

REQUEST LETTER

September 14, 2006

NAME

ADDRESS

NAME:

Please accept this letter as a formal request for a private letter ruling on the issue of sales and use tax-exempt status for the CONFERENCE. As you know from our previous conversations and documentation you now possess, The UTAH OFFICE is hosting the national fall conference training meeting for the SOCIETY, one of ten staff-related sub-divisions of CONFERENCE. While hosted by the Utah Office on behalf of legislative staffs throughout the nation, the meeting is conducted under the financial control of CONFERENCE and therefore its tax status also falls under CONFERENCE.

CONFERENCE is unique in that has been classified by the United State Internal Revenue Service as a 170 (c) (1) institution rather than a 501 (c) (3). Under the 170 section of the federal code, the IRS has ruled that CONFERENCE is an instrumentality of all states and has federal status as an organization that can receive charitable contributions. Section 170 (c) (1), unlike section 501 (c) (3), does not address tax exemption but does define those organizations operating under the section with the same charitable organization language.

There are two points I would ask you to consider in your deliberation. First, Utah State Statute does not define religious and charitable institutions. That determination has been left to the Tax Commission in its administrative rules. It is my understanding from discussions with your organization that, as a state, we primarily recognize section 501 (c) (3) classifications but have not recognized section 170 (c) (1) classifications. Both sections deal with charitable institutions and use similar descriptive language. TP REPRESENTATIVE letter (paragraph 4) cites the administrative rule that allows tax exempting for 501 (c) (3) only and dismisses exemption under any other IRS designation. In a broader interpretation of federal code I believe that organizations operating under section 170 (c) (1) can legitimately be given the same treatment as section 501 (c) (3) organizations.

Second, the IRS classification of CONFERENCE as an instrumentality of state government should result in treatment of the organization that mirrors that of state agencies. This important point was not fully addressed by the Tax Commission in TP REPRESENTATIVE letter. Clearly the intent of the IRS declaration needs to be addressed. TP REPRESENTATIVE is correct that CONFERENCE instrumentality status is not addressed in state statute pertaining to the Tax Commission but that does not mean that it has no standing. The Utah Legislature has supported CONFERENCE through the payment of dues since the inception of the organization. A number of Utah legislators and legislative staff have served in

the governance of the CONFERENCE organization and, in fact, UTAH SPEAKER served as its executive chairperson.

CONFERENCE belief in its status as an instrumentality of state governments is stated in the letter you have signed by 2ND NAME. This status has been recognized by other states and I believe should be recognized by Utah. Thank you for your time and consideration. If you have any further questions or would like to contact CONFERENCE directly please give me a call. I can be reached at ##### or by e-mail EMAIL ADDRESS

Sincerely,

REQUESTOR NAME
Audit Manager

RESPONSE LETTER

REQUESTOR NAME
ADDRESS

Re: Private Letter Ruling 06-019
Application of Sales Tax Provisions to the SOCIETY.

Dear REQUESTOR NAME,

This letter is in response to your request for tax guidance. We apologize for the delay, but due to staffing changes we were unable to respond more timely. This letter ruling is not intended as a statement of broad Tax Commission policy. It is an interpretation and application of the tax law as it relates to the facts presented in your request letter and the assumptions stated in the Analysis portion of this ruling letter. If the facts or assumptions are not correctly described in this letter ruling, please let me know so we can assure a more accurate response to your circumstances.

Facts

The UTAH OFFICE is hosting the national fall conference training meeting for the SOCIETY), a subdivision of the CONFERENCE. The meeting is conducted under the financial control of CONFERENCE.

The CONFERENCE is a private organization founded to provide technical research assistance to State Legislatures. The CONFERENCE is governed by an Executive Committee comprised of State Legislatures and Legislative staffs. Regarding CONFERENCE tax status, you point out that the Internal Revenue Service has recognized CONFERENCE as a 170(c)(1) organization. As such, donors may make tax-deductible donations to CONFERENCE.

The CONFERENCE believes itself to be “an instrumentality of the several states.” In support of that position, you have supplied a 1978 IRS ruling that indicates that the CONFERENCE is funded from state appropriations. Funding may be supplemented by grants. Additionally, a check of the CONFERENCE website indicates that the CONFERENCE Foundation, which is a separate 501(c)(3) non-profit organization, raises money to support the CONFERENCE activities and programs.

Relevant Utah Law

You have suggested that CONFERENCE should be treated similarly to charitable organizations for tax purposes because the IRS allows donors to CONFERENCE to take tax deductions under IRS §170(c). Alternatively, you state that the CONFERENCE is an instrumentality of the various states; therefore, it enjoys the same sales tax treatment as the State of Utah. The following Utah law is relevant to a determination on these theories:

Utah Code Ann. §59-12-104.1 states that sales by or to a charitable organization are exempt from Utah sales tax if the sales are made in the regular course of the organization’s charitable functions or activities. Additionally, Utah Admin. Rule R865-19S-43 specifies that the charitable deduction must be recognized as a 501(c)(3) organization by the IRS.

Utah Code Ann. §59-12-104(2) exempts from Utah sales tax sales to the state, its institutions and its political subdivisions.

Analysis

Charitable Organizations

CONFERENCE is not a 501(c)(3) charitable organization, nor does it have a charitable function or purpose. Therefore, it does not qualify for exemption under Utah Code Ann. §59-12-104.1. The fact that the IRS allows a deduction for donations to CONFERENCE under Section 170(c) does not alter this determination.

Section 170 specifically provides for deductions from federal taxable income for contributions made to various organizations. Subsection (c) defines charitable contributions as gifts or contributions to certain entities, which include, under paragraph (1), “[a] State, a possession of the United States, or any political subdivision of any of the foregoing, or the

United States or the District of Columbia. Even if CONFERENCE were to be deemed an instrumentality of Utah, it would not qualify as a charitable organization, which is specifically defined under IRS §501(c)(3). We see nothing inherent in the IRS code that qualifies the recipient of a “charitable contribution” to be a charitable organization itself. To the contrary, both federal and state tax codes distinguish governmental agencies from charitable organizations. In other words, an individual or corporation can make a charitable contribution to a non-charitable organization. We find this to be precisely the case here.

Instrumentalities of the State

To qualify for exemption under Utah Code Ann. §59-12-104(2), CONFERENCE must be a state instrumentality. A governmental instrumentality is an agency that is constitutionally or legislatively created. (See, Black’s Law Dictionary, 6th ed.) CONFERENCE is neither created by the constitution or legislation of this state, nor is it specifically exempted from taxation by law.

We have reviewed the copy of the 1978 IRS opinion you provided. In that opinion, the IRS considered how closely CONFERENCE is related to state governments and determined that CONFERENCE qualifies as a Section 170(c) organization. Under that ruling, the IRS allows income tax deductions for donations made to CONFERENCE; it does not create a sales tax exemption pursuant to Utah Code Ann. §59-12-104 (2). In addition, we note that a determination by the IRS as to the status of any organization as a governmental instrumentality does not and cannot establish a political subdivision of the state. Without direct, formal confirmation by the State of Utah, through statute or otherwise, that the CONFERENCE was established as a state agency, we cannot make this finding as you have requested.

Ruling

Based on the facts and analysis presented, neither the CONFERENCE nor the SOCIETY qualify for exemption under Utah Sales Tax law.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/IR
06-019