



State of Utah

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November 1, 2010

Mr. Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike, Suite 305
Nashville, TN 37215

Dear Scott:

This letter is Utah's response to the compliance issue raised by Mr. Mark Nebergall in an October 18, 2010 communication addressed to Pam Cook and yourself.

Mr. Nebergall notes that while Section 333 of the Streamlined Sales and Use Tax Agreement (Agreement) excludes computer software from the definition of the term "products transferred electronically," recent Utah private letter rulings construe the term "products transferred electronically" to include prewritten computer software. As such, the private letter rulings concluded that computer software is subject to Utah sales and use tax under Subsection 59-12-103(1)(m). That subsection imposes a sales and use tax on amounts paid or charged for a sale of a product that is transferred electronically.

Prior to Utah's imposition of sales and use tax on products transferred electronically, which became effective on January 1, 2009, prewritten computer software was subject to Utah sales and use tax under Subsection 59-12-103(1)(a). That subsection imposes a sales and use tax on retail sales of tangible personal property made within the state. Consequently, the tax treatment of prewritten computer software transferred electronically remained the same both before and after the January 1, 2009 law change.

Regardless of the fact that the sales tax treatment of prewritten computer software transferred electronically remains the same whether the prewritten computer software is taxed as tangible personal property or a product transferred electronically, we agree that Mr. Nebergall is correct that the current Utah statutes are contrary to the language of Section 333 of the Agreement. Accordingly, we will propose amending our statutes in our 2011 legislative session to indicate that products transferred electronically do not include computer software and that prewritten

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computer software is tangible personal property regardless of the manner in which the prewritten computer software is transferred. As noted, this change will not affect the taxability of any transaction. It will however, modify the statutory framework underlying the determination of taxability.

If any additional information is needed concerning this issue, we will be pleased to provide it.

Sincerely,



R. Bruce Johnson
Commission Chair
Utah State Tax Commission

CC: Pam Cook
Mark Nebergall