
AMENDED FINAL PRIVATE LETTER RULING

22-001 Amended

REQUEST LETTER

[THE REQUEST LETTER HAS BEEN REMOVED]

RESPONSE LETTER

AMENDED PRIVATE LETTER RULING 22-001¹

June 11, 2024

NAME-1, Principal
COMPANY-1
EMAIL-1

Dear NAME-1:

This letter is in response to your request for a private letter ruling for an unnamed client (“Taxpayer”). You have asked about the Utah sales and use tax treatment of certain transactions involving an employee reward program that the Taxpayer sells to employers. The Taxpayer’s sales to the employers are not taxable. The Taxpayer’s related sales of merchandise to employees in Utah are taxable. The Taxpayer’s sales of gift cards are not taxable.

This private letter ruling includes the following sections:

- I. Facts
- II. Issues
- III. Applicable Law
- IV. Analysis
- V. Conclusions

¹ This amended private letter ruling corrects the issuance date and also corrects the PLR number listed on the final line.

I. Facts

Taxpayer is a multinational company headquartered outside the United States. It has a subsidiary in Utah. It sells to employers an employee reward program that involves the Taxpayer's software.

The employers purchase the employee reward program from the Taxpayer for the purpose of rewarding their employees for specific employee achievements. As part of developing the reward system sold to an employer, the Taxpayer helps the employer decide which employee achievements should be rewarded and how those achievements will be rewarded.

The Taxpayer incorporates those criteria for the employee achievements into a website configured specifically for each employer. For the employee achievements, an employer's reward system grants employees reward points, which correspond to a U.S. dollar amount per point. The website that the Taxpayer configures for each employer is linked to the Taxpayer's online marketplace. Through this marketplace, the employees can redeem their reward points for rewards. These rewards can be merchandise and/or gift cards. The Taxpayer provides training to the employees on the use of the employee reward program. Through the Taxpayer's software, the employer can get reports that can help the employer to monitor how well the employee reward system is working for the employer. The Taxpayer provides a license to the employer to use and access both the website configured for the employer and the related software. The Taxpayer cannot directly modify the website or software. The website is only used in conjunction with the employee reward program sold by the Taxpayer.

The Taxpayer offers to employers who are using certain software, an application programming interface ("API") that integrates the employers' software with the software of the Taxpayer's employee reward program. If an employer chooses to use the API, the employer must configure and/or modify the API to work with the employer's software. The Taxpayer is not responsible for those configuration or modification services, according to the redacted copy of the agreement between the Taxpayer and an employer. The Taxpayer provides a license to the employers who choose to use the API. In your request letter, you described the Taxpayer as providing the API for free. However, the redacted copy of the agreement between the Taxpayer and an employer does not describe the API as being provided free of charge. No information has been provided about how the Taxpayer acquires or develops the API.

The Taxpayer determines which merchandise and gift cards the Taxpayer will offer as rewards through the Taxpayer's marketplace. The Taxpayer considers employers' suggestions for rewards, but the Taxpayer makes all final determinations about the rewards offered. The Taxpayer acquires tax-exempt the reward merchandise and gift cards from the Taxpayer's vendors. Then, the Taxpayer resells the merchandise and gift cards to the employees when the employees redeem their rewards points. Additionally, the Taxpayer provides customer service to the employees for their purchases of rewards through the Taxpayer's marketplace.

For the employee reward program, the Taxpayer charges an employer a one-time fee covering consultation, startup, and configuration. The sample order form you provided with your request letter describes the one-time fee as including website configuration services and

branding, implementation of service timelines, and access to certain software. Additionally, the Taxpayer charges an employer for, first, the U.S. dollar value of all reward points issued for a specific time period and, second, a transaction fee equal to a percentage of the reward points issued.

For the employees' purchases of the merchandise, the Taxpayer charges the employees for the merchandise, the shipping and handling costs, and the applicable Utah sales tax. You described the information provided for the employees' purchases of merchandise as follows:

Currently, sales tax is collected and remitted on the retail sales value of the taxable merchandise sold to Utah customers paid with the employees' reward points. The retail sales price of merchandise and associated shipping and handling is determined by backing out state sales tax from the total value of reward points used to purchase the item. This retail sales price is the gross sales amount contained in the sales tax submission to the state.

There is no separate invoice sent to the customer when an employee redeems reward points. . . .

For the employees' purchases of gift cards, the Taxpayer charges the employees for the gift cards and the shipping and handling costs for the gift cards. The Taxpayer does not charge Utah sales tax for the gift cards.

II. Issues

You asked the following questions in your request letter:

1. Are the consulting, startup, and website design fees subject to Utah sales and use tax?²
2. Are the transaction fees charged by the Taxpayer to its customers when reward points are rewarded subject to Utah sales and use tax?
3. What is the proper sales tax treatment for the merchandise and gift cards sold by the Taxpayer under the employee recognition program?

This private letter ruling concludes the following:

1. The consulting, startup, and website design fees are not subject to Utah sales and use taxes (*see* Subsections IV.B. through IV.C.).
2. The transaction fees charged by the Taxpayer to its customers when reward points are rewarded are not subject to Utah sales and use tax (*see* Subsections IV.B.

² The Taxpayer's question uses "website design fees." The Taxpayer's redacted order form describes the services as configuration services.

through IV.C.).

3. The Taxpayer's sales of merchandise to employees in Utah are subject to Utah sales and use taxes. The Taxpayer is required to collect and remit Utah sales and use taxes for those transactions. However, for those sales, the Taxpayer may not be using the correct purchase price to calculate the Utah sales tax. (*See* Subsection IV.D. for the analysis of the merchandise sales and of the purchase price.) The Taxpayer's sales of gift cards are not subject to Utah sales and use taxes (*see* Subsection IV.E.).

III. Applicable Law

Utah Code Ann. § 59-12-103(1) imposes Utah sales and use taxes on purchasers for certain transactions. Subsection 59-12-103(1) states the following in part:

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

- (a) retail sales of tangible personal property made within the state;
- ...
- (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;
- (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 various terms, stating in part:³

As used in this chapter:

- ...
- (29) "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.

³ The definition of "purchase price," quoted in § 59-12-102(107)(c)(ii), references § 59-12-103(2)(f)(ii) and § 59-12-103(2)(g)(i). Subsection 59-12-103(2)(f)(ii) concerns optional computer software maintenance contracts, an area not at issue in this private letter ruling. Subsection 59-12-103(2)(g)(i) concerns the sale of both an item subject to sales and use taxes and an item not subject to sales and use taxes, which is also an area not at issue in this private letter ruling.

(30) "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.

....

(35) (a) "Delivery charge" means a charge:

- (i) by a seller of:
 - (A) tangible personal property;
 - (B) a product transferred electronically; or
 - (C) a service; and
- (ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection (35)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:

- (i) transportation;
- (ii) shipping;
- (iii) postage;
- (iv) handling;
- (v) crating; or
- (vi) packing.

....

(101)(a) Except as provided in Subsection (101)(b)(ii) or (iii), "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.

....

(107)(a) "Purchase price" and "sales price" mean the total amount of consideration:

- (i) valued in money; and
- (ii) for which tangible personal property, a product transferred electronically, or services are:
 - (A) sold;
 - (B) leased; or
 - (C) rented.

(b) "Purchase price" and "sales price" include:

- (i) the seller's cost of the tangible personal property, a product transferred electronically, or services sold;
- (ii) expenses of the seller, including:
 - (A) the cost of materials used;
 - (B) a labor cost;
 - (C) a service cost;
 - (D) interest;
 - (E) a loss;
 - (F) the cost of transportation to the seller; or
 - (G) a tax imposed on the seller;
- (iii) a charge by the seller for any service necessary to complete the sale;

....
(c) "Purchase price" and "sales price" do not include:

....
(ii) subject to Subsections 59-12-103(2)(f)(ii) and (2)(g)(i), the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later, as demonstrated by 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, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:

....
(B) a delivery charge;

....
(E) a tax or fee legally imposed directly on the consumer.

(108) "Purchaser" means a person to whom:

- (a) a sale of tangible personal property is made;
- (b) a product is transferred electronically; or
- (c) a service is furnished.

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

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

....
(118)(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)(a) "Seller" means a person that makes a sale, lease, or rental of:

- (i) tangible personal property;
- (ii) a product transferred electronically; or
- (iii) a service.

....
(136)(a) Except as provided in Subsection (136)(d) or (e), "tangible personal property" means personal property that:

- (i) may be:

- (A) seen;
- (B) weighed;
- (C) measured;
- (D) felt; or
- (E) touched; or
- (ii) is in any manner perceptible to the senses.
- (b) “Tangible personal property” includes:
 -
 - (v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.
 -

(140) ...

-
- (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;
 -

Utah Code Ann. § 59-12-104(78) provides an exemption from Utah sales and use taxes for the sale of access to a database of information, with that subsection stating the following:

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

-
- (78) amounts 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 audio work;
 - (ii) digital audio-visual work; or
 - (iii) digital book ...

Utah Code Ann. § 59-12-107(3)(c) imposes on sellers with Utah sales tax collection and remittance requirements the additional requirement that the sellers provide purchasers with receipts or bills for the Utah sales tax collected, with that subsection stating the following:

- (i) Each seller shall:
 - (A) give the purchaser a receipt for the tax collected; or

- (B) bill the tax as a separate item and declare the name of this state and the seller's sales and use tax license number on the invoice for the sale.
- (ii) The receipt or invoice is *prima facie* evidence that the seller has collected the tax and relieves the purchaser of the liability for reporting the tax to the commission as a consumer.

Additionally, Utah Code Ann. § 59-12-107(2)(f) requires a person to pay Utah use tax on certain transactions, as follows:

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

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

Utah Code Ann. § 59-12-211 through § 59-12-215 provide the method to determine a transaction's location. Utah Code Ann. § 59-12-211.1 provides the location for reporting use tax transactions, with that section stating the following:

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

Utah Code Ann. § 59-12-211(1)(a)(i) defines receipt as follows in part:

“Receipt” and “receive” mean:

- (A) taking possession of tangible personal property;
- (B) making first use of a service; or
- (C) for a product transferred electronically, the earlier of:
 - (I) taking possession of the product transferred electronically; or
 - (II) making first use of the product transferred electronically.

Utah Administrative Code R865-19S-92(1) and (3) state the following in part about computer-generated output:

- (1) “Computer-generated output” means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

...
(3) The sale of computer-generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

IV. Analysis

This Analysis Section includes the following subsections:

- A. Summary of this Analysis Section's conclusions.
- B. The purchase price for the employee reward program includes the one-time fee covering consultation, startup, and configuration; the U.S. dollar value of the reward points issued; and the related transaction fee.
- C. The essence or primary object of the transaction for the sale of the employee reward program is to obtain a nontaxable service.
- D. The Taxpayer's sales of merchandise to employees in Utah are subject to Utah sales and use taxes.
- E. The Taxpayer's sales of gift cards are not subject to Utah sales and use taxes.

A. Summary of this Analysis Section's conclusions.

This private letter ruling concludes the following:

1. The consulting, startup, and website design fees are not subject to Utah sales and use taxes (*see* Subsections IV.B. through IV.C.).
2. The transaction fees charged by the Taxpayer to its customers when reward points are rewarded are not subject to Utah sales and use tax (*see* Subsections IV.B. through IV.C.).
3. The Taxpayer's sales of merchandise to employees in Utah are subject to Utah sales and use taxes. The Taxpayer is required to collect and remit Utah sales and use taxes for those transactions. However, for those sales, the Taxpayer may not be using the correct purchase price to calculate the Utah sales tax. (*See* Subsection IV.D. for the analysis of the merchandise sales and of the purchase price.) The Taxpayer's sales of gift cards are not subject to Utah sales and use taxes (*see* Subsection IV.E.).

B. The purchase price for the employee reward program includes the one-time fee covering consultation, startup, and configuration; the U.S. dollar value of the reward points issued; and the related transaction fee.

This section analyzes the purchase price of the employee reward program sold. The employers compensate the Taxpayer for the employee reward program through the following charges:

- A one-time fee covering consultation, startup, and configuration
- The U.S. dollar value of all reward points issued for a specific time period
- A transaction fee equal to a percentage of the reward points issued

The one-time fee covering consultation, startup, and configuration is stated separately from the charges for the issued rewards points and for the related transaction fee. You described the services associated with the one-time fee as including the following:

- Helping the employer decide which employee achievements should be rewarded and how those achievements will be rewarded.
- Incorporating those criteria for employee achievements into a website configured specifically for each employer.
- Training the employees on the use of an employer's reward website.

The above services are necessary to complete the sale of the employee reward program, and they are not optional. Under § 59-12-102(107)(b)(iii), "purchase price" includes "a charge by the seller for any service necessary to complete the sale." Thus, the one-time fee covering consultation, startup, and configuration is part of the purchase price of the employee reward program sold.⁴

For the U.S. dollar value of the reward points issued and the related transaction fee, these amounts are also part of the purchase price of the employee reward program. Under § 59-12-102(107)(a), "purchase price" means "the total amount of consideration: (i) valued in money; and (ii) for which tangible personal property, a product transferred electronically, or services are: (A) sold; (B) leased; or (C) rented." Thus, the U.S. dollar value of the reward points issued and the related transaction fee are part of the purchase price of the employee reward program sold by the Taxpayer.

⁴ This private letter ruling ultimately concludes that the Taxpayer is not selling remote use of prewritten computer software. If a seller sells remote use of prewritten computer software and charges for one-time services that are similar to the Taxpayer's, the purpose of the one-time services may be to modify or adapt the prewritten computer software sold. In general, reasonable, separately stated charges to modify or adapt prewritten computer software for a customer are nontaxable. *See* Utah Tax Commission Publication 64, page 1, "Prewritten Software," currently available at <https://tax.utah.gov/forms/pubs/pub-64.pdf>. Additionally, if a seller is selling "web page development" services, the sales of those services are also nontaxable. *See* Utah Tax Commission Publication 64, page 2, "Computer Services."

C. The essence or primary object of the transaction for the sale of the employee reward program is to obtain a nontaxable service.

This private letter ruling next considers whether the essence or primary object of the transaction for the sale of the employee reward program is to obtain a nontaxable service or a taxable item. The Utah Supreme Court has explained the essence of the transaction theory 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 is for nontaxable services or for a taxable item, one must consider the nature and extent of both the nontaxable services and the taxable items.

The products or services included in the employee reward program include the following:

- consulting about the specific employee achievements to be rewarded and how to reward those achievements
- configuring the Taxpayer's software for each employer
- training of the employers' employees
- issuing the reward points to the employer's employees
- providing access/use of the Taxpayer's marketplace to redeem the reward points
- acquiring the rewards
- selling and shipping to the employees the rewards when the employees redeem the reward points
- providing employers with reports to help the employers monitor how well the employee reward program is working for them

This analysis next considers the taxability of the items if sold separately.

Most of the items, if sold separately, would not be subject to Utah sales and use taxes because they are nontaxable services. Those services include consulting, configuring software, and training employees. Through the Taxpayer's use of its own software, the Taxpayer determines when to issue the reward points to the employees and also provides the employees with the use of the Taxpayer's marketplace.⁵ These uses of the Taxpayer's software are not sold;

⁵ In general, the Taxpayer's sale of reward points to employers is similar to a seller's sale of gift cards. Both the rewards points and gift cards represent an intangible right, and the sale of the intangible right is not a transaction subject to Utah sales and use taxes. Private Letter Ruling 09-024, p. 15, Subsection III.1., currently available at

instead, the Taxpayer has used the software to provide the services necessary for the employee reward program. The Taxpayer also gathers data about the employers' use of the employee reward program and provides information to the employers about that use through reports. This gathering and providing of information is not subject to Utah sales and use taxes.⁶ Overall, the services explained in this paragraph are not subject to Utah sales and use taxes.

Theoretically, some of the items if sold separately might be subject to Utah sales and use taxes. As you noted in your request letter, the sale of prewritten computer software or the sale of remote use of prewritten computer software is generally taxable.⁷ The Taxpayer's software is involved in the sale of the employee reward program, so the nature of that software is considered in this analysis. The Taxpayer's software mainly includes the software configured to be the employers' employee reward websites and the software for the Taxpayer's marketplace. This website and marketplace software is essential to the employee reward program sold by the

<https://tax.utah.gov/commission/ruling/09-024.pdf>, explained the following in part about the intangible right reflected by a gift code:

The gift code represents an intangible right to acquire goods or services. Those goods or services may be taxable or they may be exempt at the time they are purchased. The gift code itself, however, merely represents an intangible store of value recognizing an advance payment for a good or service yet to be selected. . . .

Similar to gift cards, the reward points are an intangible right to acquire taxable or nontaxable goods or services in the future.

⁶ The following explains the reasons that sales of information services are generally not subject to Utah sales and use taxes. In the definition of telecommunications service found in § 59-12-102(140), data processing and information services are recognized as a specific type of service in § 59-12-102(140)(c)(iv). Furthermore, in § 59-12-103(1), sales of data processing and information services are not listed as being taxable. The generally nontaxable nature of sales of information is also seen in the exemption found in § 59-12-104(78). That exemption provides that sales of access to a database is not subject to sales and use taxes “(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 audio work; (ii) digital audio-visual work; or (iii) digital book” (emphasis added). Furthermore, Utah Administrative Rule R865-19S-92(1) discusses “computer-generated output,” which potentially could include reports on paper or on tangible storage media. Subsection (3) of the administrative rule explains, “The sale of computer-generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.” For the information the Taxpayer generates for the employee reward program, the primary object of a report containing that information is the information, rather than the media upon which the information is printed or stored.

⁷ The following explains the reasons that sales of remote use of prewritten computer software are generally subject to Utah sales and use taxes. “Computer” and “computer software” are defined in § 59-12-102(29) and § 59-12-102(30), respectively. “Prewritten computer software” is defined in § 59-12-102(101). “Tangible personal property” is defined in part in § 59-12-102(136)(b)(v) to include prewritten computer software. “Sale” is defined in part in § 59-12-102(118)(b)(v) to include “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.” Sales of the remote use of prewritten computer software are generally taxable 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)).

Taxpayer and is used only with that employee reward program. The software supports the employee rewards program by directing the Taxpayer to issue the reward points to employees when the employees have met the employee achievements and by later directing the Taxpayer to provide the rewards chosen by the employees redeeming the reward points. Overall, the Taxpayer's software discussed above supports the Taxpayer's services necessary to have an employee reward program.⁸

After considering the nature and extent of the products and services included in the employee rewards program, this private letter ruling concludes that the essence or primary object of the transaction for the sale of the employee reward system is to obtain a nontaxable service. The Taxpayer is not selling to the employers the remote use of prewritten computer software.

Because the Taxpayer is selling a nontaxable service to the employers, the purchase price of the employee reward program is not subject to Utah sales and use taxes. As analyzed previously, that purchase price includes the one-time fee covering consulting, startup, and configuration; the cost of the employee reward points issued; and the transaction fees for the reward points issued. Thus, in answer to your first two questions for this private letter ruling: (1) the consulting, startup, and website design fees are not subject to Utah sales and use taxes and (2) the transaction fees charged by Taxpayer to its customers when reward points are rewarded are not subject to Utah sales and use tax.

D. The Taxpayer's sales of merchandise to employees in Utah are subject to Utah sales and use taxes.

The paragraphs below discuss the Taxpayer's sales of merchandise, the Utah statutes applying to those sales, and the application of the statutes to those sales.

Through the Taxpayer's online marketplace, employees exchange reward points for rewards. The rewards include merchandise and gift cards. The value of each reward point corresponds to a U.S. dollar amount. For the sales, you explained the following in part:

Currently, sales tax is collected and remitted on the retail sales value of the taxable merchandise sold to Utah customers paid with the employees' reward points. The retail sales price of merchandise and associated shipping and handling is determined by backing out state sales tax from the total value of reward points used to purchase the item. This retail sales price is the gross sales amount contained in the sales tax submission to the state.

There is no separate invoice sent to the customer when an employee redeems reward points. . . .

⁸ The Taxpayer is also providing API software to some employers. You indicated that this software is provided for free. This software only connects the employers' software to the Taxpayer's software. Because you have not specifically asked about the API and also because the facts surrounding the API are unclear, we are not providing an opinion about the API.

Under § 59-12-103(1), “[a] tax is imposed on the purchaser . . . on the purchase price or sales price for amounts paid or charged for . . . retail sales of tangible personal property made within the state.”⁹ Under § 59-12-102(118)(a), “[s]ale’ 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” (emphasis added). Under § 59-12-102(116), “‘**Retail sale**’ . . . means a sale . . . for a purpose other than: (a) resale . . .” (emphasis added). Under § 59-12-102(108), “‘**Purchaser**’ means a person to whom: . . . a sale of tangible personal property is made . . .” (emphasis added). Under § 59-12-102(107)(a), “[p]urchase price’ . . . mean[s] the total amount of consideration: (i) valued in money; and (ii) for which tangible personal property . . . [is] sold . . .” (emphasis added). Under § 59-12-102(107)(b), “[p]urchase price’ . . . include[s]: (i) the seller’s cost of the tangible personal property . . . sold; (ii) expenses of the seller . . . ; and (iii) a charge by the seller for any service necessary to complete the sale.”¹⁰ Under § 59-12-102(107)(c)(ii), purchase price does not include in following, as stated in part:¹¹

[I]f separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later, as demonstrated by 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, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:

....
(B) a delivery charge;
....
(E) a tax or fee legally imposed directly on the consumer.

Based on the above quotation, delivery charges and sales tax are included in the taxable purchase price unless they are “separately stated on . . . [a] document provided to the purchaser.” Furthermore, § 59-12-107(3)(c)(i) states, “Each seller shall: (A) give the purchaser a receipt for the tax collected; or (B) bill the tax as a separate item and declare the name of this state and the seller’s sales and use tax license number on the invoice for the sale.”

Applying the Utah statutes discussed above to the Taxpayer’s sales of merchandise, the Taxpayer’s sales of merchandise to employees in Utah are taxable transactions under § 59-12-103(1). The exchange of the Taxpayer’s merchandise for the employees’ reward points meets the definitions of **sale** found in § 59-12-102(118)(a) and **retail sale** found in § 59-12-102(116). For the sales, the employees meet the definition of **purchaser** found in § 59-12-102(108). In accordance with § 59-12-103(1), tax is imposed on the purchase price of the merchandise sold to the employees in Utah. The **purchase price** of the merchandise is determined by applying § 59-12-102(107). The purchase price includes the U.S. dollar value of the reward points for which the merchandise is sold (*see* § 59-12-102(107)(a)). As explained in the previous paragraph, delivery charges and sales tax are included in the taxable purchase price

⁹ “Tangible personal property” is defined in § 59-12-102(136).

¹⁰ “Seller” is defined in § 59-12-102(124).

¹¹ “Delivery charge” is defined in § 59-12-102(35).

unless they are “separately stated on an invoice, bill of sale, or similar document provided to the purchaser” (*see* § 59-12-102(107)(c)(ii)). Thus, under the language of the Utah Code, the taxable purchase price of the merchandise sold includes the delivery charge and sales tax unless the requirements of § 59-12-102(107)(c)(ii) have been met. Also, as explained in the previous paragraph, a seller is required to give a purchaser a receipt or bill for the sales tax that the seller collects from the purchaser (*see* § 59-12-107(3)(c)(i)). The Taxpayer does not appear to be meeting the requirements of § 59-12-107(3)(c)(i) when the Taxpayer issues no separate invoice to the employee when an employee purchases rewards from the Taxpayer through the Taxpayer’s marketplace. The Taxpayer should follow § 59-12-102(107)(c)(ii) and § 59-12-107(3)(c)(i) if the Taxpayer wants the taxable purchase price to exclude the delivery charges and Utah sales tax.

E. The Taxpayer’s sales of gift cards are not subject to Utah sales and use taxes.

The gift cards sold by the Taxpayer are not subject to Utah sales and use taxes. Utah State Tax Commission Publication 25, page 16, “Coupon Books, Gift Cards and Gift Certificates,” states the following in part:¹²

Sales of gift cards and gift certificates are not taxable. Treat the cards and certificates like cash and collect sales tax on taxable transactions. Buying card stock or paper to make the card or certificate is taxable.

Gift cards represent an intangible right, and the sale of the intangible right is not a transaction subject to Utah sales and use taxes. *See* Private Letter Ruling 09-024, which was previously discussed in Footnote 5 of this Private Letter Ruling 22-001.

V. Conclusions

This private letter ruling concludes the following:

1. The consulting, startup, and website design fees are not subject to Utah sales and use taxes.
2. The transaction fees charged by the Taxpayer to its customers when reward points are rewarded are not subject to Utah sales and use tax.
3. The Taxpayer’s sales of merchandise to employees in Utah are subject to Utah sales and use taxes. The Taxpayer is required to collect and remit Utah sales and use taxes for those transactions. However, for those sales, the Taxpayer may not be using the correct purchase price to calculate the Utah sales tax. The Taxpayer’s sales of gift cards are not subject to Utah sales and use taxes.

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

¹² Publication 25 is currently available at <https://tax.utah.gov/forms/pubs/pub-25.pdf>.

different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, please feel free to contact the Commission.

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

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

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

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

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

For the Commission,

Jennifer N. Fresques
Commissioner

JNF/ln

cc. NAME-2
COMPANY-1

EMAIL-2

22-001 Amended