

REQUEST LETTER

07-011

NAME
COMPANY
2600 Sunnyside Avenue
Salt Lake City UT 84108

August 30, 2007

I am writing to request a private letter ruling as to whether SOCIETY, DBA, COMPANY a 501(c)(3) entity would be required to collect sales tax on a Conservation Carousel ride.

The Conservation Carousel ride is scheduled to open in May 2008. All of the animals that will be on the carousel will be zoo related animals. In fact, the majority of the animals on the carousel are endangered species and the carousel will have informational conservation signage. At this time we have not determined a price for the carousel ride but we have determined that a portion of the proceeds will be donated to conservation efforts worldwide.

Enclosed is a picture of a carousel from another zoo. The carousel that we will be installing will look very similar to the one enclosed.

If you have any questions in regards to this matter please contact me at (###) ###-####.

Sincerely,

NAME
Finance Manager

RESPONSE LETTER

NAME
COMPANY
ADDRESS

Re: Private Letter Ruling 07-011
Application of Sales Tax Provisions to a carousel ride operated by SOCIETY.

Dear NAME,

This letter is in response to your request for tax guidance. 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

SOCIETY, DBA COMPANY, a 501(c)(3) entity, plans to operate a carousel at COMPANY. It will call this a Conservation Carousel and plans to open the ride in May 2008.

The carousel will be similar to one that would normally be found at an amusement park, except that the animals on the carousel will be zoo-related animals. In fact, the majority of the animals that will be on the carousel are endangered species. Photographs of the proposed animals for the carousel indicate that the animals will be depicted in a reasonably lifelike manner within the confines of the materials used. The carousel will have informational conservation signage. COMPANY intends the carousel to provide education regarding the animal species featured on the ride.

COMPANY has not yet set a price for its patrons to ride the carousel, but does plan to charge a separate fee from its normal zoo entrance fees. Because there will be a separate fee for the ride, COMPANY questions whether the Commission will require it to collect sales tax on the ride.

Relevant Authority

Utah Code §59-12-103(1)(f) generally requires sales tax for “amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity.” However, the taxes imposed in Section 59-12-103 are subject to exceptions “as provided in Section 59-12-104.”

Utah Code §59-12-104(8) exempts “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.”

Utah Code §59-12-104.1(1) requires that to qualify for a sales tax exemption, sales by a religious or charitable institution must be “made in the conduct of the institution's or organization's regular religious or charitable functions or activities.”

Tax Commission Administrative Rule, R865-19S-43 provides further guidance with regard to meeting the requirements for sales by religious and charitable institutions under Utah Code Section 59-12-104. This rule provides three requirements for tax-exempt sales by the organization claiming exemption. First, the “organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.” Second, “[r]eligious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.” Rule R865-19S-43 defines the phrase “unrelated trades or businesses” as “the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993).” Third, the organization claiming exemption under the rule “must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination.”

26 U.S.C.A. Section 513 (West Supp. 1993), defines “unrelated trade or business” as “any trade or business the conduct of which is not substantially related . . . to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.”

Because 26 U.S.C.A. Section 513 is part of the federal tax code, the Internal Revenue Service interprets and applies it. The Internal Revenue service has had occasion to review sales by a zoo to determine whether sales of zoo merchandise would be related to the operation of a zoo. In IRS private letter ruling 8252011, the Internal Revenue Service considered sales of items such as stuffed toys chosen for their likeness to specific zoo animals, animal puzzles, animal coin banks animal alphabet sets by a zoo that was a 501(c)(3) entity. The zoo that the IRS considered also sold items such as T-shirts, sweat shirts, hats, jewelry, and art items. The IRS ruled that several of the animal puzzles, stuffed animals, animal coin banks, and similar items did contribute importantly to the organization because artwork that realistically depicted and interpreted wildlife in its natural habitat contributed importantly to the purposes of the zoo. The IRS denied tax-exempt status for items that appeared to be more related to marketing of merchandise than the goals of the zoo.

Analysis and Ruling

Applying the applicable law, the Commission finds that admission fees for the carousel ride at issue fit within an exemption to the normal rule that would tax admission fees for a carousel ride. An admission fee for a carousel would normally be taxable as an amount paid for an exhibition, amusement ride, or other similar activity under Utah Code §59-12-103(1)(f). But this section providing for a tax on a carousel ride also allows for exemptions. Because COMPANY is a charitable organization qualifying under IRS code 501(c)(3), the applicable exemption is 59-12-104(8). This exemption is for “sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities.”

In making this determination that the operation of a conservation carousel is exempt as a part of COMPANY'S regular charitable functions and activities, the Commission looks to the three tests set forth in Utah Administrative Rule R865-19S-43, the section that provides interpretation for the exemption statute. Those tests are: 1) The organization claiming the exemption must be a registered 501(c)(3) organization; 2) the exempt organization must collect tax for operation of unrelated trades or businesses; and 3) the exempt organization must submit the necessary forms describing the organization's activities. As is already noted, COMPANY meets the first part of the test because it is a registered 501(c)(3) organization.

For the second part of the test, requiring that COMPANY collect sales tax for unrelated trades or businesses, the Commission finds that the carousel is similar to activities that the IRS found to be related to the activities of a zoo in IRS private letter ruling 8252011. The carousel described by COMPANY has generally lifelike representations of animals and provides educational signage to provide additional information about zoo animals and endangered species. On that basis, the Commission finds that the carousel is a part of the conduct of COMPANY regular charitable functions and activities rather than an unrelated trade or business.

As to the third requirement that COMPANY file a TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission, the Commission has verified that it has received this form and has issued the necessary certificate to COMPANY. On that basis, the carousel as described would meet all of the tests for an activity related to the operation of the 501(c)(3) organization.

Conclusion

Because the carousel, as described, appears to be a ride that meets all of the requirements for the exempt activities of a charitable organization, it will not be necessary to collect sales or use tax for admission to the carousel ride.

The Tax Commission provides this opinion on the basis of the information provided it. No person should rely on this opinion for facts other than those you provided in your initial letter and those supplemental facts as described in this letter. If you wish to address these or other Utah tax concerns further, please do not hesitate to contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/CDJ
07-011