

FINAL PRIVATE LETTER RULING

REQUEST LETTER

12-002

COMPANY 1
ADDRESS 1
CITY STATE ZIP CODE 1
PHONE NUMBER 1
WEBSITE 1

Via Email

January 10, 2012

Attention: Technical Research
Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

RE: Internet Access & Bundled Services

To Whom It May Concern:

My company develops billing software for telecommunications carriers. We are attempting to determine how Utah sales taxes would apply to the transaction identified below. We respectfully request that the State Tax Commission provide us with a written response (preferably a private letter ruling) regarding the appropriate sales tax policy.

Purchase of Premium Online News Service

This service provides access to an on-line (Internet-based) news website (such as the COMPANY NAME 2, COMPANY NAME 3, or COMPANY NAME 4). Customers would access this service from their cell phones. The premium content provided is often an enhanced version of a news publication or service that is accessed by the general public for free.

The premium service provides the following features (not available on the free website):

- Higher quality music or video streams.
- Additional content or expanded database access, such as access to archived articles or video clips.

This service could either be billed a monthly recurring or non-recurring charge.

Our company requests anonymity should your response be made public. Please do not hesitate to contact us should you have any questions regarding our inquiry and please let us know if this inquiry should be directed elsewhere. You may call us at PHONE NUMBER 2 or via email at [E-MAIL 1](#).

Sincerely,

NAME 1

TITLE 1

COMPANY 1

ADDRESS 1

CITY STATE ZIP CODE 1

[E-MAIL 1](#)

RESPONSE LETTER

December 7, 2012

NAME 1
TITLE 1
COMPANY 1
ADDRESS 1
CITY STATE ZIP CODE 1

RE: Private Letter Ruling Request–Utah Sales Tax Treatment of Sales of Access to Online News Service

Dear NAME 1:

You explained that your company develops billing software for telecommunications carriers, and you request a ruling on the Utah sales tax treatment of sales by telecommunications carriers of a Premium Online News Service (“News Service”). You further explained the transaction as follows. The News Service provides access to an online, internet-based news website such as the COMPANY NAME 2, COMPANY NAME 3, or COMPANY NAME 4. Customers will access the News Service from their cell phones. The premium content of the News Service is often an enhanced version of a news publication or service that is accessed for free by the general public. The premium content may include higher quality music or video streams, additional content, and expanded database access such as access to archived articles or video clips. Customers would be billed either a monthly recurring or non-recurring charge.

In response to a request for more information, you further explained that customers might access the News Service from their cell phones in various ways, including through an internet web browser or through an icon that activates a direct connection to the News Service. You also clarified that customers must separately obtain internet connections and/or telecommunications services to be able to use the News Service and that your request does not involve the charges for other services such as those which are necessary for access. You also stated that customers can only stream or view content when using the News Service; they cannot download content, modify code, create documents, or manipulate files on the provider’s system.

After reviewing your request, we conclude that the sales of the News Service are not subject to Utah sales and use tax.

Analysis

The News Service involves access to both the application software of the news website and also a database holding the news content. The software and the database work closely

together and are not distinct. In this case, the object of the transaction is the use of the news content in the database.

The sale of the use of the database is not taxable under § 59-12-103 because the use of the database is a service that is not specifically listed as taxable in § 59-12-103. Based on the language found in § 59-12-102(122)(c)(iv), the use of the news database should be treated as a service, and, more specifically, as a data processing and information service rather than as a product transferred electronically or the use of tangible personal property. Utah Code § 59-12-102(122)(c)(iv) defines a data processing and information service as follows:

(c) "Telecommunications service" does not include:

....

(iv) **a data processing and information service** if:

(A) the data processing and information service allows data to be:

- (I) (Aa) acquired;
- (Bb) generated;
- (Cc) processed;
- (Dd) retrieved; or
- (Ee) stored; and

(II) delivered by an electronic transmission to a purchaser; and

(B) the purchaser's primary purpose for the underlying transaction is the processed data or information;

....

(Emphasis added.)

Although the definition of a data processing and information service is not separately listed but is instead provided within the definition of "telecommunications service," the Utah Code still recognizes that a data processing and information service exists. Furthermore, the Utah Code does not later specifically list that service as taxable in § 59-12-103. Applying the definition found in § 59-12-102(122)(c)(iv), the News Service is a data processing and information service. The News Service allows the customers to request certain news content data, which the customers receive through electronic transmissions and the customers' primary purpose for the News Service is the news content data. In conclusion, the News Service is not taxable because it is a data processing and information service, which is not listed as taxable in § 59-12-103, and also the News Service is not within the meanings of the other services that are listed as taxable in § 59-12-103. We do not view the News Service as an ancillary service, which could be taxable under § 59-12-103(1)(b)(iii), or as a user fee for an entertainment activity, which could be taxable under § 59-12-103(1)(f).

Conclusion

As explained above, telecommunications carriers' sales of the News Service are not subject Utah sales tax.¹ This ruling is based on current law and could be changed by subsequent

¹ This ruling does not apply to electronic subscriptions to news magazines. In such situations, the news magazines' content is transferred to the customers and the customers are not merely viewing the content via the internet.

legislative action or judicial interpretation. Also, our conclusions are based on the facts as described. Should the facts be different, 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, you are welcome to contact the Commission.

For the Commission,

Michael J. Cragun
Commissioner

MJC/aln
12-002