

REQUEST LETTER

04-013

NAME
ADDRESS

Dear TP REPRESENTATIVE:

Please accept this letter as the CORPORATION desire to have you and the Commissioners consider extending our sales tax exemption to our revenue derived from ticket sales for rides.

We consider the revenue from ride tickets the same as revenue we receive from admissions, parking and entertainment tickets. We do not own our own rides so we must contract with individual ride owners to bring in rides at our request for our guests amusement. We, just as we do with admissions, purchase the ride tickets and the sales are our revenue. We pay the ride owners a percentage of the ticket sales in exchange for them providing the rides we have asked for. We do share in the liability of the rides as we control the type, operation times and prices of the rides, but we do require the owners top provide us proof of their insurance for their negligence.

The rides are an integral part of our mission to provide the citizens of Utah, agricultural education, commercial exhibits, youth and family activities and entertainment and believe the revenue should be tax exempt. We are not asking you to exempt sales from our commercial, food and game exhibitors as they are individual entities renting space from us for their own business purposes.

Thank you for your consideration of this request and I am available to meet with the Commissioners if you desire. Please call me at anytime if you have further questions. I can be reached at PHONE.

Sincerely,
NAME

RESPONSE LETTER

September 2, 2004

NAME
ADDRESS

RE: Private Letter Ruling Request – Taxability of Admissions to Rides at PLACE

Dear NAME,

You asked if the ticket sales for rides at the PLACE are exempt from sales tax due to the CORPORATION being a charitable organization exempt from sales tax. Sales for “admissions”

to amusement rides are generally taxable based on the ticket price for a ride, pursuant to UCA §59-12-103(1)(f). Thus, you are correct that the ticket sales, or “admissions,” for rides at the PLACE would be exempt if CORPORATION exemption extended to these sales.

The Internal Revenue Service has determined that CORPORATION qualifies as an entity described in Section 501(c)(3) of the Internal Revenue Code. Therefore, pursuant to Utah Admin. Rule R865-19S-43(A), Utah recognizes USFC as a charitable institution that qualifies for the sales and use tax exemption found in UCA §59-12-104(8)(a). Specifically, that section of the statute provides a sales and use tax exemption for “sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities” Accordingly, for the sale of tickets to PLACE rides to qualify for exemption due to CORPORATION tax-exempt status, the sale of those tickets must: 1) be made **by CORPORATION**; and 2) be made **in the conduct of CORPORATION regular charitable functions or activities**. We will consider each of these issues in sequence, in order to determine whether or not the ticket sales are exempt.

1. Are the tickets sold **by CORPORATION**?

For purposes of Utah sales taxation and exemptions, UCA §59-12-102(28) provides that a “sale” means “any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of . . . [a] taxable transaction under Section 59-13-103(1), for consideration.” Therefore, to be consistent with Section 59-12-108(8)(a), for sales of tickets to PLACE rides to be exempt due to CORPORATION tax-exempt status, CORPORATION must be the party who makes the “sale,” i.e., the party with whom the fairgoer enters into a transaction to exchange money for an admission to a ride.

To determine who is selling the ride tickets, we have reviewed the Carnival Contract (“Contract”) between CORPORATION and OTHER CORPORATION that you provided. Although the Contract provides that CORPORATION must supply the ticket stock for the ride tickets and may determine the admissions system, it is clear that OTHER CORPORATION is the party from whom the fairgoer is purchasing the ride tickets. The Contract grants OTHER CORPORATION the right to operate and provide the rides at issue and makes CORPORATION responsible for day-to-day operation of admission sales booths, including furnishing all necessary personnel to operate those booths. Furthermore, OTHER CORPORATION is the party that receives, and is entitled to, the money that is exchanged for the ride tickets. Although CORPORATION is entitled to a set percentage of the gross receipts (subject to a minimum dollar amount), the Contract clearly states that CORPORATION receives this money in exchange for giving OTHER CORPORATION the right to operate and provide the rides, not because CORPORATION has “sold” ride tickets. In addition, OTHER CORPORATION, not CORPORATION, is the party required to keep the records for all operations performed under the Contract and is responsible to maintain “a guest relations office” to handle public complaints about admission charges, including providing an Ombudsman to handle the complaints. For these reasons and because the Contract contains no provisions that suggest that OTHER CORPORATION is performing its duties as an “agent” on behalf of CORPORATION, we find that the sales of the PLACE ride tickets are made by OTHER CORPORATION, not CORPORATION. Accordingly, the sales do not qualify for the exemption relating to CORPORATION exempt status.

2. **Is the sale made in the conduct of CORPORATION regular charitable functions or activities?**

We will not address, in our ruling, whether the second requirement applies to your particular situation, as we have already determined the exemption does not apply to the specific sales at issue. However, since you stated in your letter that “. . . [t]he rides are an integral part of [the PLACE] mission . . .,” we make the following observation for future reference. Had CORPORATION been the party selling the ride tickets, we would have examined any evidence relating to CORPORATION regular charitable functions or activities (including stated purposes in Articles of Incorporation, etc.) to determine if selling admissions to rides qualified as such a function or activity. Please be aware that not all activities performed by a charitable institution meet this criterion. Thus, sales made by a charitable institution but that are “outside” its regular charitable functions or activities would be taxable.

In conclusion, based on the foregoing and the information provided, sales of ride tickets at the PLACE are subject to sales tax. Should you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/SR
04-013