

September 24, 2004

04-022

NAME
ADDRESS

NAME

Re: Tax Commission Rule R865-19S-58
Sales Tax Exemption for Purchases of Construction Materials Made by Religious or Charitable
Institutions.

Last April both NAME, POSITION, and I spoke with you regarding the SOCIETY being exempt from paying sales tax for construction materials in relation to construction projects at COMPANY. At that time we were embarking on the \$\$\$\$ PROJECT using City bond funds. We will be starting construction on another \$\$\$\$ bond project next spring, "PROJECT", and hope to have more projects in the future.

On behalf of the SOCIETY I would like to apply for a private letter ruling in order to have something official on file regarding the tax exemption.

Thanks for your Help,
NAME

May 31, 2006

NAME
ADDRESS

Dear NAME,

We received your request regarding sales tax issues related to construction materials used in construction projects at COMPANY. You stated that Salt Lake City bond funds are paying for projects at the COMPANY. You referred to Administrative Rule R865-19S-58(4) ("Rule 58") regarding a sales tax exemption for purchases of construction materials made by a religious or charitable organization. You referenced a conversation and notes from a manager in the auditing division who stated that the SOCIETY "could enter into real property contracts and not have to pay tax on the materials based on the religious/charitable exemption on real property jobs."

SOCIETY is a 501(c)(3) organization whose purpose is to give guidance and support to the COMPANY. Under an agreement with Salt Lake City ("City"), SOCIETY essentially operates the COMPANY. You stated SOCIETY enters into a contract for the construction of facilities located on the COMPANY premises. According to a copy of a Construction Project Management Agreement between SOCIETY and a construction company ("contractor"), SOCIETY acts as an agent for the City. We understand from the contract that the contractor, not SOCIETY, purchases the construction materials and installs or converts them to real property. We also understand from conversations with you that the contractor requests reimbursement for the work performed by the contractor. SOCIETY submits this request to the City. If City bond funds for this purpose are available, the City allows them to be used to reimburse the contractor. If City bond funds are not available, the contractor is reimbursed with SOCIETY funds.

Before addressing the specific question of exemptions, we note that SOCIETY would not be responsible for paying sales tax directly for a real property contract, in that such contracts are not subject to sales tax. However, the contractor would be subject to sales tax on its purchases of construction materials. These taxes would presumably be passed through to SOCIETY as part of, and in the form of, payment for work performed.

Based on the analysis that follows, the Commission does not find that the purchase of construction materials for construction projects at the COMPANY would be exempt from sales tax under the situation you have described. Furthermore, as any exemption that might be available to SOCIETY is not applicable in this situation, the contractor is also not exempt from paying sales tax on its purchases of construction materials and should not provide an exemption certificate to its seller of construction materials. This finding is based specifically on the fact that SOCIETY does not purchase construction materials directly, but enters into real estate construction contracts, and that it does not own the property in question.

In responding to your request, we will address two fundamental issues: 1) ownership of the property, and 2) the relevant law dealing with exemptions.

Ownership

Ownership of the property is critical in determining whether an exemption is due under the relevant exemption statutes and administrative rule. You have represented that the City owns the real property where the COMPANY is located. We have also reviewed a copy of an agreement between the City and the SOCIETY. It is our understanding the terms of this agreement currently governs the relationship between the city and the SOCIETY. Paragraph 3(a) of the agreement states,

“ . . . title to all existing animals and all animals hereafter acquired by the SOCIETY for exhibition purposes in the COMPANY gardens and to all buildings, additions, alterations, or other improvements of every kind, nature, or description placed upon the above described grounds shall immediately vest in SALT LAKE CITY CORPORATION and shall be peaceably delivered to the CITY by the SOCIETY at the termination of this agreement unless superseded by a written agreement with the CITY providing for other disposition of said animals and property;”

On DATE, OTHER NAME, Finance Manager for SOCIETY, confirmed that Salt Lake City owns the land and improvements. It is clear that Salt Lake City owns the property operated by the COMPANY. Furthermore, based on the documents you have provided, as well as from our discussions, we conclude that the zoo itself is not a separate legal entity that owns any property or assets.

Applicable Law

There are two possible exemptions under state law for sales tax exemptions on purchases of construction materials; purchases by charitable organizations or governmental entities.

Charitable Organizations

There are two pertinent provisions dealing with sales tax exemptions on purchases of construction materials by religious or charitable organizations. To begin, Utah Code Ann. §59-12-104 (8) states:

The following sales and uses are exempt from the taxes imposed by this chapter:
(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

§59-12-104.1 (2)(a) further states:

Except as provided in Section 59-12-104, sales made to a religious or charitable institution or organization are exempt from the sales and use tax imposed by this chapter if the sale is made in the conduct of the institution's or organization's regular religious or charitable functions and activities.

Second, Rule 58(4)(a) requires a religious or charitable organization make payment

directly to the vendor. In this case, the contractor, not SOCIETY, purchases the materials from, and makes payment directly to, the vendor. The contractor then requests reimbursement from SOCIETY. Because the sale is made to the contractor, the requirements of these statutes and rule are not met. The religious or charitable exemption is therefore not available under the above noted provisions, notwithstanding SOCIETY's 501(c)(3) status.

Rule 58(4)(b), does provide for the exemption to apply to a purchase of construction materials on behalf of a religious or charitable institution. However, subparagraph (4)(b)(i) clarifies this exemption further, requiring that the materials be "clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution." (Emphasis added.) Even assuming the contractor makes the purchases on behalf of SOCIETY, and not the City, the materials are not "installed or converted to real property owned by the religious or charitable institution." Accordingly, they are subject to sales tax. See R865-19S-58(B)(5).

In addition, even if COMPANY were a separate legal entity established as a 501(c)(3) organization, it would have to both own the property and enter into the construction contract itself in order to qualify for the exemption. This is not the case here.

Governmental Entities

We have also considered another possible exemption found in §59-12-104(2), which generally exempts purchases by the State or its political subdivisions from sales tax. This exemption usually does not apply to construction materials purchased by the State or its political subdivisions. However subparagraph (2)(a)(ii) states the exemption would apply to "construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions."

If Salt Lake City were to purchase the construction materials directly, and the materials were installed or converted to real property by city employees, the purchase would be exempt from sales tax. (We note that the provision under Rule 58(4)(b), which extends the exemption to purchases on behalf of a charitable institution, without a requirement for conversion by employees of the charitable institution, does not apply to the state or its political subdivisions.)

In this case, however, a contractor is purchasing and installing or converting the materials to real property owned by the City. Assuming that purchases reimbursed by City bond funds are viewed as being made by the City, with SOCIETY acting as its agent, the contractor is still installing or converting the materials to real property. Thus the exemption set forth in §59-12-104 (2)(a)(ii) does not apply.

Conclusion

In summary, although the real estate construction contracts you have described are not subject to sales tax, we find the purchases made by the contractor are subject to sales tax, which should be collected and remitted by the seller. The role played by the SOCIETY does not exempt

the transactions you have described from sales tax.

This conclusion is based on the information provided to us. Our response might be different if the facts are other than those upon which our response is based. Please contact us if you have any other questions.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/SR
04-022