



100 Majestic Drive, Suite 400 ♦ Westby, WI 54667

## Interpretation – Definition Request

**Provide the name(s) and contact information of the state or parties submitting the Request.**

**Date Request is submitted:** 12/22/2020

**Name of Person(s) submitting request:** Austin DeMoss

**Contact Person:** Austin DeMoss

**Address:** 2501 W Beltline Hwy, Ste 401, Madison, WI 53713

**Phone:** 608-661-2688 **Email:** ademoss@wipfli.com

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**1. Agreement Section(s), Rules or Tax Administration Practice(s) involved:**

Appendix C, Part II, definition of “Telecommunications service” and what the definition of “telecommunications services” does not include

**2. Issue:**

Wisconsin has taken the position that the services of providing and hosting an online banking platform are subject to sales and use tax as telecommunications services despite the services meeting the definition of data processing and information services, which are exempt from Wisconsin sales and use tax.

**3. Statement of Background Facts** (Provide a detailed description of the issue and supporting facts.):

See Attachment 1

**4. Proposed Interpretation:**

The services provided to Educators Credit Union by Alkami Technology do not fall within the definition of telecommunications services and, therefore, are exempt from Wisconsin sales and use tax.

**5. Is expedited consideration requested?** ☒ NO ☐ YES If yes, please explain: [Click here to enter text.](#)

A request for interpretation or definition normally requires a minimum 60-day comment period. The comment period may be shortened to 10 days if the Committee grants a request for expedited consideration. See Governing Board Rule 902(#) and (H).

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**Submit completed form to:**

Craig Johnson, Executive Director  
Streamlined Sales Tax Governing Board  
100 Majestic Dr., Suite 400  
Westby, WI 54667

Email: [Craig.Johnson@SSTGB.org](mailto:Craig.Johnson@SSTGB.org)  
Phone: 608-634-6160  
[www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)

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**Compliance Review and Interpretations Committee Meeting Schedule**

The Compliance Review and Interpretations Committee meets by teleconference at 10:00 am central every other Thursday. Its schedule can be found at [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org) under the meeting calendar.

## ATTACHMENT 1

### **Background of Facts**

In August 2019, we submitted a private letter ruling request (Attachment 2) to the Wisconsin Department of Revenue regarding the taxability of an online and mobile banking platform that our client, Educators Credit Union (“ECU”) purchased from their vendor, Alkami Technology, Inc. (“Alkami”). Our position was that the online and mobile banking platform provided by Alkami was not subject to Wisconsin sales and use tax because Alkami was providing a data processing service by processing ECU’s customers’ banking data from ECU’s servers and displaying that information to ECU’s customers when they logged in to their bank accounts. The online and mobile banking platform provided by Alkami is similar to creating and hosting a website. The WI DOR determined in their ruling (Attachment 3) that Alkami’s online and mobile banking platform and the other services provided through that platform were taxable as telecommunications services.

Prior to submitting the ruling request to the WI DOR, we researched how other Streamlined Sales Tax member states would tax a similar transaction. We found recent rulings from Indiana (Attachment 4) and Utah (Attachment 5) in which an online and mobile banking platform, very similar to the one provided by Alkami, was the subject of the ruling request. Both states determined that data processing services were being provided rather than telecommunications services which is contrary to Wisconsin’s position.

After we received the WI DOR’s ruling, we submitted a response (Attachment 6) asking them to look more closely at the data processing aspect of the banking platform, which is the object of the transaction, rather than the service of merely transferring data from ECU’s servers to their customers’ computer or smartphone screens. The WI DOR, in their second response (Attachment 7), again took the position that Alkami’s online and mobile banking platform was subject to Wisconsin sales and use tax as a telecommunications service.

We are requesting that the Compliance Review and Interpretations Committee determine whether the WI DOR accurately applied the definition of telecommunications services and, more specifically, what the definition of “telecommunications services” does not include, to the transactions between Alkami and ECU.

August 21, 2019

Wisconsin Department of Revenue  
Director of Private Letter Rulings  
PO Box 8933  
Madison, WI 53708-8933

Dear Sir or Madam:

In an effort to maintain compliance with Wisconsin's current taxing procedures, my client, Educators Credit Union ("ECU"), holding Wisconsin tax account number 0000255725 and located at 1326 Willow Rd, Mt Pleasant, WI 53177, would like to request a private letter ruling, based on the state's sales and use tax laws. On behalf of ECU, I would respectfully request the Wisconsin Department of Revenue responds to the questions we have identified below regarding the Wisconsin sales and use tax. ECU would like to verify they are handling the application of use tax correctly given the situations outlined below

### Statement of Facts

#### *Background*

ECU wishes to obtain guidance on how Wisconsin sales and use tax applies to their purchases of services related to their online and mobile banking platform. ECU is a state-chartered credit union that offers traditional personal and commercial banking services. ECU provides its members with an online and mobile banking platform so they can access their banking information whenever they need to from their computer or their mobile device.

ECU has a service agreement with one vendor, Alkami Technology, Inc. ("Alkami"), in which Alkami provides ECU with an online and mobile banking platform that ECU's banking members use to access and view their personal and business banking accounts. These platforms are provided over the Internet. Alkami's platform is proprietary and neither ECU, nor its members has the rights or access to control or manipulate Alkami's platform. Alkami provides a custom "theme" for its platform to

incorporate ECU's branding. ECU only provides and receives data to and from Alkami, which Alkami processes in order to provide account information to ECU's members and to provide the services outlined below and contained in the attached agreements and invoices.

Alkami does not sell, license, or transfer any software to ECU, other than a mobile banking application that ECU's members download to their mobile devices from iTunes or the Google Play Store to access their account information. Alkami does not charge ECU for this mobile banking application nor does ECU charge its members for use of the mobile banking application.

#### *Services Provided by Alkami*

Alkami's platform includes several products and services as outlined in the enclosed Master Services Agreement between Alkami and ECU (Exhibit A). The products and services include:

Online Relationship Builder Alkami's Online Relationship Builder application service enables ECU to offer its members online access to their personal or commercial bank account information through an online banking webpage or mobile application unique to ECU. ECU's members download the mobile application through iTunes or the Google Play Store free of charge. Alkami's Online Relationship Builder webpage and mobile application seamlessly process data provided by ECU and displays ECU's members' bank account information in real-time. ECU's members are also able to view online statements and past transactions. Additionally, ECU's members may send messages to ECU through the online platform to obtain assistance with the online platform or to ask account specific questions.

Alkami creates the unique banking webpage for ECU in order to perform its services. Alkami does not turn over control over the website to ECU. Any changes that might be suggested by ECU must be made by Alkami and cannot be made by ECU. Alkami uses the website to provide its services. In addition, ECU must notify Alkami of any issues or bugs on website and Alkami must resolve the issues as ECU has no control over the website.

Online Bill Payment Another add-on service to Online Relationship Builder is Online Bill Payment. Online Bill Payment is a service offering that allows ECU's members to send payments to any company or person within the United States. All payments are processed by third-party vendors of ECU. When an ECU member initiates an Online Bill Payment, Alkami connects ECU's member to the third-party vendor selected by ECU through an application programming interface (API). ECU's members have the ability to schedule current payments, schedule future payments, view historical payments, and view scheduled payments.

Quicken/QuickBooks Export Alkami provides ECU's members with the functionality to export their transaction history from the online banking platform into a file that can be used with their accounting software. ECU's members can export the data into a CSV file or into a file that can be imported into Quicken or QuickBooks. ECU's members are not charged for the ability to export their transaction data.

Intuit Account Aggregation (now provided by Yodlee) Alkami provides an API that allows ECU's members to link their bank accounts to the Intuit software that they use. The Intuit software uses the API to pull the data from the Alkami's platform so that ECU's members can view it from within their Intuit software. This allows ECU's members with multiple accounts with ECU to see all account information in one place.

Credential Validation Credential Validation is a service that is part of Online Relationship Builder. This service is responsible for keeping the ECU's member usernames and passwords database up-to-date so that credentials can be verified when ECU's members access their account through the Amazon Alexa application.

Apptentive Apptentive is a third-party service that Alkami integrates into its mobile application. Apptentive is a member feedback platform that sends a prompt to ECU's members, while they are using the mobile application, asking them to rate the mobile application in iTunes or the Google Play Store.

Push Notifications Another feature of Alkami's mobile application is push notifications. Push notifications are initiated by the Alkami's application server and provide information to members through the mobile application. These notifications are real time notifications and are sent to ECU's members based on their personal preferences that they set up within their account. These notifications may send ECU's members information about account balances, unauthorized transactions, upcoming scheduled payments, or payment due dates.

Managed/Monitored Router Fee Alkami provides a managed router service for ECU. This service includes the installation, configuration, and maintenance of the router on ECU's premises. The router is used to send data that Alkami processes and helps maintain the security of the sensitive information that is sent.

Touch ID The final feature of the mobile banking application is Touch ID. Touch ID allows ECU's members using an Apple iPhone or iPad, with the ability to read fingerprints, to access their account

by having their fingerprint scanned rather than entering a username and password. This feature allows ECU's members to save time and adds another level of security to their account in order to prevent unauthorized access.

#### *Fees Charged by Alkami*

Alkami has two different billing methods – annual and monthly.

The annual billings include separately stated charges for:

- Annual fee for the service add-ons that are mentioned above and not included in Online Relationship Builder.
- Annual interface fee which is the fee for managing all of the various API's.
- Annual custom development maintenance fee for customizing the online and mobile platforms to ECU's specifications and needs.
- Annual 3<sup>rd</sup> party authentication fees, which are fees for authenticating ECU's members' information when they use services like Online Bill Payment.

For reference, we have included a copy of an annual invoice (Exhibit B).

The monthly billings include separately stated charges for:

- Online Relationship Builder – fees charged are based on the number of ECU's members who access the online or mobile platform.
- Intuit Aggregation Fee – flat fee charged for integration of Intuit API.
- Quicken/QuickBooks Fee – flat fee charged for ability for ECU's members to export data to CSV, Quicken, or QuickBooks file.
- Online Bill Payment User Interface Fee – flat fee charged for the ability for ECU's members to pay bills to third parties through their bank account.
- Credential Validation Fee – flat fee charged for credential validation service for up to 150,000 users.
- Apptentive Fee – flat fee charged for integration of Apptentive services into mobile application.
- Push Notifications Fee – fees charged for push notifications sent based on the number of users that notifications were sent to.
- Managed Router Fee – flat fee charged for management of on-premises router.
- Touch ID Fee – fee for use of Touch ID service based on number of users of Touch ID service.

For reference, we have included a copy of a typical monthly invoice (Exhibit C).

### Question

Are the charges for the services that Alkami provides subject to Wisconsin sales and use tax?

### Answers

1. The annual fees charged for the interface, custom development maintenance, and 3<sup>rd</sup> party authentication fees are not taxable as they represent the sale of non-taxable information and data processing services or Software as a Service.
2. The annual fee charged for the Online Relationship Building add-ons is partially taxable. Since the fee is related to distinct and identifiable taxable and non-taxable monthly fees for which a reasonable allocation can be made, only the percentage that applies to the taxable monthly fees would be taxable.
3. The monthly fees charged for Online Relationship Builder, Intuit aggregation, online bill payment, credential validation, Apptentive, and Touch ID are not taxable as they represent the sale of non-taxable information and data processing services or Software as a Service.
4. The monthly fees charged for Quicken/QuickBooks data export and push notifications are taxable as they represent the sale of tangible personal property and a telecommunications service, respectively.

### Analysis

Pursuant to section Tax 11.71(2)(b), Wis. Adm. Code, the sale of prewritten computer software, regardless of how it's delivered to the purchaser is subject to Wisconsin sales and use tax. However, section Tax 11.71(3), Wis. Adm. Code, exempts from sales data processing services and computer software that is not prewritten software.

Pursuant to section Tax 11.66(2)(d), Wis. Adm. Code, telecommunications message services are taxable. However, section Tax 11.66(1)(zp)1, Wis. Adm. Code, provides that telecommunications services do not include, "data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic transmission, if the *purchaser's primary purpose for the underlying transaction is the processed data*" (emphasis added).

Here, Alkami offers Online Relationship Building, Online Bill Payment, Intuit aggregation, credential validation, Apptentive services, and Touch ID security services over the Internet through its proprietary platform. Alkami also offers integration of its platform with third parties through APIs, custom platform development, and third-party authentication services. None of these services are enumerated services in Wisconsin. Moreover, the Alkami's services meet the definition of data processing and information services and therefore are non-taxable services. In providing its services, data is acquired, generated, processed, retrieved, or stored by Alkami, and is delivered electronically with the primary purpose of providing processed data or information to ECU's members. Thus, Alkami's charges for these services are not subject to Wisconsin sales or use tax as non-taxable data processing and information services.

While ECU's members may have the ability to send and receive messages to and from ECU through the online platform, that feature does not make the entire fee for Online Relationship Builder subject to Wisconsin sales or use tax as the primary purpose of the transaction is the online banking platform (processed data) and not the ability to send and receive messages. Alkami is not providing ECU with a telecommunications system. Rather, they are providing a platform that utilizes processed data and information to enable ECU's members to obtain vital, up-to-date bank account information. Further supporting this position is the Department's news release posted on its website entitled, "E-Mail Services Provided With Web Hosting." This release clarifies that providing email services along with web hosting, for a single fee, are not taxable because the main object of the transaction is the web hosting service and the email services are incidental to the transaction.

With Alkami's Online Relationship Builder, the main object of the transaction is the online banking platform, or the acquisition of processed data. The purpose of the transaction is not to acquire a means of sending messages or transmitting other data. Therefore, the ability to send and receive messages is incidental. The Department has previously determined that a truck tracking service that is done through GPS is not a taxable telecommunications service, even though data is being sent from one location to another. In that determination, tracking information was sent from the customer's truck to the vendor's server where data was further processed. The customer was then able to login to their account, via the internet, and download reports for management purposes. Online Relationship Builder is similar in that it is getting information from ECU's server, processing the data, and providing it to ECU's members when they login to their online bank accounts. Again, while the truck tracking service had a telecommunications component, that was not the intent or use of the purchaser in acquiring the service.



Furthermore, while ECU's members may have to download a mobile application to their mobile device in order to access the mobile version of Online Relationship Builder, this does not make the transaction subject to Wisconsin sales or use tax because the mobile application that is downloaded by ECU's members is incidental to the data processing service. This position is supported in the Department's FAQ posted on its website entitled, "Sales and Use Tax Treatment Computer - Hardware, Software, Services (October 1, 2009 and Thereafter)" under the explanation of Data Processing Services. This published guidance provides that if prewritten software is downloaded in order to access the service provider's software, the transaction is considered to be data processing if the software is downloaded incidental to the data processing service.

The fees charged for the ability to allow ECU's members to export transactions into downloadable files and the monthly managed router fees are taxable under section 77.52(1)(a), Wis. Stats., as the sale and rental of tangible personal property, respectively. The monthly fees for push notifications are taxable under sec. 77.52(2)(a)5m, Wis. Stats., as a telecommunications messaging service.

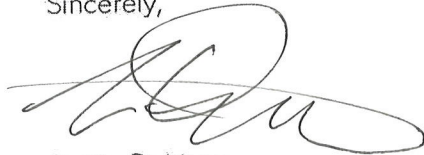
The annual service fee for the add-ons provided outside of Online Relationship Builder is partially taxable because a reasonable allocation can be made between taxable and non-taxable products using the monthly fees. Therefore, this fee does not meet the definition of a bundled transaction under section 77.51(1f), Wis. Stats.

We make the following representations to this request:

1. ECU is not currently under audit by the Department;
2. ECU has not been notified by the Department concerning a pending audit;
3. ECU was audited by the Department and the statutory period of limitation for filing a petition for redetermination or a petition for review has expired but the statutory period of limitation for filing a claim for refund has not expired;
4. ECU has not submitted a claim for refund containing transactions involving any issue contained in the request for declaratory ruling; and
5. The same issue is not currently the subject of litigation with the Department and has not been previously ruled on by the Department.

Therefore, we kindly request your assistance in guiding us to the appropriate response to our inquiries above. If you have any questions, please feel free to contact me at (608) 661-2688, or by email at [ademoss@wipfli.com](mailto:ademoss@wipfli.com). If the Department should rule other than as noted above, we would like to request a conference after the Department has had the opportunity to study the case.

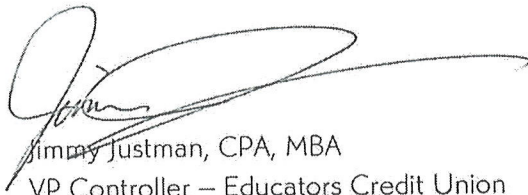
Sincerely,



Austin DeMoss  
Senior Consultant  
State and Local Tax Practice

**Required Declaration Under Penalty of Perjury**

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete.



Jimmy Justman, CPA, MBA  
VP Controller – Educators Credit Union



**State of Wisconsin • DEPARTMENT OF REVENUE • Income, Sales & Excise Tax Division**

2135 Rimrock Rd. • MS 6-40 • P.O. BOX 8933 • MADISON, WI 53708-8933  
Phone (920) 398-1056 • tanya.damerow@wisconsin.gov

July 30, 2020

Wipfli LLP  
Attn: Austin DeMoss  
2501 West Beltline Highway, Suite 401  
Madison, WI 53913

RE: Educators Credit Union

Dear Mr. DeMoss:

Thank you for your letter dated August 21, 2019 requesting a private letter ruling and the additional information provided in your email dated January 28, 2020. Although this is not a private letter ruling, this letter provides the Wisconsin Department of Revenue's ruling regarding the questions that you asked. You may rely on this letter as you would a private letter ruling.

**Facts as Provided by You**

Educators Credit Union ("ECU") is a state-chartered credit union that offers traditional personal and commercial banking services. ECU provides its members with an online and mobile banking platform so they can access their banking information whenever they need to from their computer or mobile device.

ECU has a service agreement with one vendor, Alkami Technology, Inc. ("Alkami"), in which Alkami provides ECU with an online and mobile banking platform that ECU's banking members use to access and view their personal and business banking accounts. These platforms are provided over the Internet. Alkami's platform is proprietary and neither ECU, nor its members have the rights or access to control or manipulate Alkami's platform. Alkami provides a custom "theme" for its platform to incorporate ECU's branding. ECU only provides and receives data to and from Alkami, which Alkami processes in order to provide account information to ECU's members and to provide the services outlined below and contained in the agreements and invoices provided.

Alkami does not sell, license, or transfer any software to ECU, other than a mobile banking application that ECU's members download to their mobile devices from iTunes or the Google Play Store to access their account information. Alkami does not charge ECU for this mobile application nor does ECU charge its members for use of the mobile banking application.

***Services provided by Alkami***

Alkami's platform includes several products and services as outlined in the Master Services Agreement between Alkami and ECU (provided in Exhibit A). The products and services include:

- Online Relationship Builder – Alkami's Online Relationship Builder application service enables ECU to offer its members online access to their personal or commercial bank

account information through an online banking webpage or mobile application unique to ECU. ECU's members download the mobile application through iTunes or the Google Play Store free of charge. Alkami's Online Relationship Builder webpage and mobile application seamlessly process data provided by ECU and displays ECU's members' bank account information in real-time. ECU's members are also able to view online statements and past transactions. Additionally, ECU's members may send messages to ECU through the online platform to obtain assistance with the online platform or to ask account specific questions.

- Alkami creates the unique banking webpage for ECU in order to perform its services. Alkami does not turn over the website to ECU. Any changes that might be suggested by ECU must be made by Alkami and cannot be made by ECU. Alkami uses the website to provide its services. In addition, ECU must notify Alkami of any issues or bugs on the website and Alkami must resolve the issues as ECU has no control over the website.
- Online Bill Payment – Another add-on service to Online Relationship Builder is Online Bill Payment. Online Bill Payment is a service offering that allows ECU's members to send payments to any company or person within the United States. All payments are processed by third-party vendors of ECU. When an ECU member initiates an Online Bill Payment, Alkami connects ECU's member to the third-party vendor selected by ECU through an application programming interface (API). ECU's members have the ability to schedule current payments, schedule future payments, view historical payments, and view scheduled payments.
- Quicken/QuickBooks Export – Alkami provides ECU's members with the functionality to export their transaction history from the online banking platform into a file that can be used with their accounting software. ECU's members can export the data into a CSV file or into a file that can be imported into Quicken or QuickBooks. ECU's members are not charged for the ability to export their transaction data.
- Intuit Account Aggregation (now provided by Yodlee) – Alkami provides an API that allows ECU's members to link their bank accounts to the Intuit software they use. The Intuit software uses the API to pull the data from Alkami's platform so that ECU's members can view it from within their Intuit software. This allows ECU's members with multiple accounts with ECU to see all account information in one place.
- Credential Validation – Credential Validation is a service that is part of the Online Relationship Builder. This service is responsible for keeping the ECU's member usernames and passwords database up-to-date so that credentials can be verified when ECU's members access their account through the Amazon Alexa application.
- Apptentive – Apptentive is a third-party service that Alkami integrates into its mobile application. Apptentive is a member feedback platform that sends a prompt to ECU's members, while they are using the mobile application, asking them to rate the mobile application in iTunes or the Google Play Store.
- Push Notifications – Another feature of Alkami's mobile application is push notifications. Push notifications are initiated by the Alkami's application server and provide information to members through the mobile application. These notifications are real-time notifications and are sent to ECU's members based on their personal preferences that they set up

within the account. These notifications may send ECU's members information about account balance, unauthorized transactions, upcoming scheduled payments, or payment due dates.

- Managed/Monitored Router Fee – Alkami provides a managed router service for ECU. This service includes the installation, configuration, and maintenance of the router on ECU's premises. The router is used to send data that Alkami processes and helps maintain the security of the sensitive information that is sent.
- Touch ID – The final feature of the mobile application is Touch ID. Touch ID allows ECU's members using an Apple iPhone or iPad, with the ability to read fingerprints, to access their account by having their fingerprint scanned rather than entering a username and password. This feature allows ECU's members to save time and adds another level of security to their account in order to prevent unauthorized access.

### ***Fees Charged by Alkami***

Alkami has two different billing methods – annual and monthly.

The annual billings include separately stated charges for:

1. Annual fee for the service add-ons that are mentioned above and not included in Online Relationship Builder
2. Annual interface fee which is the fee for managing all of the various API's
3. Annual custom development maintenance fee for customizing the online and mobile platforms to ECU's specifications and needs
4. Annual 3<sup>rd</sup> party authentication fees, which are fees for authenticating ECU's members' information when they use services like Online Bill Payment

A copy of an annual invoice was provided (Exhibit B).

The monthly billings include separately stated charges for:

1. Online Relationship Builder – fees charges are based on the number of ECU's members who access the online or mobile platform.
2. Intuit Aggregation Fee – flat fee charged for integration of Intuit API
3. Quicken/QuickBooks Fee – flat fee charged for ability for ECU's members to export data to CSV, Quicken, or QuickBooks file
4. Online Bill Payment User Interface Fee – flat fee charged for the ability for ECU's members to pay bills to third-parties through their bank account
5. Credential Validation Fee – flat fee charged for credential validation service for up to 150,000 users
6. Apptentive Fee – flat fee charged for integration of Apptentive services into mobile application
7. Push Notifications Fee – fees charges for push notifications sent based on the number of users that notifications were sent to
8. Managed Router Fee – flat fee charged for management of on-premises router
9. Touch ID fee – fee for use of Touch ID service based on the number of users of Touch ID service



A copy of a typical monthly invoice was provided (Exhibit C).

**Ruling Requested by You**

**Question:** Are the charges for the services that Alkami provides subject to Wisconsin sales and use tax?

**Answers for Monthly Service Fees:**

1. *Online Relationship Builder: fees charges are based on the number of ECU's members who access the online or mobile platform - Taxable telecommunications service. The primary purpose of the application is for the routing of data from ECU to its members through an online banking web page or mobile banking application.*
2. *Intuit Aggregation Fee: flat fee charged for integration of Intuit application programming interface (API) - Taxable telecommunications service. The primary purpose is for the routing of data from ECU to its member's Intuit software.*
3. *Quicken/QuickBooks Fee: flat fee charged for ability for ECU's members to export data to CSV, Quicken, or QuickBooks file – Taxable telecommunications service. The primary purpose is the routing of data from ECU to its member's Quicken or QuickBooks accounting software.*
4. *Online Bill Payment User Interface Fee: flat fee charged for the ability for ECU's members to pay bills to third-parties through their bank account - Taxable telecommunications service. The primary purpose is for the routing of data from ECU's customers to a third party.*
5. *Credential Validation Fee: flat fee charged for credential validation service for up to 150,000 users - Nontaxable service.*
6. *Apptentive Fee: flat fee charged for integration of Apptentive services into mobile application - Taxable telecommunications service/telecommunications message service. The Apptentive fee is for a third party service to provide rating prompts to ECU's members while using the mobile app. Information obtained from Apptentive's website: <https://www.apptentive.com/features/ratings-reviews/>, describes the service as follows: Customer (i.e., ECU) develops a customized message which is recorded by Apptentive and sent to ECU's members using the mobile app. A negative rating will then integrate with the message center to provide feedback one-on-one. There are components of both taxable telecommunications message and telecommunications services.*
7. *Push Notifications Fee: fees charges for push notifications sent based on the number of users that notifications were sent to - Taxable telecommunications message service. The primary purpose is for ECU members to receive notifications about certain account information or reminders. When an event occurs, a message is recorded, and a notification is sent to the member.*
8. *Managed Router Fee: flat fee charged for management of on-premises router - Taxable service to tangible personal property.*

9. *Touch ID fee: fee for use of Touch ID service based on the number of users of Touch ID service - Nontaxable service.*

**Answers Annual Fees:**

1. *Annual fee for the service add-ons that are mentioned above and not included in Online Relationship Builder - Taxable bundled transaction, assuming the taxable services are more than 10% of the total fee. The services above include nontaxable and taxable services for one-nonitemized fee. The seller (i.e., Alkami) has the option to charge tax only on the portion of the sales price relating to the taxable products and services, if it can identify, by reasonable and verifiable standards from its books and records, the portion of the selling price that is attributable to the taxable products. However, if a seller has not charged tax, the purchaser (i.e., ECU) of a bundled transaction is required to pay use tax on the taxable products included in the bundle. If the purchaser is unable to determine the purchase price of the taxable products contained in the bundle, the entire purchase price is subject to use tax.*
2. *Annual interface fee which is the fee for managing all of the various API's - Taxable telecommunications services. The primary purpose is for the routing of data from ECU to its members software program (e.g., Intuit.).*
3. *Annual custom development maintenance fee for customizing the online and mobile platforms to ECU's specifications and needs - Taxable service necessary to complete the sale of the online relationship builder (i.e., included in the sales price of the online relationship builder).*
4. *Annual 3<sup>rd</sup> party authentication fees, which are fees for authenticating ECU's members' information when they use services like Online Bill Payment - Nontaxable service.*

**Applicable Statutes:**

Section 77.51(15b)(a)3., Wis. Stats., provides that charges by the seller for any services necessary to complete a sale, not including delivery and installation charges are included in the sales price.

Section 77.52(2)(a)5.am, Wis. Stats., imposes sales tax on the privilege of selling, licensing, performing, or furnishing of telecommunications services.

Section 77.52(2)(a)5m., Wis. Stats., imposes sales tax on the sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction.

Section 77.52(2)(a)10., Wis. Stats., imposes sales tax on the repair, service and maintenance to tangible personal property.

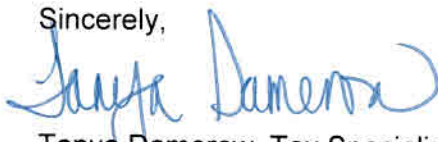
Section 77.52(20)(a), Wis. Stats., imposes sales tax on the entire sales price of a bundled transaction, as provided in sec. 77.52(20)(a), Wis. Stats.



"Bundled transaction" is defined in sec. 77.51(1f), Wis. Stats., in part, as "...the retail sale of 2 or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price..." Bundled transactions do not include the seller's purchase price or the sales price of the taxable products is no greater than 10% of the seller's total purchase price or sales price of all the bundled products (sec. 77.51(1f)(d), Wis. Stats.).

"Telecommunications services" are defined in s. 77.51(21n), Wis. Stats., and includes the electronically transmitting, conveying, or routing of data or other information to a point or between or among points. "Telecommunications services" includes the transmission, conveyance, or routing of such information or signals in which computer processing applications are used to act on the content's form, code, or protocol for transmission, conveyance, or routing purposes, regardless of whether the service is referred to as a voice over Internet protocol service or classified by the federal communications commission as an enhanced or value-added nonvoice data service. "Telecommunications services" does not include data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic transmission, if the purchaser's primary purpose for the underlying transaction is the processed data.

Sincerely,



Tanya Damerow, Tax Specialist  
Wisconsin Department of Revenue



## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2015-09ST  
April 13, 2017

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

## ISSUES

## Sales and Use Tax - Online Banking and Related Cloud-Based Products

Authority: [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-1-28.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-6](#); [IC 6-2.5-4-15](#); [IC 6-2.5-4-16.4](#); [IC 6-2.5-5-24](#); [45 IAC 2.2-1-1](#); [45 IAC 2.2-4-2](#); Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue, 575 N.E.2d 718 (Ind. T.C. 1991); Grand Victoria Casino & Resort, LP v. Indiana Dep't of State Revenue, 789 N.E.2d 1041 (Ind. T.C. 2003); Asplundh Tree Expert Co. v. Indiana Dep't of State Revenue, 38 N.E.3d 744 (Ind. T.C. 2015); Sales Tax Information Bulletin #4 (June 2016); Sales Tax Information Bulletin #8 (December 2016); Revenue Ruling 2011-05ST, (December 9, 2011) 20111130 Ind. Reg. 045110713NRA; Streamlined Sales and Use Tax Agreement (December 23, 2016)

A taxpayer ("Company") is seeking an opinion as to whether Company's products are a service that is not subject to the Indiana sales and use tax when sold to clients located in Indiana.

## STATEMENT OF FACTS

Company is an out-of-state corporation. Company provides the following facts regarding its request for a revenue ruling:

## A. Service Offerings

The Company is an out-of-state corporation with customers located throughout the country, including Indiana. The Company's customers are financial institutions, including banks and federal and state credit unions (Financial Institutions). In order for Financial Institutions to remain competitive, they must be able to offer online banking to their account holders. The Company is the outsourced provider of Financial Institutions for online banking. The Company provides services over the Internet that allows account holders of a Financial Institution (Account Holder) to view and manage their personal bank accounts online. Specifically, the Company provides the Financial Institutions the ability to offer Account Holders the following services: Online Banking, Online Bill Payment, Finance and Budget Tool, and Mobile Banking.

The following is a detailed description of these service offerings:

- Online Banking. The Company's Online Banking service enables Financial Institutions to offer Account Holders online access to their personal bank account information through an online banking webpage unique to the Account Holder's Financial Institution. The Company's Online Banking webpage seamlessly displays the Account Holder's personal bank account information that is provided by the Financial Institution or agents of the Financial Institution in real-time. An Account Holder is also able to view online statements and past transactions.

The Company creates the unique banking webpage for the Financial Institution in order to perform its services. The Company does not turn over control over the website to the Financial Institution. Any changes that might be suggested by the Financial Institution must be made by the Company and not the Financial Institutions. The Company uses the website to provide its services.

- Finance and Budget Tool. An add-on service to Online Banking is the Finance and Budget Tool. The Finance and Budget Tool utilizes the Account Holder's banking information to categorize the Account Holder's personal spending (e.g., restaurants, gas, retail, and utilities). In addition, the Finance and Budget Tool allows Account Holders to create budgets and monitor their individual spending and savings activities.

- **Online Bill Payment.** Another add-on service to Online Banking is Online Bill Payment. Online Bill Payment is a service offering that allows an Account Holder to send payments to any company or person within the United States. All payments are processed by third-party vendors of the Financial Institutions' choosing. When an Account Holder initiates an Online Bill Payment, the Company connects the Account Holder to the third-party vendor selected by the Financial Institution through a single sign-on user interface hosted by the third-party bill payment processor. The third-party bill payment processor handles funds transfers in accordance with the Account Holder's instructions.
- **Mobile Banking.** The final add-on service to Online Banking is Mobile Banking. As part of its Mobile Banking service offerings, the Company offers Account Holders access to Online Banking from cell phones, tablets, and other mobile devices. Similar to the online banking website, the mobile banking website is customized and branded as to provide the Account Holder with a similar experience of accessing Online Banking from a personal computer. Like Online Banking, the Account Holder gains access to account balances, history, and other add-on services such as Online Bill Payments.

In addition, the Company enables Financial Institutions the ability to offer Account Holders a mobile banking application that can be downloaded for free on an iPhone or Android smartphone. With the mobile banking application, the Account Holder can access account balances, history, and other services directly from within the electronically downloaded app rather than on an Internet browser. Although the Account Holder may download the mobile banking application for free, the Company charges fees to Financial Institutions for offering this service on behalf of the Financial Institutions.

In performing the above services, the Company utilizes its proprietary platform. This platform is used exclusively by the Company in performing its services. Financial Institutions do not have rights or access to control or manipulate the Company's platform. Financial Institutions only provide and receive certain data feeds to and from the Company. Except for the mobile banking application, the Company does not sell, license, or transfer any software to Financial Institutions or Account Holders nor does the Company separately charge for use of its platform. In addition, neither the Financial Institution nor Account Holders have the ability to modify or control the Company's proprietary platform used by the Company in performing its services except in the processing of online bill payments. In the case of Online Bill Payment services, Account Holders still do not have the ability to modify or control the platform but simply have the limited ability to authorize amounts to be paid for the purposes of processing bill payments.

#### B. Customers

As discussed above, the Company's customers are financial institutions, many of which are federal credit unions. Under federal law a state cannot tax federal credit unions. (12 U.S.C. Sec. 1768.)

#### C. Fees

The Company has various billing methods depending on the Financial Institution and services selected. The Company may bill a monthly or annual service fee, charge on a per transaction basis for online bill payment, or charge based on the number of Account Holders. In addition, the Company may charge initial setup fees separate from any service offerings. The Company does not receive fees from Account Holders; all services are provided for the Financial Institution itself, although the end-user is the Account Holder. It is up to the Financial Institution as to whether the Account Holder is charged for access or use of any of the above service offerings and the Financial Institution would charge the Account Holders. Moreover, except for fees charged to Financial Institutions for downloaded mobile banking applications, the Company does not charge Financial Institutions for any software.

#### D. Service Documentation Agreements

In contracting with Financial Institutions, the Company enters into a Master Services Agreement and separate Service Documentation Agreements based on the services selected. . . . As indicated in each agreement, except for mobile banking applications, the agreements are for licenses of services and not the licenses of software.

For example, in the Master Services Agreement, the Company grants a "non-exclusive, non-sublicensable, and non-transferable (except as expressly set forth in this Agreement) license to access and use: (a) the Services as made available by [the Company], solely for the purpose of receiving the Authorized Services and providing the Services' functionality to End Users; and (b) the Service Documentation solely in

connection with Customer's access and use of the Services' as expressly permitted by this Agreement." In Service Documentation agreements, the Company contracts to provide enumerated services such as "provide to eligible End Users with personal computers (PCs running compatible browsers) with the following functionality." "view payments," "schedule payments," and "bill presentment."

## DISCUSSION

Based on the foregoing facts, Company requests a ruling as to whether its products are a non-taxable service. Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), sales tax is imposed on retail transactions made in Indiana. A retail transaction is defined in [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration. [IC 6-2.5-4-1\(c\)](#) goes on to provide in pertinent part:

For purposes of determining what constitutes selling at retail, it does not matter whether:

...

(2) the property is transferred alone or in conjunction with other property or services . . .

"Tangible personal property" is defined in [IC 6-2.5-1-27](#) as:

. . . personal property that:

(1) can be seen, weighed, measured, felt, or touched; or

(2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. [45 IAC 2.2-4-2](#) clarifies the taxability of services as follows:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

(1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

(2) The tangible personal property purchased is used or consumed as a necessary incident to the service;

(3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

(4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in [subsection (a)], the gross retail tax shall not apply to such transaction.

A unitary transaction is clarified in [45 IAC 2.2-1-1\(a\)](#) as follows:

Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

Sales of specified digital products are also included in the definition of retail transactions. [IC 6-2.5-4-16.4\(b\)](#) provides that a person engages in making a retail transaction when the person (1) electronically transfers specified digital products to an end user; and (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser. "Specified digital products," as currently defined by [IC 6-2.5-1-26.5](#), include only digital audio works (e.g., songs, spoken word recordings, ringtones), digital audiovisual works (e.g., movies), and digital books. Products "transferred electronically" are

defined at [IC 6-2.5-1-28.5](#) to mean products that are "obtained by a purchaser by means other than tangible storage media."

Pursuant to Section 333 ("Use of Specified Digital Products," effective Jan. 1, 2010) of the Streamlined Sales and Use Tax Agreement ("SSUTA," effective December 23, 2016), of which Indiana is a signatory, "A member state shall not include any product transferred electronically in its definition of 'tangible personal property.'" Therefore, Indiana may not impose sales tax on a product transferred electronically by basing the product's taxability on inclusion of the product in the definition of tangible personal property. Pursuant to the same section of the SSUTA, "ancillary services," "computer software," and "telecommunication services" are excluded from the term "products transferred electronically." This means prewritten computer software transferred electronically is still taxable. Additionally, [IC 6-2.5-1-27.5\(c\)\(8\)](#) explicitly excludes ancillary services from the definition of telecommunication services, which are taxable under [IC 6-2.5-4-6](#) when they are intrastate, meaning "that the transmission must originate and terminate within Indiana." *Grand Victoria Casino & Resort, LP v. Indiana Dep't of State Revenue*, 789 N.E.2d 1041, 1045 (Ind. T.C. 2003). Accordingly, ancillary services are not subject to sales tax in Indiana.

Based on the foregoing, Indiana may impose sales tax on products transferred electronically only if the products meet the definition of specified digital products, pre-written computer software, or telecommunication services.

"Prewritten computer software" is defined in [IC 6-2.5-1-24](#) as follows:

Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

- (1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.
- (2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.
- (3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
- (4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

"Telecommunication services" is defined in [IC 6-2.5-1-27.5](#) as follows:

- (a) "Telecommunication services" means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.
- (b) The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service:
  - (1) is referred to as voice over Internet protocol services; or
  - (2) is classified by the Federal Communications Commission as enhanced or value added.
- (c) The term does not include the following:
  - (1) **Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.**
  - (2) Installation or maintenance of wiring or equipment on a customer's premises.
  - (3) Tangible personal property.
  - (4) Advertising, including but not limited to directory advertising.
  - (5) Billing and collection services provided to third parties.
  - (6) Internet access service.
  - (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3.
  - (8) Ancillary services.
  - (9) Digital products delivered electronically, including the following:

- (A) Software.
- (B) Music.
- (C) Video.
- (D) Reading materials.
- (E) Ring tones.

**(Emphasis added).**

With regard to the taxability of remotely accessed software, the Department in Sales Tax Information Bulletin #8 (December 2016) ("STIB 8") provides the following guidance:

Whether a transaction involving the use of "cloud-based" software is subject to Indiana sales or use tax depends on the facts and circumstances of each transaction, particularly with regards to the amount of control or possession the purchaser is granted in the software, the object of the transaction, and the ownership rights, if any, the purchaser has in the software.

STIB 8 goes on to provide guidance with regard to situations where a vendor uses cloud-based software on a client's behalf:

Depending on the factors of the transaction and arrangement, SaaS may or may not be subject to tax. Charges for accessing prewritten computer software maintained on the vendor's or a third party's computer or servers are not subject to tax when accessed electronically via the Internet if the customer is not transferred the software, does not have an ownership interest in the software, and does not control or possess the software or the server.

Example #3: An Indiana resident pays an hourly rate to utilize a vendor's software resources, which are maintained on the vendor's computer servers located outside of Indiana. The purchaser never uses, receives or has control of the software. Instead, the vendor uses the software to perform services on the Indiana resident's behalf. The transaction is not subject to sales tax.

Further, a purchaser may contract with a business in order to receive services, and as part of those services, tangible personal property in the form of software is provided. If the software provided to the customer is merely incidental to the provision of services (less than 10% of the total price of the transaction), then the service transaction may not be subject to sales tax as a unitary transaction.

Example #4: An Indiana business contracts with a service provider who will perform the business's IT functions. As part of the service, the Indiana business downloads the service provider's prewritten software onto the business's computer. However, the Indiana business does not use the software; rather, the service provider uses the software remotely in order to perform its IT services. The cost of the software is incidental (less than 10% of the total price of the transaction) to the service, so the transaction with the business customer is exempt from sales tax. The service provider, however, is subject to Indiana sales/use tax on the purchase of this software.

Even though software may be located outside Indiana, the Indiana Tax Court has indicated that something need not necessarily be physically present in Indiana for it to be "used" in Indiana. *Asplundh Tree Expert Co. v. Indiana Dep't of State Revenue*, 38 N.E.3d 744, 748 (Ind. T.C. 2015) (quoting *Fisher & Co., Inc. v. Dep't of Treasury*, 282 Mich.App. 207, 769 N.W.2d 740, 743 (2009)). Further, the Court stated the following:

Indiana's statutory definition of a taxable use is broad and leads to a very low threshold of taxability. See *USAir Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 469 (Ind. Tax Ct.1993). Moreover, this Court has explained that the location of tangible personal property is not dispositive of whether the use tax applies because it would impermissibly limit the definition of a taxable use to either the intended or the ultimate use of the property. See *id.* at 471. . . . [T]herefore, the imposition of use tax does not necessarily depend on whether the subject property is physically present in the taxing state. *Id.*

Company's Online Banking, Online Bill Payment, and Mobile Banking products are provided over the internet and operated using proprietary software controlled by Company and maintained outside Indiana. Company further asserts that because neither the Financial Institutions nor the Account Holders gain possession nor the right to use, control, or direct the use of the Company's proprietary platform, there is no sale of tangible personal property. However, in order for a Financial Institution or Account Holder to use any of these products, they would need to open the Company-created Financial Institution's website from a web browser on a computer or the

Mobile Banking application on a mobile electronic device. In that respect, the products are software used electronically via the internet.

To distinguish Company's software from the guidance in STIB 8, Company compares its products to information services and data processing services, which are nontaxable services per [IC 6-2.5-1-27.5](#). Company further points to a prior Revenue Ruling (Revenue Ruling 2011-05ST, (December 9, 2011) 20111130 Ind. Reg. 045110713NRA) to support this proposition. In this Ruling, the Department concluded that a taxpayer's charges for online access to an information database were not taxable, but charges for the use of certain add-on remotely hosted software applications were taxable under the assumption that the customer obtained a possessory interest in the applications. With regard to the access to the database, the Ruling held that "Taxpayer's sales of access to its online database and its upgraded data packages via the Internet are not subject to Indiana sales and use tax." Regarding the workflow add-ons, however, the Ruling held that "customers are purchasing access to prewritten computer software for which they, the customers, have a possessory interest," and that "Taxpayer's sales of access to its workflow add-ons to end-user customers via the Internet are subject to Indiana sales and use tax when provided to customers located in Indiana."

Differentiating its own products from those at issue in Revenue Ruling 2011-05ST, Company makes the following assertions:

Here, although the Company uses its proprietary platform in performing its services . . . , the Company's services are not sales of tangible personal property as there is no sale, license, or transfer of software by the Company to the Financial Institutions or Account Holders nor does the Company separately charge for use of its platform. In addition, as indicated in the Service Documentation Agreements and like the taxpayer in Revenue Ruling No. 2011-05 ST, the Company does not transfer constructive possession of any software to Financial Institutions or Account Holders. The platform is used exclusively by the Company in performing its services. Unlike the taxpayer's customers in Revenue Ruling No. 2011-05 ST that could input data into the web-based application to modify or control the software tools, neither the Financial Institution nor Account Holders have the ability to modify or control the Company's proprietary platform used by the Company in performing its services. Financial Institutions only provide and receive certain data feeds from the Company. In the case of Online Bill Payment services, Account Holders still do not have the ability to modify or control the software but have the limited ability, as permitted by the Company, to enter individual data into a database used by the software for the purposes of transmitting information to third-party online bill payment processors for the processing of bill payments. In addition, unlike the workflow add-on services in Revenue Ruling No. 2011-05 ST that allow the taxpayer's customers to input their own information, combine that information with the taxpayer's database, and then use the software to make business decisions based on the combined information, the Company's add-on services provide limited functionality and only present the Account Holder's personal information in different formats and categories to assist with budgeting.

Moreover, in applying the true object test,<sup>1</sup> the true object of the transaction is for Financial Institutions to provide custom information services for its Account Holders through Online Banking, Online Bill Payment, and Mobile Banking services. With these services, Account Holders can view their bank accounts and authorize bill payments. As there is no constructive possession of software nor a separate charge for the platform used in providing the services, and the Company does not license, sell, or transfer the platform to Account Holders of Financial Institutions, the true object of the transaction is not tangible personal property, but instead non-taxable services.

Accordingly, except for specific charges related to the electronic download of the mobile banking application and charges for its Finance and Budget Tool, the Company's services within Indiana as outlined above are not subject to Indiana sales or use tax.

In the present matter, Company's Online Banking, Online Bill Payment, and Mobile Banking products have the same limited functionality as the database in the above-mentioned Ruling. The basic platform of the software is strictly to allow an Account Holder to access their bank account. Account Holders essentially can view their account information in the Online Banking or Mobile Banking platform and pay bills using the Online Bill Payment.

Furthermore, the serviceperson test found at [45 IAC 2.2-4-2](#) applies in this instance. Company satisfies all of the requirements of [45 IAC 2.2-4-2\(a\)](#) for finding that the Online Banking, Online Bill Payment, and Mobile Banking products provided by Company are non-taxable. First, Company is primarily in the business of providing digital banking services, and not selling tangible personal property. [45 IAC 2.2-4-2\(a\)\(1\)](#). Second, the software is for the purpose of allowing the Account Holders to view their bank accounts and pay bills. [45 IAC 2.2-4-2\(a\)\(2\)](#). Third, Financial Institutions are not charged for the software, but are either charged a monthly or an annual fee, a



charge per transaction fee on each online bill payment, or a charge based on the number of Account Holders. [45 IAC 2.2-4-2\(a\)\(3\)](#). Fourth, the software was created by Company, and thus Company did not have to pay sales tax when it was created or purchased. [45 IAC 2.2-4-2\(a\)\(4\)](#). Company's software is available to Company's customers incident to the service provided, which is providing digital banking services. Company retains ownership of the software. Customers are not granted any rights to the software.

Additionally, Company argues that the service is the "true object" of the transaction. [IC 6-2.5-4-15](#) provides that "[a] person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction." [IC 6-2.5-1-11.5](#) defines "bundled transaction" in pertinent part as follows:

(b) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, that are:

- (1) distinct;
- (2) identifiable; and
- (3) sold for one (1) nonitemized price.

...  
(d) The term does **not** include a retail sale that:

- (1) is comprised of:
  - (A) **a service that is the true object of the transaction;** and
  - (B) tangible personal property that:
    - (i) is essential to the use of the service; and
    - (ii) is provided exclusively in connection with the service;

(2) includes both taxable and nontaxable products in which:

- (A) the seller's purchase price; or
- (B) the sales price;

of the taxable products does not exceed ten percent (10%) of the total purchase price or the total sales price of the bundled products . . .

**(Emphasis added).**

The requirements for determining the "true object" of a transaction are not defined in statute. Company references *Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue*, 575 N.E.2d 718 (Ind. T.C. 1991), in which the Tax Court held that the determination of whether a sale was a retail transaction turned on whether the "true object" of the transaction was service or property. In *Cowden*, the taxpayer was a hauler who only on occasion sold stone at cost to his customers as a convenience, and therefore the Court concluded that the "true object" of the transaction was the provision of service and not the sale of stone. Company's position is that the true object of the transaction is for Financial Institutions to provide custom information services for its Account Holders through Online Banking, Online Bill Payment, and Mobile Banking services. Further, the tangible personal property is still used by Company to perform the services and neither title nor interest in the property transfers to Account Holders or Financial Institutions. As such, the true object of the transaction does appear to be non-taxable services.

Aside from the Online Banking, Online Bill Payment, and Mobile Banking products, Company concedes that the Finance and Budget Tool, like some of the add-ons in Revenue Ruling 2011-05ST, allows a user greater amounts of control and possesses greater functionality. Account Holders can create budgets and monitor their individual spending and savings activities, which goes beyond the simple inputs provided in the Online Banking, Online Bill Payment, and Mobile Banking products. Because of the greater amount of control one has over the software, this product would be considered taxable.

With regards to applications (or "apps") that are downloaded on a smartphone, tablet, or similar device, while Financial Institutions may make their mobile banking app available for free for Account Holders, Company charges fees to Financial Institutions for offering this product on behalf of the Financial Institutions. Since apps are software, and the software is downloaded and accessed by users, this would constitute a sale of software and subject to sales tax.

Having said that, some of the Financial Institutions are federal credit unions. Such organizations are exempt from sales tax pursuant to [IC 6-2.5-5-24](#), which in essence restates the United States Constitution's prohibition for any state to tax purchases made directly by the United States government. As the Department's guidance in Sales Tax Information Bulletin #4 (June 2016) clarifies, this exemption applies to agencies and instrumentalities of the United States government, including instrumentalities not wholly owned or controlled by the U.S. government, such as federal credit unions, federal land banks, federal reserve banks, and federal home loan banks. As such, if

a Financial Institution that is a federal credit union purchases the Finance and Budget Tool or the mobile banking app, the purchase would be exempt from sales tax.

Company has shown that the Financial Institutions are not granted any rights to the Online Banking, Online Bill Payment, and Mobile Banking products, that the software functionality is limited and primarily provides the ability to view their account information in the Online Banking or Mobile Banking platform and pay bills using the Online Bill Payment, and that the software is available to Financial Institutions and End Users incident to the service provided. Company's Online Banking, Online Bill Payment, and Mobile Banking products appears to be a service under [45 IAC 2.2-4-2](#), and not a sale, lease, license, or other transfer of software or other tangible personal property. Additionally, the product would not meet the definition of a "telecommunication service," which again is defined in [IC 6-2.5-1-27.5](#) as "electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points." Company is transmitting, conveying, or routing information; however, "telecommunication services" does not include "[d]ata processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information," which is what Company's service performs.

Financial Institutions pay for the services in various different ways. As Company states, "[t]he Company may bill a monthly or annual service fee, charge on a per transaction basis for online bill payment, or charge based on the number of Account Holders." However, in reviewing the documents provided, it does not appear that Financial Institutions are explicitly paying for software when it purchases the Online Banking, Online Bill Payment, and Mobile Banking products.

Based on the information provided, Company's Online Banking, Online Bill Payment, and Mobile Banking products are not subject to sales or use tax, as they are nontaxable services with the provision of tangible personal property incident to the service provided. Further, despite a single, bundled price, the true object of the transactions is the provision of a service.

#### RULING

Company's Online Banking, Online Bill Payment, and Mobile Banking products are services as enumerated in [45 IAC 2.2-4-2](#). Further, the products are not "telecommunication services." Therefore, these services are not subject to Indiana sales and use tax. However, the charges for Finance and Budget Tool and electronic download of the mobile banking application within Indiana are transfers of tangible personal property, and are subject to Indiana sales and use tax, except in cases where they are purchased by a federal credit union.

#### CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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<sup>1</sup> Here, Company refers to *Cowden & Sons Trucking, Inc. v. Indiana Dept. of Rev.*, 575 N.E.2d 718 (1991), where the Indiana Tax Court applied the "true object" test to determine whether the transaction was the provision of a service or sale of tangible personal property.



## **FINAL PRIVATE LETTER RULING**

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### **REQUEST LETTER**

15-005

April 15, 2015

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

Also submitted via mail: taxplr@utah.gov

#### **RE: Request for Private Letter Ruling on the Taxability of Services**

To Whom it May Concern:

Our client (the “Company”) has engaged ACCOUNTING FIRM (“ACCOUNTING FIRM”) to assist them in obtaining a Private Letter Ruling regarding the taxability of charges for information services provided over the Internet. These services are provided to Financial Institutions to enable their Account Holders to do their banking online. At this time, the Company wishes to remain anonymous. However, the Company respectfully requests the opportunity to provide its name, address, identifying number, and taxpayer representative authorization to make the letter binding on the Utah State Tax Commission (the “Commission”).

#### **General Statements**

- On behalf of the Company, we seek a ruling from the Commission on the taxability of the Company’s services, as fully outlined below. We respectfully request that the Commission issue a letter ruling with respect to the taxability of these offerings.
- The issue or related issues of the Private Letter Ruling are not subject to an existing audit, protest, appeal, or litigation concerning the Company in Utah. The Company is not currently under audit by the Commission for any sales, use, or corporate income taxes. However, the Company has entered into Utah’s Voluntary Disclosure Program for sales and use taxes in conjunction with its request for a Private Letter Ruling.
- The Company respectfully requests that the names of the services provided, names of all parties involved, addresses, and taxpayer identification numbers be redacted from the final, published Private Letter Ruling. To assist the Commission, the Company will provide a proposed deletions request of the Private Letter Ruling prior to its publication.

## **Statement of Facts**

### *A. Service Offerings*

The Company is an out-of-state corporation with customers located throughout the country, including Utah. The Company's customers are financial institutions, including banks and federal and state credit unions (Financial Institutions). In order for Financial Institutions to remain competitive, they must be able to offer online banking to their account holders. The Company is the outsourced provider of Financial Institutions for online banking. The Company provides services over the Internet that allows account holders of a Financial Institution (Account Holder) to view and manage their personal bank accounts online. Specifically, the Company provides the Financial Institutions the ability to offer Account Holders the following services: Online Banking, Online Bill Payment, Finance and Budget Tool, and Mobile Banking.

The following is a detailed description of these service offerings:

- **Online Banking.** The Company's Online Banking service enables Financial Institutions to offer Account Holders online access to their personal bank account information through an online banking webpage unique to the Account Holder's Financial Institution. The Company's Online Banking webpage seamlessly displays the Account Holder's personal bank account information that is provided by the Financial Institution or agents of the Financial Institution in real-time. An Account Holder is also able to view online statements and past transactions.

The Company creates the unique banking webpage for the Financial Institution in order to perform its services. The Company does not turn over control over the website to the Financial Institution. Any changes that might be suggested by the Financial Institution must be made by the Company and not the Financial Institutions. The Company uses the website to provide its services.

- **Finance and Budget Tool.** An add-on service to Online Banking is the Finance and Budget Tool. The Finance and Budget Tool utilizes the Account Holder's banking information to categorize the Account Holder's personal spending (e.g., restaurants, gas, retail, and utilities). In addition, the Finance and Budget Tool allows Account Holders to create budgets and monitor their individual spending and savings activities.
- **Online Bill Payment.** Another add-on service to Online Banking is Online Bill Payment. Online Bill Payment is a service offering that allows an Account Holder to send payments to any company or person within the United States. All payments are processed by third-party vendors of the Financial Institutions' choosing. When an Account Holder initiates an Online Bill Payment, the Company connects the Account Holder to the third-party vendor selected by the Financial Institution through a single sign-on user interface hosted by the third-party bill payment processor. The third-party

bill payment processor handles funds transfers in accordance with the Account Holder's instructions.

- Mobile Banking. The final add-on service to Online Banking is Mobile Banking. As part of its Mobile Banking service offerings, the Company offers Account Holders access to Online Banking from cell phones, tablets, and other mobile devices. Similar to the online banking website, the mobile banking website is customized and branded as to provide the Account Holder with a similar experience of accessing Online Banking from a personal computer. Like Online Banking, the Account Holder gains access to account balances, history, and other add-on services such as Online Bill Payments.

In addition, the Company enables Financial Institutions the ability to offer Account Holders a mobile banking application that can be downloaded for free on an iPhone or Android smartphone. With the mobile banking application, the Account Holder can access account balances, history, and other services directly from within the electronically downloaded app rather than on an Internet browser. Although the Account Holder may download the mobile banking application for free, the Company charges fees to Financial Institutions for offering this service on behalf of the Financial Institutions.

In performing the above services, the Company utilizes its proprietary platform. This platform is used exclusively by the Company in performing its services. Financial Institutions do not have rights or access to control or manipulate the Company's platform. Financial Institutions only provide and receive certain data feeds to and from the Company. Except for the mobile banking application, the Company does not sell, license, or transfer any software to Financial Institutions or Account Holders nor does the Company separately charge for use of its platform. In addition, neither the Financial Institution nor Account Holders have the ability to modify or control the Company's proprietary platform used by the Company in performing its services except in the processing of online bill payments. In the case of Online Bill Payment services, Account Holders still do not have the ability to modify or control the platform but simply have the limited ability to authorize amounts to be paid for the purposes of processing bill payments.

#### *B. Customers*

As discussed above, the Company's customers are financial institutions, many of which are federal credit unions. Under federal law a state cannot tax federal credit unions. (12 U.S.C. Sec. 1768.)

#### *C. Fees*

The Company has various billing methods depending on the Financial Institution and services selected. The Company may bill a monthly or annual service fee, charge on a per transaction basis for online bill payment, or charge based on the number of Account Holders. In addition, the Company may charge initial setup fees separate from any service offerings. The Company does not receive fees from Account Holders; all services are provided for the Financial Institution itself, although the end-user is the Account Holder. It is up to the Financial Institution as to whether the Account Holder is charged for access or use of any of the above service

offerings and the Financial Institution would charge the Account Holders. Moreover, except for fees charged to Financial Institutions for downloaded mobile banking applications, the Company does not charge Financial Institutions for any software.

#### *D. Service Documentation Agreements*

In contracting with Financial Institutions, the Company enters into a Master Services Agreement and separate Service Documentation Agreements based on the services selected. Attached are a sample Master Services Agreement and Service Documentation for Online Banking, Online Bill Payment, Mobile Banking, and Mobile Banking Application. As indicated in each agreement, except for mobile banking applications, the agreements are for licenses of services and not the licenses of software.

For example, in the Master Services Agreement, the Company grants a “non-exclusive, non-sublicensable, and non-transferable (except as expressly set forth in this Agreement) license to access and use: (a) the Services as made available by [the Company], solely for the purpose of receiving the Authorized Services and providing the Services’ functionality to End Users; and (b) the Service Documentation solely in connection with Customer’s access and use of the Services’ as expressly permitted by this Agreement.” In Service Documentation agreements, the Company contracts to provide enumerated services such as “provide to eligible End Users with personal computers (PCs running compatible browsers) with the following functionality:” “view payments,” “schedule payments,” and “bill presentment.”

#### **Issue**

Whether the Company’s services: Online Banking, Online Bill Payment, Finance and Budget Tool, and Mobile Banking are subject to Utah sales or use tax.

#### **Suggested Ruling**

The charges for Online Banking, Online Bill Pay, and Mobile Banking services within Utah are not subject to Utah sales or use tax as they represent the sale of non-taxable information and data processing services. Charges for Finance and Budget Tool and electronic download of the mobile banking application within Utah are taxable.

#### **Discussion**

Utah imposes sales tax on the retail sale of tangible personal property, including prewritten software, and enumerated services. (*See* Utah Code Ann. §§ 59-12-103(1)(a), 59-12-102.) Data processing and information services are not enumerated taxable services. (*See* Utah Code Ann. §§ 59-12-103(1)(a), 59-12-102; Opinion No. 10-012.) Utah Code defines data processing and information service as data acquired, generated, processed, retrieved, or stored and delivered electronically to the purchaser, in which the purchaser’s primary purpose is to obtain the processed data or information. (Utah Code Ann. § 59-12-102(125(c).))

Here, the Company offers Online Banking, Online Bill Payment, and Mobile Banking services over the Internet through its proprietary platform. None of these services are enumerated services in Utah. Moreover, the Company's services meet the definition of data processing and information services and therefore are non-taxable services. In providing its services, data is acquired, generated, processed, retrieved, or stored by the Company, and is delivered electronically with the primary purpose of providing processed data or information to Account Holders. Thus, the Company's charges for Online Banking, Online Bill Pay, and Mobile Banking are not subject to Utah sales or use tax as non-taxable data processing and information services.

Further supporting the position that these services are non-taxable, Utah previously determined that similar services are not subject to tax. In Private Letter Ruling, Opinion No. 10-012, the Commission held that the taxpayer's sales of access to its online database and upgraded data packages via the Internet are not subject to Utah sales and use tax because they are sales of data processing and information services. The Commission concluded, however, that the taxpayer's sale of add-on services were subject to Utah sales and use tax as sales of prewritten software. The taxpayer, for a subscription fee, granted its customers access to business information about potential or existing customers and suppliers through its online database. The taxpayer's core services allowed customers to run searches and create customizable reports containing summary trade data, basic credit scores, legal filings, and general company information. For an additional fee, customers could purchase upgraded data packages and workflow add-ons that provided additional data beyond core service offering.

The upgraded data package included: access to additional corporate information and related companies; a visual family tree report; a summary of public filings and financial statements; monitoring and alerts sent via email; credit recommendations; predictive and comprehensive credit scores and fraud scores; access to historical payment data with information about delinquency and average payments; and access to additional financial data. The workflow add-ons included: access to a web-based tool to assist companies make immediate credit decisions about new customers based on credit reports and bank references; ability to monitor various business activities based on user inputted data; ability to create a customizable credit application for a user's customers to complete; and other web-services that allowed for data and account information to integrate core services and workflow add-on services.

As noted above, the Commission concluded that the taxpayer's core services and upgraded data package sold as a bundled annual subscription were not subject to Utah sales or use tax because the services are data processing and information services, and as such, are not taxable. The Commission, however, concluded that the workflow add-on services are prewritten software since the object of the transaction was the use of prewritten computer software, and as such, are taxable. Although the workflow add-on services were hosted on third-party servers and the customer did not download software, the Department reasoned that the workflow add-on services are prewritten software because the workflow add-ons instruct a computer how to perform a task.

Here, although the Company uses its proprietary platform in performing its services, as evidenced in the Service Documentation Agreements, the Company's services are not sales of tangible personal property as there is no sale, license, or transfer of software by the Company to

the Financial Institutions or Account Holders nor does the Company separately charge for use of its platform. In addition, as indicated in the Service Documentation Agreements and like the taxpayer in Opinion No. 10-012, the Company does not transfer constructive possession of its proprietary platform to Financial Institutions or Account Holders. The platform is used exclusively by the Company in performing its services. Unlike the taxpayer's customers in Opinion No. 10-012 that could input data into the web-based application to modify or control the software tools, neither the Financial Institution nor Account Holders have the ability to modify or control the Company's proprietary platform. Financial Institutions only provide and receive certain data feeds from the Company. In the case of Online Bill Payment services, which are akin to data processing services, Account Holders still do not have control over the software but have the limited ability, as permitted by the Company, to enter individual data into a database used by the software for the purposes of transmitting information to third-party online bill payment processors for the processing of bill payments. In addition, unlike the workflow add-on services in Opinion No. 10-012 that allowed the taxpayer's customers to input their own information, combine that information with the taxpayer's database, and then use the software to make business decisions based on the combined information, the Company's services – other than Finance and Budget Tool – provide limited functionality and only present the Account Holder's personal information in different formats and categories to assist with budgeting.

Moreover, in applying the essence of the transaction test,<sup>1</sup> the essence of the Company's transactions is for Financial Institutions to provide custom information services for its Account Holders through Online Banking, Online Bill Payment, and Mobile Banking services. With these services, Financial Institutions can offer Account Holders the ability to view their bank accounts and authorize bill payments online. As there is no separate charge for the platform used in providing the services, and the Company does not license, sell, or transfer the platform to Account Holders or Financial Institutions, the essence of the transaction is not tangible personal property, but instead non-taxable services.

Accordingly, except for specific charges related to the electronic download of the mobile banking application and charges for its Finance and Budget Tool, the Company's services within Utah as outlined above are not subject to Utah sales or use tax.

Even if the Commission determines the Company's services are not non-taxable data processing or information services, the Company's services should be considered non-taxable charges to access a database where the primary purpose for accessing the database is to view or retrieve information. Account Holders are able to access the Financial Institutions' account databases in order to see the transactions occurring in their accounts. Effective July 1, 2013, Utah exempts such charges. (Utah Code Ann. § 59-12-104(78).)

## **Conclusion**

In conclusion, the Company's charges for Online Banking, Online Bill Pay, and Mobile Banking services within Utah are not subject to Utah sales or use tax as they represent the sale of non-

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<sup>1</sup> See Haroldsen, Inc. v. State Tax Commission, 805 P.2d 176 (Nov. 27, 1990).

taxable information and data processing services. Charges for Finance and Budget Tool and electronic download of the mobile banking application within Utah are taxable.

\* \* \* \* \*

I trust that this information is sufficient to enable you to render a ruling. If, however, you should have any questions or require additional information, please do not hesitate to contact me at PHONE NUMBER-1 or NAME-1 WEB ADDRESS-1, or NAME-2 at PHONE NUMBER-2 or WEB ADDRESS-2. Please direct all written correspondence pertaining to this matter to me at the address listed below.

ACCOUNTING FIRM  
Attn: NAME-1  
ADDRESS-1  
CITY-1, STATE-1 ZIP CODE

Sincerely,

NAME-1,  
Partner – State and Local Tax  
**ACCOUNTING FIRM**

**RESPONSE LETTER**  
**PRIVATE LETTER RULING 15-005**

November 16, 2015

Mr. NAME-1  
Partner – State and Local Tax  
ACCOUNTING FIRM  
Suite- #####  
ADDRESS-2  
CITY-1, STATE-1 ZIP CODE

RE: Private Letter Ruling Request – Sales and Use Taxability of Services or Computer Software Supporting Online Banking

Dear NAME-1:

This letter is in response to your request for a private letter ruling on behalf of your client (“Company”). You have inquired whether the Company’s sales of the following offerings (“Offerings”) are subject to Utah sales and use taxes:

- Online banking
- Online bill payment
- Finance and budget tool
- Mobile banking

You have characterized sales of these Offerings as sales of services. Based on the facts presented, though, the Company’s sales of the Offerings are sales of tangible personal property and are subject to Utah sales and use taxes when the Company’s customers (“Financial Institutions”) are located in Utah. Please note, **this private letter ruling does not address special situations such as when the Company’s customer is a federal credit union.** In your request letter, you briefly wrote that “many of [the Company’s customers] are federal credit unions. Under federal law a state cannot tax federal credit unions. (12 U.S.C. Sec. 1768).” However, you provided no further discussion or analysis about this issue. In general, interactions between federal law and state law can cause certain items to be excluded from taxability for state tax purposes. However, because you provided no further discussion of the issue, this private letter ruling does not address 12 U.S.C. § 1768. Instead, this private letter ruling analyzes the state taxability of the transaction you presented absent any possible exclusions created by federal law or any potential exemptions found in state law other than the



exemption created in Utah Code Ann. § 59-12-104(78), which is expressly addressed in this private letter ruling.<sup>1</sup>

## I. Facts

In your letter, you explained the following facts. The Company is an out-of-state corporation. It sells the Offerings to Financial Institutions. The Financial Institutions include banks and credit unions, some of which are located in Utah. The Financial Institutions purchase one or more of the Offerings to enable the Financial Institutions' account holders ("Account Holders") to do online banking with the bank accounts they have with the Financial Institutions.

In your letter, you explained the following about each of the Offerings:

- Online Banking. The Company's Online Banking service enables Financial Institutions to offer Account Holders online access to their personal bank account information through an online banking webpage unique to the Account Holder's Financial Institution. The Company's Online Banking webpage seamlessly displays the Account Holder's personal bank account information that is provided by the Financial Institution or agents of the Financial Institution in real-time. An Account Holder is also able to view online statements and past transactions.

The Company creates the unique banking webpage for the Financial Institution in order to perform its services. The Company does not turn over control [of] the website to the Financial Institution. Any changes that might be suggested by the Financial Institution must be made by the Company and not the Financial Institutions. The Company uses the website to provide its services.

- Finance and Budget Tool. An add-on service to Online Banking is the Finance and Budget Tool. The Finance and Budget Tool utilizes the Account Holder's banking information to categorize the Account Holder's personal spending (e.g., restaurants, gas, retail, and utilities). In addition, the Finance and Budget Tool allows Account Holders to create budgets and monitor their individual spending and savings activities.
- Online Bill Payment. Another add-on service to Online Banking is Online Bill Payment. Online Bill Payment is a service offering that allows an

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<sup>1</sup> The Utah State Tax Commission has a sales tax exemption certificate which might apply to situations involving federal credit unions. This exemption certificate is Form TC-721G: Exemption Certificate for Governments & Schools, which can be used for "sales of tangible personal property to federally chartered credit unions." For more direction on this area, you may contact the Taxpayer Services Division, Technical Research Unit, by phone at 801-297-7705, by email at taxmaster@utah.gov, or by mail at 210 N 1950 W, Salt Lake City, UT 84134.

Account Holder to send payments to any company or person within the United States. All payments are processed by third-party vendors of the Financial Institutions' choosing. When an Account Holder initiates an Online Bill Payment, the Company connects the Account Holder to the third-party vendor selected by the Financial Institution through a single sign-on user interface hosted by the third-party bill payment processor. The third-party bill payment processor handles funds transfers in accordance with the Account Holder's instructions.

- Mobile Banking. The final add-on service to Online Banking is Mobile Banking. As part of its Mobile Banking service offerings, the Company offers Account Holders access to Online Banking from cell phones, tablets, and other mobile devices. Similar to the online banking website, the mobile banking website is customized and branded as to provide the Account Holder with a similar experience of accessing Online Banking from a personal computer. Like Online Banking, the Account Holder gains access to account balances, history, and other add-on services such as Online Bill Payments.

In addition, the Company enables Financial Institutions the ability to offer Account Holders a mobile banking application that can be downloaded for free on an iPhone or Android smartphone. With the mobile banking application, the Account Holder can access account balances, history, and other services directly from within the electronically downloaded app rather than on an Internet browser. Although the Account Holder may download the mobile banking application for free, the Company charges fees to Financial Institutions for offering this service on behalf of the Financial Institutions.

You also explained the Company uses its own proprietary platform to provide the Offerings. The Financial Institutions and Account Holders cannot modify or control the Company's platform. The Company does not separately charge for the use of its platform. The "Financial Institutions [can] only provide and receive certain data feeds to and from the Company." Other than the downloadable mobile banking application, the Company's sales of the Offerings do not include the "[sale], license, or transfer [of] software to [the] Financial Institutions or Account Holders." For the downloadable mobile banking application, as explained in "Mobile Banking" above, the Company charges Financial Institutions fees for the downloads of the application by Account Holders.

You explained the Company's billing as follows:

The Company has various billing methods depending on the Financial Institution and services selected. The Company may bill a monthly or annual service fee, charge on a per transaction basis for online bill payment, or charge based on the number of Account Holders. In addition, the Company may charge initial setup fees separate from any service offerings. The Company does not receive fees from Account Holders; all services are provided for the Financial Institution itself, although the end-user is the Account Holder. It is up to the Financial Institution

as to whether the Account Holder is charged for access or use of any of the above service offerings and the Financial Institution would charge the Account Holders. Moreover, except for fees charged to Financial Institutions for downloaded mobile banking applications, the Company does not charge Financial Institutions for any software.

The Company enters into a Master Service Agreement and Service Documentation agreements (“Agreements”) with the Financial Institutions. You have provided a sample of these Agreements. You explained that “except for the mobile banking applications, the agreements are for licenses of services and . . . not software.” You explained the following:

For example, in the Master Services Agreement, the Company grants a “non-exclusive, non-sublicensable, and non-transferable (except as expressly set forth in this Agreement) license to access and use: (a) the Services as made available by [the Company], solely for the purpose of receiving the Authorized Services and providing the Services’ functionality to End Users; and (b) the Service Documentation solely in connection with Customer’s access and use of the Services’ as expressly permitted by this Agreement.” In Service Documentation agreements, the Company contracts to provide enumerated services such as “provide to eligible End Users with personal computers (PCs running compatible browsers) with the following functionality:” “view payments,” “schedule payments,” and “bill presentment.”<sup>[2]</sup>

These Agreements also provide additional facts about the sales of the Offerings, such as the facts that follow. The Company’s personnel instruct the Financial Institutions on the technological requirements and other requirements needed to implement the Offerings.<sup>3</sup> The Company’s personnel train the Financial Institutions’ personnel on the Offerings.<sup>4</sup> That training would seem to include the training of the Financial Institutions’ personnel on the use of the “Management Console.” Through the Management Console, the Financial Institutions’ personnel perform the following administrative functions:<sup>5</sup>

- (a) Start/stop the internet banking services.
- (b) Hold/enable/display/reset individual Account Holders that are enrolled in the system.
- (c) Set the Regulation E description message.
- (d) Set the ‘Message of the Day’ on home banking sign-on screen.

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<sup>2</sup> WORDS REMOVED

<sup>3</sup> WORDS REMOVED

<sup>4</sup> WORDS REMOVED.

<sup>5</sup> WORDS REMOVED

- (e) Display, print and download various activity logs and reports that provide detailed activity of the Financial Institution's online banking service.
- (f) Maintain authorized employee users of the Financial Institution.

Additionally, the Agreements provide that the Company's personnel do not interact with the Account Holders. Instead, Financial Institutions' personnel are "solely responsible for providing assistance to its End Users [Account Holders] regarding access to and use of the [Offerings]." <sup>6</sup> The Financial Institutions and the Account Holders must have the correct hardware and software to receive the Offerings. <sup>7</sup> The Offerings are intended to be available on a continuous basis other than during times of scheduled maintenance. <sup>8</sup> The Financial Institutions are not to "decompile, disassemble, or otherwise reverse engineer . . . the Services or Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Services or Software or any portion thereof . . ." <sup>9</sup> The Financial Institutions are to "receive all improvements, enhancements, modifications and updates to the Authorized Services . . . free of charge." <sup>10</sup>

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<sup>6</sup> WORDS REMOVED

<sup>7</sup> WORDS REMOVED

<sup>8</sup> WORDS REMOVED

<sup>9</sup> WORDS REMOVED

<sup>10</sup> WORDS REMOVED

## II. Issue

The issue for this private letter ruling is whether the Company's sales to Financial Institutions of the following Offerings are subject to Utah sales and use taxes:<sup>11</sup>

- Online banking
- Online bill payment
- Finance and budget tool
- Mobile banking

Based on the facts presented, the sales of the Offerings are subject to Utah sales and use taxes if the Financial Institutions, which are the Company's customers, are located in Utah. 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 tax and states the following in part:

A tax is imposed on the purchaser . . . for amounts paid or charged for the following transactions:

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

. . . .

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

- (i) stored;
- (ii) used; or
- (iii) otherwise consumed;

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<sup>11</sup> Your request letter states: "[T]he Company may charge initial setup fees separate from any service offerings." This private letter ruling does not address the initial setup fees for the following reasons. You characterized the issue for this private letter ruling as whether the sales of the Offerings are taxable, and you have explained the initial setup fees are charged separately from those for any Offerings. Also, you have not explained what the Company provides the Financial Institutions in exchange for the initial setup fees. Furthermore, the Master Services Agreement does not simply explain the initial setup fees, either. Instead, the Master Services Agreement includes many fees in addition to setup fees, including fees for the following items: additional training and consulting (§ ##), set-up, license, and training (§ ##), taxes (§ ##), optional services (§ ##), development of an interface (§ ##), termination (§ ##), customer requests regarding regulatory audit process requirements (§ ##), frame relay and host connectivity (Master Service Agreement, Ex. A), website maintenance (Master Service Agreement, Ex. B, § ##), rush website maintenance (Master Service Agreement, Ex. B, § ##), website development (Master Service Agreement, Ex. B, § ##), access to facilities and conduits (Master Service Agreement, Ex. C, § ##), etc.

If you have questions about the taxability of the separately-stated initial setup fees, you may contact the Taxpayer Services Division, Technical Research Unit, using the contact information at the end of footnote 1.

- (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. § 59-12-102 defines multiple terms, including the following in part:

- (26) "Computer" means an electronic device that accepts information:
  - (a) (i) in digital form; or
  - (ii) in a form similar to digital form; and
  - (b) manipulates that information for a result based on a sequence of instructions.
- (27) "Computer software" means a set of coded instructions designed to cause:
  - (a) a computer to perform a task; or
  - (b) automatic data processing equipment to perform a task.

....

- (93) (a) . . . . *"prewritten computer software" means computer software that is not designed and developed:*
  - (i) *by the author or other creator of the computer software; and*
  - (ii) *to the specifications of a specific purchaser.*
- (b) "Prewritten computer software" includes:

....

- (iii) except as provided in Subsection (93)(c), prewritten computer software or a prewritten portion of prewritten computer software:
  - (A) that is modified or enhanced to any degree; and
  - (B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.
- (c) "Prewritten computer software" does not include a modification or enhancement described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:
  - (i) reasonable; and
  - (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the invoice or other statement of price provided to the purchaser at the time of sale or later, as demonstrated by:
    - (A) 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;
    - (B) a preponderance of the facts and circumstances at the time of the transaction; and
    - (C) the understanding of all of the parties to the transaction.

....

(107) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

- (a) resale;
- (b) sublease; or
- (c) subrent.

....

(109)(a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) *"Sale" includes:*

....

- (v) *any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.*

....

(124) ....

(b) *"Tangible personal property" includes:*

....

- (v) *prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.*

....

(128) ....

(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.)*

Utah Code Ann. § 59-12-211(12) provides the location of sales that involve the purchasers' use of software when there is not a transfer of a copy of the software, with Subsection (12) stating the following:

- (a) Notwithstanding any other provision of this section and except as provided in Subsection (12)(b), *if a purchaser uses computer software and there is not a*

*transfer of a copy of that software to the purchaser*, the location of the transaction is determined in accordance with Subsections (4) and (5).

- (b) If a purchaser uses computer software described in Subsection (12)(a) at more than one location, the location of the transaction shall be determined in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(Emphasis added.)

When § 59-12-211(12) applies, subsections (4) and (5) of Utah Code Ann. § 59-12-211 locate transactions at an address for the purchaser.<sup>12</sup>

Utah Code Ann. § 59-12-104(78) exempts from Utah sales and use taxes the following:

[A]mounts paid or charged to access a database:

- (a) if the primary purpose for accessing the database is to view or retrieve information from the database; and
- (b) not including amounts paid or charged for a:
  - (i) digital audiowork;
  - (ii) digital audio-visual work; or
  - (iii) digital book . . .

#### IV. Analysis

The Company's sales of the Offerings to Financial Institutions located in Utah are subject to Utah sales and use taxes under § 59-12-103(1)(a), (k), and (l) as "amounts paid or charged for . . . retail sales of tangible personal property made within the state . . ." (under subsection (1)(a)); as "amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is . . . used . . . or . . . otherwise consumed" (under subsection (1)(k)); and as "amounts paid or charged for tangible personal property if within this state the tangible personal property is . . . used . . . or . . . consumed . . ." (under subsection (1)(l)). After considering the facts presented, the essence of the transaction between the Company and the Financial Institutions is the sale of the use of the Company's prewritten computer software and not the sale of the services of the Company's personnel.

In this section the analysis explains, first, why the Company's sales of the Offerings could be taxable depending on the essence of the transaction; second, why the essence of the transaction is the sale of the use of the Company's application software; third, why the Offerings are not data processing and information services; and fourth, why the sales of the Offerings are not exempt under § 59-12-104(78), as amounts paid or charged to access a database.

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<sup>12</sup> For more direction on the application of § 59-12-211 to the situation you have presented, you may contact the Taxpayer Services Division, Technical Research Unit, using the contact information at the end of footnote 1.



**A. The Company’s Sales of the Offerings Could be Taxable Transactions Involving Tangible Personal Property, Depending on the Essence of the Transaction, the Analysis of Which is in Subsection IV. B.**

Under § 59-12-102(27), “[c]omputer software means a set of coded instructions designed to cause . . . a computer to perform a task” (internal quotes omitted). All Offerings you present involve software applications that run on the Company’s proprietary platform. We interpret “platform” to include the Company’s basic computer hardware and operating system.

Under § 59-12-102(93)(a) “prewritten computer software means computer software that is not designed and developed . . . by the . . . creator of the computer software . . . to the specifications of a specific purchaser” (internal quotes omitted). The software applications running on the Company’s platform are not designed and developed by the Company to the specifications of a specific Financial Institution. Thus, the software applications are prewritten computer software.

Under § 59-12-102(124)(b)(v), prewritten computer software is tangible personal property. Transactions involving tangible personal property are subject to Utah sales and use taxes under the following subsections:

- Section 59-12-103(1)(a), for “retail sales of tangible personal property made within the state”
- Section 59-12-103(1)(k), for “amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is . . . used . . . or . . . otherwise consumed”
- Section 59-12-103(1)(l), for “amounts paid or charged for tangible personal property if within this state the tangible personal property is . . . used . . . or . . . consumed . . .”

For purposes of § 59-12-103(1)(a), (k), and (l), § 59-12-102(109)(b)(v) broadly defines “sale” to include “any transaction under which *right to . . . use* of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made” (emphasis added).<sup>13</sup> Thus, if the sales of the Offerings are essentially sales of the right to use the software applications on the Company’s platform, the sales of such would be taxable under § 59-12-103(1)(a) as a retail sale of tangible personal property if the sales are “made within the state.” Alternatively, such sales could also be taxable under § 59-12-103(1)(k)

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<sup>13</sup> Under § 59-12-102(107), a “[r]etail sale” . . . means a sale, lease, or rental for a purpose other than: (a) resale; (b) sublease; or (c) subrent.” You briefly indicated that the Financial Institutions could decide whether to charge their Account Holder for the Financial Institution’s services that utilize the Offerings. Because of the uncertainty and the lack of details about such possible transactions between Financial Institutions and their Account Holders, this private letter ruling does not analyze those transactions, and this private letter ruling analyzes the Company’s sales to the Financial Institutions as *retail sales*.

and (1)(l) if the Financial Institutions are using or consuming the Company's application software within this state.

Section 59-12-211(12) addresses whether certain transactions are made within this state, with § 59-12-211(12) stating the following:

[I]f a purchaser uses computer software and there is not a transfer of a copy of that software to the purchaser, the location of the transaction is [the address for the purchaser].

Thus, if the sales of the Offerings are sales of the use of the application software, then the sales are subject to Utah sales and use taxes if the Financial Institutions are located in Utah.

**B. The Essence of the Transaction of the Sales of the Offerings is the Company's Sale of the Use of the Company's Application Software; Thus, the Sales of the Offerings are Subject to Utah Sales and Use Taxes when the Transactions are Located Within this State.**

To determine whether the sales of the Offerings are the sales of the services of the Company's personnel or the sales of the use of the Company's software applications, one must consider the essence of, or primary object of, the transaction. The Utah Supreme Court has explained the essence of the transaction as follows:

[T]he essence of the transaction theory[] focuses on the nature of what was sold and whether it primarily entails tangible personal property. . . . This theory examines the transaction as a whole to determine whether the essence of the transaction is one for services or for tangible personal property. The analysis typically requires a determination either that the services provided are merely incidental to an essentially personal property transaction or that the property provided is merely incidental to an essentially service transaction. . . .

*B.J.-Titan Services v. State Tax Comm'n*, 842 P.2d 822, 825 (Utah 1992) (Internal citations removed).

To decide whether the essence of the transaction presented is for services provided by the Company's personnel or for the use of the Company's application software, one must consider the nature and extent of both (1) the services provided by the Company's personnel and (2) the use of the application software.

*1. Nature and Extent of the Services Provided by the Company's Personnel*

For the Offerings, Company's personnel establish the Financial Institutions' websites. They also register website domain names and construct and maintain the Internet webpages and

the mobile banking websites for the Financial Institutions.<sup>14</sup> You presented the purpose of the websites as follows:

The Company creates the unique banking webpage for the Financial Institution *in order to perform its services*. . . . The Company uses the website *to provide its services*.

(Emphasis added.)

Based on your explanation, the primary purpose of the Internet webpages and the mobile websites is to establish the means through which the Company provides the Financial Institutions with the Offerings.”<sup>15</sup>

Your request letter does not explain additional services performed by the Company’s personnel for the Financial Institutions. However, based on the Agreements, the Company’s personnel also instruct the Financial Institutions on the technological and other requirements needed to implement the Offerings and train the Financial Institutions’ personnel on the Offerings. Furthermore, that training seems to include training the Financial Institutions’ personnel on the use of the “Management Console,” through which the Financial Institutions’ personnel perform the following administrative functions:

- (a) Start/stop the internet banking services.
- (b) Hold/enable/display/reset individual Account Holders that are enrolled in the system.
- (c) Set the Regulation E description message.
- (d) Set the ‘Message of the Day’ on home banking sign-on screen.
- (e) Display, print and download various activity logs and reports that provide detailed activity of the Financial Institution’s online banking service.
- (f) Maintain authorized employee users of the Financial Institution.

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<sup>14</sup> It is unclear whether a Financial Institution’s payment for the Company’s services for the webpages and websites is part of the fees paid by the Financial Institution for the Offerings or whether the payment for these services is part of the initial setup fee charged separately from the Offerings.

<sup>15</sup> In other circumstances, the purchase of websites specifically designed for individual customers could be nontaxable. PLR 01-030, quoted in PLR 09-002, explains that when a “customer is primarily purchasing the Company’s expertise in knowing what designs work best on a website and how to incorporate the various designs into a website,” such a transaction could be a nontaxable purchase of graphic design services, but when a customer “is primarily purchasing a website with the [seller’s] design services being a secondary concern,” such a transaction could be a taxable purchase of tangible personal property. PLR 01-030 and PLR 09-002 are available online through the webpage found at <http://tax.utah.gov/commission-office/rulings>.

Furthermore, the Agreements also state that the Company's personnel do not interact with the Account Holders. Instead, the Financial Institutions' personnel are "solely responsible for providing assistance to its End Users [Account Holders] regarding access to and use of the [Offerings]." The Company's services of instruction, training, and support seem technical in nature.

## *2. Nature and Extent of the Use of the Company's Application Software*

The Company's application software is integral in providing the Offerings. The Financial Institutions and the Account Holders must have the correct hardware and software to benefit from the Offerings. The Financial Institutions' personnel must be trained to use the Management Console to perform certain administrative functions connected with the Offerings. The Offerings are intended to be available on a continuous basis other than during times of scheduled maintenance. The Financial Institutions are not to "decompile, disassemble, or otherwise reverse engineer . . . the Services or Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Services or Software or any portion thereof . . ." The Financial Institutions are to "receive all improvements, enhancements, modifications and updates to the Authorized Services . . . free of charge."

## *3. Determination of the Essence of the Transaction*

After reviewing the facts relating to the nature and extent of both the services provided by the Company's personnel and the use of the Company's application software, the essence of the transaction between the Company and the Financial Institutions is to provide the Financial Institutions with the use of the Company's application software. The Financial Institutions' use of the Company's application software prompts the Company to provide the services related to the website and the other training and support.<sup>16</sup> Additionally, the Financial Institutions' use of the application software requires coordination between the Financial Institutions' and the Company's hardware and software. The purpose of the Financial Institutions' use of the Company's application software is to offer the Financial Institutions' customers, the Account Holders, online banking services. The Financial Institutions, not the Company, provide technical support to the Account Holders using the Financial Institutions' online banking.<sup>17</sup>

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<sup>16</sup> The facts presented about the Company's services of set up, instruction, training, and support are insufficient to determine whether the charges for these services are subject to Utah sales and use tax. If you want more direction about this area, you may contact the Taxpayer Services Division, Technical Research Unit, using the contact information at the end of footnote 1.

<sup>17</sup> You discussed the Company's proprietary platform. In the sales of the Offerings, the Company is not selling the Financial Institutions the use of the Company's proprietary platform. Instead the Company is using the Company's proprietary platform to provide the Offerings to the Financial Institutions. In PLR 13-003, currently available at <http://tax.utah.gov/commission/ruling/13-003.pdf>, the seller sold an "offering," which was the online use of the seller's software. For that ruling, the Commission explains that the seller was not selling to its customers the use of the seller's hardware.

Because the essence of the transaction is the sale of the use of the Company's application software, such sales are subject to tax under § 59-12-103(1)(a), (1)(k), and (1)(l) if the transactions are made "within the state" according to § 59-12-211(12).

**C. The Analysis Found in Private Letter Ruling 10-012 ("PLR 10-012"), Involving Data Processing and Information Services, Does Not Apply to the Transaction You Presented for this Private Letter Ruling.**

The Company's sales of the Offerings are distinguishable from the sales transaction presented in PLR 10-012.<sup>18</sup> For background, in PLR 10-012 the seller sold customers online access to a database of information that the seller compiled. The customers used the seller's software to access that database. The Commission found the primary object of the transaction was the use of the seller's database, not the use of the seller's software. The Commission ruled that the seller's sales were not subject to Utah sales taxes because the sale of the use of a database is not listed in § 59-12-103 as a taxable transaction. The Commission then explained that the use of the seller's database was a "data processing and information service," which service is not included in the list of taxable services found in § 59-12-103. For the current private letter ruling, the Company's sales of the Offerings to Financial Institutions are distinguishable. First, the primary object of the Company's transaction is the use of the Company's application software, not use of any database compiled by the Company. The Company does not compile then sell the use of any database. Second, the Company's sales of use of its software are taxable under § 59-12-103(1)(a), (1)(k), and (1)(l).

**D. The Sales of the Offerings are Not Exempt Under § 59-12-104(78), as Amounts Paid or Charged to Access a Database.**

Section 59-12-104(78) exempts "[A]mounts paid or charged to access a database." The Financial Institutions are paying the Company to use the Company's application software; they are not paying to access the Company's database. As explained previously, the Company does not compile then sell access to any database. Thus, the Company's sales of the Offerings do not qualify for the exemption found in § 59-12-104(78).

**V. Conclusion**

As explained in this letter, this private letter ruling does not cover the Company's sales of the Offerings to Financial Institutions that are federal credit unions. The Company's sales of the Offerings to Financial Institutions located in Utah, that are not federal credit unions, are taxable under § 59-12-103(1)(a), (1)(k), and (1)(l). The sales of the Offerings are not sales of nontaxable services and are not exempt under § 59-12-104(78), as amounts charged to access a database.

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<sup>18</sup> PLR 10-012 is currently available online at <http://www.tax.utah.gov/commission/ruling/10-012.pdf>.

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.** 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,

Rebecca L. Rockwell  
Commissioner

RLR/aln  
15-005

September 11, 2020

Tanya Damerow  
Wisconsin Department of Revenue  
2135 Rimrock Rd, MS 6-40  
PO Box 8933  
Madison, WI 53708-8933

Hello Tanya,

We are writing to you in response to the ruling that you provided in your letter dated July 30, 2020 (attached). We are providing additional information for you to consider when determining the taxability of the products and services provided by Alkami Technology Inc. ("Alkami") to Educators Credit Union ("ECU").

In the aforementioned ruling, you deemed the monthly fees for Online Relationship Builder, Intuit Aggregation, and Online Bill Payment, as well as the annual fees for Online Relationship Builder add-ons, API Interfacing, and Customer Development Maintenance, to be taxable as telecommunications services because the "primary purpose is for the routing of data from ECU to its members" rather than data processing. However, this is not true. The primary purpose of the services that ECU is purchasing is the data processing provided by Alkami that processes the data from ECU's servers into information that is useful to ECU members.

As we explained in our initial ruling request, Alkami's Online Relationship Builder (ORB) is an application that is essentially a website that that ECU's members access and use to login to their banking accounts. When the members login, Alkami's ORB pulls the data from ECU's servers, processes it, and displays the information to the members.

Section Tax 11.71.(1)(L), Wis. Adm. Code, defines "processing a client's data" as, "the developing of original information from raw data furnished by a client. Automatic data processing operations which develop original information include summarizing, computing, extracting, sorting, sequencing, or the updating of a continuous file of information maintained for a client by a service bureau." (emphasis added). The definition of "processing a client's data" makes the important distinction between data and information. This distinction was seemingly overlooked when the taxability of Alkami's services was determined in your ruling.

Diffen.com provides a comparison of the meanings of data and information ("Data vs Information." Diffen.com. Diffen LLC, n.d. Web. 12 Aug 2020 [https://www.diffen.com/difference/Data\\_vs\\_Information](https://www.diffen.com/difference/Data_vs_Information)). **Data** is raw, unorganized facts that need to be processed and is useless to the user until it is organized by being processed into information. **Information** is data that is processed, organized, or presented in a given context in order to make it useful for the user. Data, on its own, is useless to the user until it is processed into information.

To say that Alkami is just simply routing data from ECU's servers to ECU's members who log in to their bank accounts is incorrect. If this were the case, the members would be given a plethora of data when they logged in and then they would have to process it themselves in order to get it into a format or context that would be relevant to them and easy to understand. As mentioned before, ORB takes the data from ECU's servers and displays it on the webpage that the customer views when they are logged in so that they can see their account balances, payment history, deposit history, and any other information related to their bank account activity. The same is true for the Intuit Aggregation and Online Bill Payment services that Alkami charges ECU for.

To further support our position that Alkami is providing nontaxable data processing services, rather than taxable telecommunications services, we have included rulings that Indiana and Utah, which are both full member Streamlined Sales Tax states, issued in 2017 and 2015, respectively. The subject of the rulings is similar to the services provided by Alkami to ECU. Indiana, which uses the same definition of "telecommunications services" as Wisconsin, explicitly stated that the services did not meet the definition of telecommunications services since the services were data processing services. Indiana went on to conclude that the services were nontaxable data processing services, with the exception of a Finance and Budgeting Tool which was deemed to be taxable software since it had to be downloaded by customers.

Utah, in its ruling, determined that the services provided were taxable as the sale of tangible personal property, and not telecommunications services, since Utah imposes sales tax on cloud-based software. Furthermore, Utah's ruling implied that the services provided were not taxable telecommunications services as evidenced by the emphasis they placed on the definition of data processing and information services.

Based on these facts and supporting evidence, we respectfully request that the department reconsider its position that the services previously mentioned are taxable as telecommunications services.

Additionally, we disagree that the Apptentive Fee is taxable as a telecommunications messaging service but is instead a nontaxable information gathering service. The object of this service is for ECU to receive feedback from its members in order to improve the overall



banking experience using the information provided by the members. The services provided by Apptentive are similar to the services provided in the private letter ruling on pages 19-21 of Wisconsin Tax Bulletin 183. In that ruling, the department deemed the services of telemarketing and gathering customer information to be the object of the transaction and the telecommunications messaging services were deemed to be an incidental element of the services provided. The department went on to conclude that the services provided were not subject to sales tax.

We respectfully request that this additional information be reviewed and that the department reconsider its position on the taxability of the services that were deemed to be taxable. If, after reviewing this additional information we have provided, the department still deems the services to be taxable as telecommunications services, we would like a detailed explanation of how the department arrived at that conclusion along with statutory support that confirms that position.

If any additional information is needed, please contact me at (608) 661-2688 or by email at [ademoss@wipfli.com](mailto:ademoss@wipfli.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Austin DeMoss', with a large, stylized loop at the end.

Austin DeMoss

*Manager – State and Local Tax*

Enc.

## DeMoss, Austin

---

**From:** Damerow, Tanya J - DOR <tanya.damerow@wisconsin.gov>  
**Sent:** Tuesday, November 10, 2020 4:19 PM  
**To:** DeMoss, Austin  
**Cc:** Weber, Nathaniel R - DOR; Steines, David J - DOR; Coogle, Craig  
**Subject:** FW: Ruling Request  
**Attachments:** WTB 183.pdf; UT\_No\_15\_005\_1457458743.pdf; IN\_No\_ST\_2015\_09\_1498773264.pdf; Educators Credit Union Ruling from DOR.PDF; Educators Credit Union Response to DOR Ruling.pdf

Dear Austin,

After further review, the department is in agreement with you on the taxability of the Apptentive Fees. The telecommunications service/telecommunications message service is incidental to the nontaxable information gathering service. The separately stated monthly Apptentive fees are for a nontaxable information gathering service.

The department maintains that the other services you have questioned in your response are taxable as originally provided. While there may be an element of data processing involved in the services, the primary purpose is the routing of this data or information to ECU's members. Telecommunications services are defined in sec. [77.51\(21n\)](#), Wis. Stats., and include "electronically transmitting, conveying, or routing voice, data, audio, video, or other information." The distinction between data and information does not need to be made, as the taxable service includes the routing of both. Also note that the definition of "telecommunications services" acknowledges that some computer processing applications may be used to act on the content's form, code, or protocol for the conveyance to occur. So just because some data processing occurs, doesn't mean that the primary purpose of the transaction is data processing.

The same statute goes on to say that telecommunications services does not include "Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic transmission, if the purchaser's primary purpose for the underlying transaction is the processed data. In your scenario, ECU is not hiring Alkami to process ECU's data and return it to ECU. The information is already known to ECU (e.g., the outstanding balance of the customer's account). Instead, the primary purpose of the transaction is for ECU to convey their information to their customers.

I hope this information is helpful. Please feel free to contact me if you have any questions.

Sincerely,

Tanya Damerow, Sales Tax Specialist  
Wisconsin Department of Revenue  
(920) 398-1056  
[Tanya.damerow@wisconsin.gov](mailto:Tanya.damerow@wisconsin.gov)

**From:** DeMoss, Austin <ADeMoss@wipfli.com>  
**Sent:** Friday, September 11, 2020 2:47 PM  
**To:** Damerow, Tanya J - DOR <tanya.damerow@wisconsin.gov>  
**Cc:** Weber, Nathaniel R - DOR <Nathaniel.Weber@wisconsin.gov>; Steines, David J - DOR <David.Steines@wisconsin.gov>; Coogle, Craig <ccoogle@WIPFLI.com>  
**Subject:** RE: Ruling Request

Good afternoon Tanya,

Attached is our response to the ruling that was issued in July for Educators Credit Union as discussed on the call Craig and I had with Nate and Dave. I've also attached the rulings that Indiana and Utah provided for a similar product/service in which they determined the transaction did not involve the sale of telecommunications services.

If you have any questions, please let me know.

Thanks,

**Austin C DeMoss**

*Manager – State and Local Tax / 608 661 2688 Office*

Wipfli LLP / 2501 West Beltline Highway, Ste 401, Madison, WI 53713

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**From:** Damerow, Tanya J - DOR <[tanya.damerow@wisconsin.gov](mailto:tanya.damerow@wisconsin.gov)>

**Sent:** Thursday, July 30, 2020 9:42 AM

**To:** DeMoss, Austin <[ADeMoss@wipfli.com](mailto:ADeMoss@wipfli.com)>

**Cc:** Weber, Nathaniel R - DOR <[Nathaniel.Weber@wisconsin.gov](mailto:Nathaniel.Weber@wisconsin.gov)>

**Subject:** Ruling Request

Hi Austin,

After reviewing all the information provided, the department is not comfortable issuing a private letter ruling to the purchaser of the product and would prefer the private letter ruling request be from the seller. Therefore, we have issued an informal ruling. However, you may rely on the ruling as you would a private letter ruling.

Please let me know if you have any questions.

Sincerely,

Tanya Damerow, Sales Tax Specialist  
Wisconsin Department of Revenue  
(920) 398-1056  
[Tanya.damerow@wisconsin.gov](mailto:Tanya.damerow@wisconsin.gov)

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Wipfli LLP  
CPAs and Consultants



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