

FINAL PRIVATE LETTER RULING

REQUEST LETTER

DEAR TP REP

I discussed the question of tax exemption with you last DATE. I included the attached communication I had with INTERNATIONAL CLUB legal department. I wondered if the subject could receive a written reply as to the instruction from the Utah Tax Commission. Could you forward this as a private letter asking for a ruling? I would like to have clarity in writing on the subject.

Thanks for your help.

NAME

RESPONSE LETTER

November 18, 2008

NAME

ADDRESS

RE: Private Letter Ruling Request—Sales and Use Tax Exemption Treatment for 501(c)(4) Institutions

Dear NAME:

You have requested a ruling as to whether two local CLUBS and districts are eligible for exemption from Utah sales tax under Utah's exemption for religious and charitable institutions. The CLUBS, which are for districts ##### and #####, are chartered by INTERNATIONAL CLUB and operate with 501(c)(4) exemptions determined by the Internal Revenue Service ("IRS"). The FOUNDATION operates with a 501(c)(3) exemption determined by the IRS and has a Utah sales tax exemption number. The FOUNDATION and the CLUBS operate separately. Other local CLUBS view themselves as operating under the umbrella of the FOUNDATION; they use the FOUNDATION'S exemption number to treat themselves as exempt.

Applicable Law

Utah Code Ann. § 59-12-103 imposes sales and use tax on sales of tangible personal property and other specifically enumerated services. Utah Code Ann. § 59-12-104(8) provides an exemption for “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 Ann. § 59-12-104.1 restates the same qualifications as § 59-12-104(8) and then provides some procedural requirements to facilitate the administration of the exemption.

Utah Admin. Code R865-19S-43(A) (“Rule 43A”) limits religious or charitable institutions to 501(c)(3) organizations, stating:

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

In addition, Utah Admin. Code R865-19S-43(C) (“Rule 43C”) requires that the institutions submit Form TC-160 to qualify for the exemption. Rule 43C states:

C. Every institution claiming exemption from sales tax under this 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. . . .

Form TC-160(1) specifies that institutions provide certain documentation, stating:

1. Per administrative rule R865-19S-43, applicant must document exemption status as follows: A. Attach a copy of the IRS determination letter exempting your organization from federal income tax under IRC Section 501(c)(3) [or] B. If your organization is claiming exemption as a subunit of a central organization, attach a copy of the central organization’s religious or charitable 501(c)(3) determination letter and IRS group exemption letter specifically naming your organization as a subunit . . .

Under Form TC-160(1)(B), an organization that is a subunit “must” provide both the central institution’s determination letter and the group exemption letter specifically naming the organization as a subunit.

I.R.C. § 501(c)(3) organizations are:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying

on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

I.R.C. § 501(c)(4) organizations are:

- (4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.
- (B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Analysis

Section 59-12-104(8) exempts sales made to or by religious and charitable organizations in the conduct of their regular religious and charitable functions and activities. But, Rule 43A specifies that in order for the organization to qualify for the sales tax exemption, the IRS must recognize the organization as a 501(c)(3) organization. Likewise, Form TC-160(1)(A) requires such institutions to provide the Utah State Tax Commission the IRS determination letters finding those institutions to be 501(c)(3) organizations. In the current situation, the CLUBS are not 501(c)(3) organizations and thus by themselves are not charitable institutions. They simply cannot meet the requirements of Rule 43A and Form TC-160, and they cannot qualify for a sales tax exemption.

Previously in Private Letter Ruling (“PLR”) 06-019, the Commission declined to expand the definition of charitable institutions to include organizations operating under I.R.C. 170(c)(1). The Commission upheld Rule 43A, limiting charitable institutions to 501(c)(3) organizations. The Commission explained that a 170(c)(1) organization was “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 [a 170(c)(1) organization] under Section 170(c) does not alter this determination.” Similarly in the present situation, although the CLUBS are 501(c)(4) organizations and have some of the characteristics of 501(c)(3) organizations, they are still not 501(c)(3) organizations, which are required under Rule 43A.

Furthermore, the Commission previously found that 501(c)(4) organizations, specifically, do not qualify as charitable institutions under § 59-12-104(8). In PLR 95-038, the Commission refused to grant an exemption to a 501(c)(4), stating:

Only organizations which are recognized as religious or charitable organizations under section 501(c)(3) of the IRS code qualify for this exemption. The XXXXX is recognized as a 501(c)(4) organization.

and

Under Utah Administrative Rule R865-19S-43, only organizations recognized by the Internal Revenue Service as exempt from tax under section 501(c)(3) of the Internal Revenue Code qualify for this exemption. A 501(c)(4) organization, such as yours, does not qualify. Absent compelling grounds for doing so, the Commission has no discretion to ignore that administrative rule.

In PLR 95-038, the misrepresentations of other agencies were not compelling grounds to ignore Rule 43A. In the current situation, the CLUBS are also 501(c)(4) organizations and, therefore, cannot qualify under Rule 43. Additionally, this current situation presents no compelling grounds to allow the Commission to ignore Rule 43A. Therefore, the CLUBS cannot qualify as charitable institutions under § 59-12-104(8).

Even if the CLUBS by themselves are not charitable institutions, they may still be subunits of a central charitable institution. Form TC-160(1)(B) provides the requirements: “a subunit of a central organization [must] attach a copy of the central organization’s religious or charitable 501(c)(3) determination letter and IRS group exemption letter specifically naming [the] organization as a subunit.” In the current situation, to qualify for sales tax exemptions as subunits, your CLUBS must meet the requirements of Form TC-160(1)(B); they must provide copies of the FOUNDATION’s determination letter and IRS group exemption letter specifically naming the CLUBS as subunits. If your CLUBS can provide this information, they can complete TC-160 and qualify for the sales tax exemption. Currently, there is no indication that the IRS has issued a group exemption letter specifically naming the districts and their clubs as subunits of the Foundation.

Please note, even if the CLUBS meet the requirements of Form TC-160(1)(B) and are found to be charitable institutions, not all purchases and sales by the CLUBS are exempt. Rather, the sales and purchases must be “in the conduct of [the FOUNDATION’S] regular . . . charitable functions and activities” to be exempt. *See* § 59-12-104(8).

Basically, we agree with SECOND NAME, counsel for INTERNATIONAL CLUB, who said, “[u]nfortunately, CLUBS cannot operate under another organization's tax ID number. The CLUBS are chartered by INTERNATIONAL CLUBS, not a particular district's foundation. Unless the money is going directly to the state FOUNDATION, the CLUBS are not operating under the ‘umbrella’ of the FOUNDATION.”

Conclusion

Based on the above analysis, the CLUBS and districts by themselves are not eligible for exemption from Utah sales and use tax under Utah's exemption for religious and charitable institutions. Also, the CLUBS and districts cannot just use the sales tax exemption number of the FOUNDATION. A reasonable interpretation of 2ND NAME letter indicates that the CLUBS are not specifically named as qualifying subunits on a group IRS exemption letter as required by Form TC-160(1)(B). Our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
08-011