

**FINAL PRIVATE LETTER RULING**

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**REQUEST LETTER**

08-014

UNIVERSITY  
NAME  
ADDRESS

October 29, 2008

To Whom It May Concern:

UNIVERSITY is requesting clarification of the tax code section 59-12-104.1 which states that a 501(c)(3) organization is able to purchase goods tax exempt by submitting a TC-62N coupon for taxes that were paid at the point of purchase.

We have spoken with an auditor within the auditing division of the Utah State Tax Commission. We found that it is not clear if sales tax included in reimbursements made to employees, who have purchased goods on behalf of a 501(c)(3) organization, can be recovered by submitting the TC-62N coupon. It is UNIVERSITY'S desire to recover this sales tax utilizing the TC-62N coupon.

UNIVERSITY would like a Private Letter Ruling that clarifies if sales tax reimbursements to employees, who have purchased goods for the University, can be recovered from the Utah State Tax Commission by the University submitting the TC-62N coupon. If not, what process is in place to recover the sales tax inadvertently paid by employees when using their own funds to make purchases on behalf of the 501(c)(3) organization?

If you have questions or need clarification of the University's inquiry, please contact 2<sup>ND</sup> NAME at #####.

Please send the Private Letter Ruling back to the address that is listed on the letterhead. Your time concerning this matter is greatly appreciated.

Sincerely,

NAME  
UNIVERISTY

## RESPONSE LETTER

April 7, 2009

NAME  
UNIVERSITY

RE: Private Letter Ruling Request—Whether a 501(c)(3) University Can Recover Sales Tax Paid by Employees Who are Reimbursed for Goods Purchased for the University.

Dear Mr. NAME:

You had requested a ruling as to whether UNIVERSITY, as a 501(c)(3) organization, can recover from the Tax Commission sales tax reimbursements to employees who purchased goods for the University. For purposes of this response, we note that the University has applied for and received a Utah sales tax exemption number as a 501(c)(3) organization. Your specific request is whether a 501(c)(3) organization may obtain refunds of sales taxes paid on purchases made by its employees. You ask if the refund claim can be made by submitting the TC-62N form (Utah Sales Tax Refund Request). You also inquire, if the response is “no,” whether a mechanism is available to get refunds for purchases made by employees who inadvertently pay the sales tax.

### I. Applicable Law

Utah Code Ann. § 59-12-104 provides:

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 . . .  
(Emphasis added.)

Utah Code Ann. § 59-12-104.1 in pertinent part states:

- (2) (a) 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.
- (b) In order to facilitate the efficient administration of the exemption granted by this section, the exemption shall be administered as follows:
- (i) the exemption shall be at point of sale if the sale is in the amount of at least \$1,000;

- (ii) except as provided in Subsection (2)(b)(iii), if the sale is less than \$1,000, the exemption shall be in the form of a refund of sales or use taxes paid at the point of sale; and
  - (iii) notwithstanding Subsection (2)(b)(ii), the exemption under this section shall be at point of sale if the sale is:
    - (A) made pursuant to a contract between the seller and the charitable or religious institution or organization; or
    - (B) made by a public utility, as defined in Section 54-2-1, to a religious or charitable institution or organization.
- (3) (a) Religious or charitable institutions or organizations entitled to a refund under Subsection (2)(b)(ii) may apply to the commission for the refund of sales or use taxes paid.
- (b) The commission shall designate the following by commission rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (i) procedures for applying for a sales and use tax refund;
  - (ii) standards for determining and verifying the amount of purchase at the point of sale;
  - (iii) procedures for submitting a request for refund on a monthly basis anytime the taxpayer has accumulated \$100 or more in sales tax payments; and
  - (iv) procedures for submitting a request for refund on a quarterly basis for any cumulative amount of sales tax payments.

(Emphasis added.)

In conjunction with § 59-12-104.1(3)(b), the Commission adopted Utah Admin. Code R865-19S-100 titled, “Procedures for Exemption From and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.” The Commission also provided Form TC-62N, titled “Sales Tax Refund Booklet for Religious or Charitable Organizations.”

Sales to religious or charitable institutions are also discussed in Utah Admin. Code R865-19S-58 (“Rule 58”); Subsection (2) of Rule 58 provides in part:

- (c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.
- (d) Sales of [construction] materials are considered *made to* religious or charitable institutions and, therefore, exempt from sales tax, if:
  - (i) the religious or charitable institution makes payment for the materials directly to the vendor; or

- (ii) (A) the materials are purchased on behalf of the religious or charitable institution.
  - (B) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.
- (e) Purchases *not* made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and *are subject to sales tax*.

(Emphasis added.)

## II. Analysis

### A. Statutes

Section 59-12-104(8) specifically exempts “sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities.” Section 59-12-104.1(2) reiterates that “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.” In the current situation, the issue is whether a sale made to an employee of a charitable (we mean charitable to include religious) institution qualifies as an exempt sale “made to” the institution when the employee directly pays the vendor.

### B. Prior Private Letter Rulings

Several Private Letter Rulings (“PLR’s”) address the treatment of purchases made to or on behalf of a religious or charitable institution. These rulings, PLR 01-028, PLR 01-004, and PLR 04-022, deal with purchases of tangible personal property by charitable organizations.

Of the three PLR’s, PLR 01-028 compares most directly with the current situation. It addressed in part the purchase of equipment by a for-profit company on behalf of a 501(c)(3) organization. The Commission applied Rule 58 to that situation. Although Rule 58 primarily deals with sales of personal property to real property contractors, it does address purchases of tangible personal property that are not converted to real property. That rule was applied because then, as is now the case, there is “no current statute or rule [that] specifically addresses only the purchase of tangible personal property on behalf of a charitable institution.” *See* PLR 01-028.

Under PLR 01-028, all purchases of tangible personal property must meet the requirements of Rule 58 to be exempt. A purchase of tangible personal property that remains tangible personal property does not comply with Rule 58(2)(d)(ii) (prior version at Rule 58(B)(4)(b)(i)) because the property is never converted to real property as required. Therefore, a purchase of tangible personal property that remains tangible personal property can only comply with Rule 58 when “the . . . institution makes payment . . . directly to the vendor,” under Rule 58(2)(d)(i). As we stated in PLR 01-028 “[w]hile the rule contemplates the purchase of tangible

personal property that is installed to real property, the Commission will also consider the purchase of tangible personal property that remains tangible personal property to be exempt when made on behalf of a charitable institution, but only if that institution makes payment directly to the vendor.” Otherwise the charitable institution may only purchase tangible personal property tax-free if the institution pays the seller directly, as we indicated in PLR 01-028.

Although not directly on point, PLR’s 01-004 and 04-022 also address whether purchases of tangible personal property are exempt. They differ from PLR 01-028, in that they deal specifically with construction materials. Consistent with PLR 01-028, these rulings require that the charitable organizations make exempt purchases of tangible personal property directly if that property is not converted into real property owned by the organizations.

### C. Sales Tax Refunds on Purchases Made by Charitable Organizations and Governmental Entities

In considering the language of §§ 59-12-104 and 59-12-104.1, the Commission has consistently interpreted those statutes to permit refunds of taxes on reimbursements for purchases made by volunteers of charitable or religious organizations only—not for purchases by volunteers of other organizations or by employees of any organization. This is a principled distinction. In the case of employees of governmental or charitable organizations, the Commission finds that such organization has sufficient control over its employees to entrust its funds to the employees when the organization determines such entrustment is needed and appropriate. Accordingly, purchases made by an organization are exempt only when the purchases are made directly from the organization’s funds.

In contrast, the Commission finds that a charitable organization does not have sufficient financial and organizational controls to allow the volunteers direct access to the organization’s funds. At the same time, we hold that the charitable purposes of a charitable organization should not be thwarted because of financial inconveniences involving volunteers. Thus, the Commission has permitted sales tax refunds for purchases made by volunteers of charitable organizations when the taxes are reimbursed by the organizations. We find that the refund provisions under § 59-12-104.1(3)(a) permit refunds under this circumstance. Accordingly, charitable organizations may request a sales tax refund though the refund process permitted under § 59-12-104.1(2)-(3) for taxes paid by volunteers of such organizations, as long as these purchases are “made in the conduct of the institution's or organization's regular religious or charitable functions and activities.”

We emphasize that this refund provision does not apply to volunteers of governmental entities. To begin, we do not find that governmental or other organizations rely upon volunteers to the extent of charitable organizations, who are heavily dependent on volunteer work in order to carry out their missions. Furthermore, the statutory refund provision under § 59-12-104.1(3)(a) is absent from the exemption for government entities under § 59-12-104(2). We find no policy purpose or statutory language to permit refunds on purchases made by volunteers of governmental or other non-charitable entities.

#### D. Purchases Made by University Employees

In this case, based on §§ 59-12-104(8) and 59-12-104.1, the aforementioned PLR's, and the Tax Commission's statutory interpretation in similar situations, there is no basis that allows the University to claim a refund of the sales tax paid by its employees on purchases that they make, even if the purchases are on behalf of the University. Such sales to employees were not "made to" a charitable institution as required statute. Neither is there any indication that the purchases meet the requirements of Rule 58. The University did not make payment directly to the vendor, as required by Rule 58(2)(d)(i). We assume that the tangible personal property is not "converted to real property owned by the [University]," as required by Rule 58(2)(d)(ii)(B). Because the purchases were not made to the University, the University cannot qualify for or file a claim for a refund as provided in §§ 59-12-104.1(2)(b)(ii) and 59-12-104.1(3). When the University needs to make purchases, it can authorize certain employees to make those purchases directly with the University's funds. The "made to" language of §§ 59-12-104(8) and 59-12-104.1(2) requires purchases made through employees to be made directly with the University's funds. We find no statutory language to permit refunds on purchases made by employees of charitable organizations.

### **III. Conclusion**

Based on the above analysis, the University does not qualify to recover sales tax paid by employees who are reimbursed by the University. 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  
08-014