company's sales are subject to Utah sales and use taxes either in accordance with § 59-12-103(1)(a) when the sales are made within Utah or in accordance with § 59-12-103(1)(l) when the prefabricated home packages are stored, used, or consumed in Utah.

**C. The Company has Utah sales and use tax collection and remittance requirements in accordance with § 59-12-107(2)(c).**

The Company has collection and remittance obligations in accordance with § 59-12-107(2)(c), according to the TRU's written answer. Thus, when the Company's sales are subject to Utah taxes under § 59-12-103(1), the Company is required to collect and remit Utah sales and use taxes on those sales, in accordance with § 59-12-107(2)(c).<sup>2</sup>

**D. Because the Company's prefabricated home packages are modular homes, the sales of those packages are sourced to Utah or to other locations in accordance with § 59-12-213.**

Sections 59-12-211 through 59-12-217 determine when a transaction is made within Utah for purposes of § 59-12-103(1). The Company's prefabricated home packages meet the definition of "modular home," according to the TRU's written answer. Under § 59-12-213(1)(a)(iv), when tangible personal property is a modular home, the location of the sale of that modular home is determined in accordance with § 59-12-213.

**E. Because the Company is not a "dealer," the Company's sales of prefabricated home packages are sourced in accordance with § 59-12-213(3)(b).**

Subsections 59-12-213(2) and (3) provide the following in part:

- (2) (a) Except as provided in Subsection (2)(b), 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.
- (b) If an item of tangible personal property described in Subsection (1)(a) is sold by a dealer of that tangible personal property that does not have a business location in the state, the location of the sale of that tangible personal property is the location where the purchaser takes receipt of the tangible personal property.
- (3) If an item of tangible personal property described in Subsection (1)(a) is sold by a person other than a dealer of that tangible personal property, the location of the sale of that tangible personal property is:
  - (a) if the tangible personal property is required to be registered with the state

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<sup>2</sup> You asked about webpage <https://tax.utah.gov/sales/remote-sellers>, in your March 26, 2021 email. That webpage relates to § 59-12-107(2)(c).

- before the tangible personal property is used on a public highway, on a public waterway, on public land, or in the air, the location of the street address at which the tangible personal property is registered; or
- (b) if the tangible personal property is not required to be registered as provided in Subsection (3)(a), the location of the street address at which the purchaser of the tangible personal property resides.

The above cited language includes the term, “dealer” in Subsections (2) and (3). There is no statutory definition of "dealer" that relates to manufactured homes, mobile homes, or modular homes, which are tangible personal property specifically listed in § 59-12-213(1)(a). However, there are definitions of "dealer" in the Utah Code that apply to the other types of property specifically listed in § 59-12-213(1)(a), which are aircraft, motor vehicles, and watercraft. The Utah Code also contains definitions of “dealer” for off-highway vehicles and for motor vehicle business regulation. This private letter ruling first considers the statutory definitions for "dealer" then considers dictionary definitions, to interpret “dealer” for purposes of the sale of a modular home.

For an aircraft, the definition of “dealer” is found in § 72-10-102(17) and states the following:<sup>3</sup>

"Dealer" means any person who is actively engaged in the business of flying for demonstration purposes, or selling or exchanging aircraft, and who has an established place of business.

For motor vehicles, the definition of “dealer” is found in § 41-1a-102(17) and states the following:<sup>4</sup>

"Dealer" means a person engaged or licensed to engage in the business of buying, selling, or exchanging new or used vehicles, vessels, or outboard motors either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise or who has an established place of business for the sale, lease, trade, or display of vehicles, vessels, or outboard motors.

For motor vehicle business regulation, the definition of “dealer” is found in § 41-3-102(9) and states the following:

- (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

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<sup>3</sup> For sales and use tax purposes, “aircraft” is defined in § 59-12-102(8) to mean “the same as that term is defined in Section 72-10-102.” “Aircraft” is defined in § 72-10-102(4). The related definition of “dealer” is found in § 72-10-102(17).

<sup>4</sup> For sales and use tax purposes, “motor vehicle” is defined in § 59-12-102(81) to mean “the same as that term is defined in Section 41-1a-102.” “Motor vehicle” is defined in § 41-1a-102(40). The related definition of “dealer” is found in § 41-1a-102(17).

- (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.

For off-highway vehicles, the definition of “dealer” is found in § 41-22-2(7) and states the following:

"Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

For watercraft, the definition of “dealer” is found in § 73-18-2(7) and states the following:<sup>5</sup>

"Dealer" means any person who is licensed by the appropriate authority to engage in and who is engaged in the business of buying and selling vessels or of manufacturing them for sale.

The majority of the statutory definitions for “dealer” that were provided above do not include a person manufacturing property. However, the definition found in § 73-18-2(7) does. Therefore, this private letter ruling next considers dictionary definitions to interpret “dealer” for purposes of a sale of a modular home. *Black’s Law Dictionary* defines “dealer” as follows:

1. A person who purchases goods or property for sale to others; a retailer.

*Black’s Law Dictionary*, 457 (9th ed. 2009). *The Law Dictionary, Featuring Black’s Law Dictionary Free Online Legal Dictionary 2<sup>nd</sup> Ed.* defines “dealer” as follows:

A dealer, in the popular, and therefore in the statutory, sense of the word, is not one who buys to keep, or makes to sell, but one who buys to sell again. *Norris v. Com.*, 27 Pa. 490; *Com. v. Campbell*, 33 Pa. 380.

*The Law Dictionary, Featuring Black’s Law Dictionary Free Online Legal Dictionary 2<sup>nd</sup> Ed.*, currently available at <https://thelawdictionary.org/dealer/>. *The Webster’s New Universal Unabridged Dictionary* defines “dealer” as follows:

1. a person who buys and sells articles without altering their condition; trader or merchant, esp. a wholesaler . . .

*Webster’s New Universal Unabridged Dictionary*, 513 (1<sup>st</sup> ed. 2003). After considering the statutory and dictionary definitions discussed above, this private letter ruling interprets “dealer” for purposes of a sale of a modular home to include a person who is engaged in the business of buying and selling property, but not include a person who is engaged in the business of

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<sup>5</sup> For sales and use tax purposes, “watercraft” is defined in § 59-12-102(148) to mean “a vessel as defined in Section 73-18-2.” “Vessel” is defined in § 73-18-2(19). The related definition of “dealer” is found in § 73-18-2(7).

fabricating or manufacturing property. Based on this analysis, the Company is not a dealer because the Company fabricates the home packages it sells. Thus, it is selling articles it has altered. Subsection 59-12-213(2) applies when tangible personal property is sold by a dealer of that tangible personal property. Because the Company is not a dealer, § 59-12-213(2) does not apply. Subsection 59-12-213(3) applies when tangible personal property is sold by a person other than a dealer of that tangible personal property. Because the Company is not a dealer, § 59-12-213(3) applies.

**F. When the Company sells prefabricated home packages to purchasers in Utah, those sales would be sourced to the street addresses where the purchasers reside.**

As explained in Subsection IV. E., § 59-12-213(3) applies because the Company is not a dealer. Also as stated previously, § 59-12-213(3) states the following:

If an item of tangible personal property described in Subsection (1)(a) is sold by a person other than a dealer of that tangible personal property, the location of the sale of that tangible personal property is:

- (a) if the tangible personal property is required to be registered with the state before the tangible personal property is used on a public highway, on a public waterway, on public land, or in the air, the location of the street address at which the tangible personal property is registered; or
- (b) if the tangible personal property is not required to be registered as provided in Subsection (3)(a), the location of the street address at which the purchaser of the tangible personal property resides.

Under § 59-12-213(3)(b), the location of the Company's sales is "the location of the street address at which the purchaser of the tangible personal property resides." Thus, when a purchaser resides in Utah, the sale of the prefabricated home package would be sourced to the Utah street address where the purchaser resides. For the sales that are sourced to Utah, the sales would be subject to Utah sales tax in accordance with § 59-12-103(1) and the Company would have Utah sales and use tax collection and remittance requirements in accordance with § 59-12-107(2)(c).<sup>6</sup> If the Company has further questions about how to correctly apply the Utah

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<sup>6</sup> The Company would not have a Utah collection requirement if the Company were to sell to purchasers residing outside of Utah even if the packages were shipped to and received in Utah to be assembled and affixed to Utah real property. Under that scenario, though, the purchasers would be liable for Utah use taxes in accordance with § 59-12-107(2)(f) and § 59-12-211.1. Subsection 59-12-104(26) provides a limited exemption when tax was paid to another state on the same transaction. So if the purchaser must pay tax to the state where they reside and also to Utah, § 59-12-104(26) may apply.

Alternatively, the Company would have a Utah collection requirement if the Company were to sell to purchasers residing in Utah even if the packages were shipped to and received outside of Utah to be affixed to real property outside of Utah. However, § 59-12-104(58) allows a Utah exemption for taxes that are required to be paid to another state where tangible personal property is installed to real property. Thus, if a purchaser residing in Utah must pay taxes to another state where the prefabricated home package is installed to real property, then § 59-12-104(58) may apply.

sales and use tax laws to the Company's situation, please contact USTC REP, TRU Manager, at PHONE or at EMAIL for further direction.

**G. Purchasers may be subject to Utah use taxes when the Company has not collected Utah sales and use taxes.**

Purchasers who stored, used, or consumed prefabricated home packages in Utah have engaged in taxable transactions according to § 59-12-103(1)(1). If the Company collected Utah sales and use taxes from those purchasers on the purchases, then the purchasers have no further Utah sales and use tax obligations on those purchases. Alternatively if the Company did not collect Utah sales and use taxes from those purchasers on the purchases, then the purchasers are required to pay and remit Utah use taxes on those purchases in accordance with § 59-12-107(2)(f) and § 59-12-211.1.

**H. Prospective enforcement is appropriate for the Company's situation to the extent described in this subsection.**

Based on the facts and circumstances of your unique situation, the Commission finds that prospective enforcement of Utah sales and use tax collection is appropriate for the Company's sales of prefabricated home packages. The Company submitted its request for this private letter ruling on DATE, to learn about its tax collection obligations. Additionally, the Company has been responsive throughout the process of preparing this private letter ruling, causing no delay in the ruling's issuance. Our delay in our response to you along with the complexity of the issues justify prospective enforcement. Thus, as of thirty (30) days after the date of this private letter ruling (effective date), the Company is obligated to collect and remit Utah sales and use taxes on the Company's sales of prefabricated home packages in accordance with the direction that the Commission has provided in this private letter ruling.

The Company may have collected Utah sales and use taxes on the Company's sales of prefabricated home packages for periods prior to the effective date of this ruling. For these sales, the prospective enforcement provisions do not relieve the Company of its obligation to remit all Utah sales and use taxes the Company has collected. Thus, for tax periods prior to the effective date of this private letter ruling, the Company must still remit all Utah sales and use taxes actually collected.

Additionally, prospective enforcement of this private letter ruling does not apply to the purchasers of the prefabricated home packages. If the Company did not collect Utah sales and use taxes from purchasers who later stored, used, or consumed prefabricated home packages in

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Lastly, the Company would have a Utah collection requirement if the Company were to sell to purchasers residing in Utah even if the purchasers were to pick up the packages by themselves (without a shipping company) at the Company's STATE location. Subsection 59-12-213(3)(b) determines the sale's location based on where the purchaser resides and does not determine the location based on where the purchaser takes receipt.

Utah, those purchasers are still required to pay and remit Utah sales and use taxes on those purchases in accordance with § 59-12-107(2)(f) and § 59-12-211.1.

## V. Conclusion

This private letter ruling concludes the following:

1. Based on the written answer from the TRU, the Company's prefabricated home packages are tangible personal property and the Company is subject to the remote seller guidelines found in § 59-12-107(2)(c) for collecting and remitting Utah sales and use taxes.
2. The Company's sales of prefabricated home packages would be sourced to Utah when the purchasers reside in Utah and this sourcing is in accordance with § 59-12-213(3)(b), applying to sales of modular homes. The Company's Utah collection and remittance requirements, mentioned in the prior paragraph, apply to the sales sourced to Utah.
3. Prospective enforcement is appropriate for the Company's situation to the extent described in Subsection IV. H. of this private letter ruling.

The Tax Commission's conclusions are based on the facts as you described them and the Utah law currently in effect. Should the facts be different or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, please feel free to contact the Commission.

Additionally, you may also appeal the private letter ruling in the following two ways.

First, you may file a petition for declaratory order, which would serve to challenge the Commission's interpretation of statutory language or authority under a statute. This petition must be in written form, and submitted within thirty (30) days after the date of this private letter ruling. You may submit your petition by any of the means given below. **Failure to submit your petition within the 30-day time frame could forfeit your appeal rights and will be deemed a failure to exhaust your administrative remedies.** Declaratory orders are discussed in Utah Administrative Code R861-1A-34 C.2., available online at <http://tax.utah.gov/commission/effective/r861-01a-034.pdf>, and in Utah Administrative Code R861-1A-31, available online at <http://tax.utah.gov/commission/effective/r861-01a-031.pdf>.

Second, you may file a petition for redetermination of agency action if your private letter ruling leads to an audit assessment, a denial of a claim, or some other agency action at a division level. This petition must be written and may use form TC-738, available online at <http://tax.utah.gov/forms/current/tc-738.pdf>. Your petition must be submitted by any of the means given below, within thirty (30) days, generally, of the date of the notice of agency action that describes the agency action you are challenging.

You may access general information about Tax Commission Appeals online at <http://tax.utah.gov/commission-office/appeals>. You may file an appeal through any of the means provided below:

- **Best way**—by email: [taxappeals@utah.gov](mailto:taxappeals@utah.gov)
- By mail: Tax Appeals  
USTC  
210 North 1950 West  
Salt Lake City, UT 84134
- By fax: 801-297-3919

For the Commission,

Jennifer N. Fresques  
Commissioner

JNF/aln

Enclosure: TRU's written answer dated December 6, 2021

21-001