

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-011

May 12, 1009

Utah State Tax Commission
Attn: STAFF
210 North 1950 West
Salt Lake City UT 84134

Re: Private Letter Ruling for ORGANIZATION

Dear STAFF

EMPLOYEE, Division Director for the Tax and Revenue Division of the Utah Attorney General's Office, gave me your contact information and suggested that I contact you. As I mentioned during our telephone conversation on DATE, I am the Legal Counsel for ORGANIZATION and would like to obtain a private letter ruling regarding the ORGANIZATION's status as a tax-exempt political subdivision of the State of Utah.

The GROUP created the ORGANIZATION in YEAR to serve as the (X) advisory body for the MEMBER STATES. Our membership currently encompasses the MEMBER STATES, including Utah, as well as individual members who are appointed by the governors of each member state. Historically, the ORGANIZATION's sole source of revenue has been from state taxes that its member states have allocated in the form of dues.

In YEAR, the Utah Attorney General's Office issued the attached letter concluding that the ORGANIZATION is a "political institution or subdivision of the State of Utah, the property of which belongs to the State of Utah and other states which are members of the council, is exempt from sales and other taxes under Utah law." The letter reached this conclusion because: (1) Utah law exempts Utah property and political subdivision from taxation; (2) the ORGANIZATION's sole source of revenue is from state taxes; (3) it is a "public body performing a governmental function;" and (4) its operations do not have any private of business interests. For federal tax purposes, the ORGANIZATION is a tax-exempt government entity under Section 115 of the IRS Code.

Although the ORGANIZATION's mission has evolved since YEAR, it is still funded with state taxes, including state taxes from Utah. Its operations do not include any private or business interests, and it performs the following governmental functions: (1) providing a forum for states to exchange ideas and information pertaining to REGION (X) issues; (2) providing information to the MEMBER STATES regarding (X) policy issues; (3) assisting member states in reviewing and preparing positions on matters of concern before Congress and under consideration by federal agencies; and (4) fostering cooperation among MEMBER STATES

with respect to (X) policy issues. For your reference, I have enclosed a more detailed description of the ORGANIZATION's formation and role, which is entitled "Celebrating our ##### Anniversary."

In the light of the above, the ORGANIZATION respectfully requests a private letter ruling that addresses the following issues:

1. Political Subdivision/Tax-Exempt Status

The ORGANIZATION has long used the YEAR letter to prove its status as a tax-exempt political subdivision for a number of purposes, including obtaining state agency discounts for hotels and travel arrangements. However, given the letter's age, we would like to obtain a more recent private letter ruling confirming our status as a tax-exempt political subdivision of the State of Utah with respect to state sales tax, income tax, and any other taxes.

2. Other Political Subdivision Considerations

Although the ORGANIZATION is not a Utah agency and represents all of its member states equally, it has tried to approximate Utah's policies with respect to salaries, travel, and other human resources issues. The ORGANIZATION's staff also participates in INSURANCE PROGRAM and in its disability insurance program. The major exception is that ORGANIZATION does not participate in RETIREMENT PROGRAM. Nevertheless, the ORGANIZATION has long interpreted the YEAR letter to mean that it is a political subdivision of the State of Utah for tax purposes only. Are there any other circumstances or situations in which the ORGANIZATION would qualify or operate as a political subdivision of the State of Utah?

3. Accepting Federal and Private Grants

The ORGANIZATION is considering the possibility of accepting grants from federal and private organizations to carry out the above governmental objectives. If the ORGANIZATION were to receive any such grants, it would separate these funds from the dues that it collects from its member states. Would accepting grant money change the ORGANIZATION's status as a tax-exempt political subdivision?

EMPLOYEE thought that the Utah State Tax Commission is the appropriate entity to address the above issues. However, he recognized that the Commission may not be able to address all of these issues and mentioned that his Division might issue an opinion letter if the Commission is unable to be of assistance.

Please contact me at PHONE or via email at EMAIL if you have any questions. Thank you for your assistance.

Respectfully,

NAME

Legal Counsel
ORGANIZATION

Enclosures: YEAR Letter from the Utah Attorney General's Office
"Celebrating Our ##### Anniversary"

RESPONSE LETTER

April 6, 2010

NAME
TITLE
ORGANIZATION
ADDRESS

RE: Private Letter Ruling Request—Determination of Whether ORGANIZATION is Tax-Exempt Entity for Utah Taxes

Dear NAME:

You have requested a ruling on whether ORGANIZATION is a tax-exempt entity for Utah taxes. You explained that ORGANIZATION is an entity created in YEAR by member governors of the GROUP to serve as a (X) advisory body . ORGANIZATION is funded with state taxes from member states. Council members of the ORGANIZATION serve at the pleasure of the governors of these member states. In YEAR, the ORGANIZATION became a formal affiliate of the GROUP 2. ORGANIZATION is not a Utah agency, but represents all of its member states equally.

With your request, you provided us with a copy of a letter to the ORGANIZATION dated DATE from ATTORNEY, Assistant Attorney General , of the Utah Attorney General’s Office. Carbon copies of the letter were sent to EMPLOYEE 1 and EMPLOYEE 2 of the Utah State Tax Commission. In that letter, ATTORNEY concluded that:

[ORGANIZATION is a] political institution or subdivision of the State of Utah, the property of which belongs to the State of Utah and other states which are members of the council, [and ORGANIZATION] is exempt from sales and other taxes under Utah law.

In that letter, ATTORNEY also stated:

[ORGANIZATION] requested an opinion on whether the ORGANIZATION is exempt from Utah sales tax.

.....

The difficulty in granting exemption from sales tax arises out of the fact that purchases are made directly by the Council rather than through the State Purchasing Agent and Department of Finance.

.....

Since all of the property being purchased with state general funds belongs to the State of Utah and, upon dissolution of the ORGANIZATION, will revert to the State of Utah and be sold either as surplus property or consumed by other

divisions of the State of Utah, it is exempt from sales tax pursuant to [Utah Constitution, Article XIII, Section 2 (YEAR) and Utah Code Ann. § 56-15-6 (YEAR)].

Furthermore, ATTORNEY interpreted the Utah Constitution, Article XIII, Section 2 (YEAR) as exempting the property of the state (including the property of ORGANIZATION) from all taxation—including both property tax and sales tax. ATTORNEY quoted Section 2 as follows, “The property of the state [etc.] . . . shall be exempt from taxation.” The Commission notes that the language of the Utah Constitution has since changed. The pertinent parts of the Utah Constitution, Article XIII, Sections 3 and 4 are located below in the “Applicable Law” section of this ruling.

You stated, “ORGANIZATION has long used the YEAR letter to prove its status as a tax-exempt political subdivision for a number of purposes, including obtaining state agency discounts for hotels and travel arrangements.” You also explained that employees of the ORGANIZATION participate in INSURANCE PROGRAM and its disability insurance program, but ORGANIZATION does not participate in RETIREMENT PROGRAM. You stated, “ORGANIZATION has long interpreted the YEAR letter to mean that it is a political subdivision of the State of Utah for tax purposes only.”

Finally, you have represented that the IRS has recognized that the gross income of your organization is not taxable under Section 115 of the Internal Revenue Code. Through follow-up conversations, you further explained that ORGANIZATION is not a corporation, that its only funding source is dues from member states, and that its operations do not include any private or business interests.

I. Applicable Law

A. Utah Constitution

The Utah Constitution, Article XIII, Section 3 states, in part:

- (1) The following are exempt from property tax:
 - (a) property owned by the State;
. . . .
 - (d) property owned by a political subdivision of the State; [and]
. . . .
 - (f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes . . .

The Utah Constitution, Article XIII, Section 4 states, in part:

- (1) Nothing in this Constitution may be construed to prevent the Legislature from providing by statute for taxes other than the property tax and for deductions, exemptions, and offsets from those other taxes.

B. Utah Code

i. Property Tax

Property tax is imposed under Utah Code, Title 59, Chapter 2. Utah Code Ann. § 59-2-1101(1)(b) provides an exemption, as follows:

[The] "government exemption" means a property tax exemption provided under Subsection (3)(a), (b), or (c) . . .

Utah Code Ann. § 59-2-1101(3)(a)-(c) states:

- (3) The following property is exempt from taxation:
 - (a) property exempt under the laws of the United States;
 - (b) property of:
 - (i) the state;
 - (ii) school districts; and
 - (iii) public libraries;
 - (c) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of:
 - (i) counties;
 - (ii) cities;
 - (iii) towns;
 - (iv) local districts;
 - (v) special service districts; and
 - (vi) all other political subdivisions of the state . . .

ii. Sales and Use Tax

Sales tax is imposed under Utah Code Ann. § 59-12-103(1). Utah Code Ann. § 59-12-104 provides exemptions from sales and use tax, stating in part:

The following sales and uses are exempt from the taxes imposed by this chapter:

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- (2) sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of [certain construction materials and sales of property connected with electrical generation and transmission projects.]

For sales tax, Utah Code Ann. § 59-12-102(106) defines state as follows: “‘State’ means the state of Utah, its departments, and agencies.”

iii. Corporate Franchise and Income Taxes

Taxes relating to corporations are imposed under Utah Code, Title 59, Chapter 7, titled “Corporate Franchise and Income Taxes.”

Utah Code Ann. § 59-7-101(10) defines corporation as follows:

"Corporation" includes:

- (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code; and
- (b) other organizations that are taxed as corporations for federal income tax purposes under the Internal Revenue Code.

Utah Code Ann. § 59-7-104 imposes tax as follows:

- (1) Each domestic and foreign corporation, except those exempted under Section 59-7-102, shall pay an annual tax to the state based on its Utah taxable income for the taxable year for the privilege of exercising its corporate franchise or for the privilege of doing business in the state.
- (2) The tax shall be 5% of a corporation's Utah taxable income.
- (3) The minimum tax a corporation shall pay under this chapter is \$100.

Utah Code Ann. § 59-7-102(1) exempts from tax the following:

- (1) Except as provided in this section, the following are exempt from a tax under this chapter:
 - (a) an organization exempt under Section 501, Internal Revenue Code;
 - (b) an organization exempt under Section 528, Internal Revenue Code;
 - (c) an insurance company that is otherwise taxed on the insurance company's premiums under Chapter 9, Taxation of Admitted Insurers;
 - (d) a building authority as defined in Section 17A-3-902;
 - (e) a farmers' cooperative; or
 - (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an ownership interest in:
 - (i) a project, as defined in Section 11-13-103; or
 - (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

Utah Code Ann. § 59-7-802(1) imposes a tax on unrelated business income, as follows:

An organization which is exempt from taxation as provided in Subsection 59-7-102(1) or Section 59-10-126 shall be subject to the tax imposed by this part on its Utah unrelated business income.

Utah Code Ann. § 59-10-126 of the Individual Income Tax Act states:

- (1) A business entity that is taxable as a corporation for federal income tax purposes:
 - (a) may not be subject to the tax imposed by this chapter; and
 - (b) is subject to Chapter 7, Corporate Franchise and Income Taxes.

- (2) A business entity that is exempt from federal income taxation is exempt from the tax imposed by this chapter.
- (3) Notwithstanding Subsection (2), if a business entity that is exempt from federal income taxation has income that is subject to federal income taxation, that income is subject to taxation under Chapter 7, Corporate Franchise and Income Taxes.

C. Utah Administrative Code

Utah Admin. Code R865-19S-54 (“Rule 54”), titled “Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104,” states:

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

D. Federal Law

I.R.C. § 115 is titled “Income of States, Municipalities, Etc.” and is located under a Part III, titled “Items Specifically Excluded from Gross Income.” I.R.C. § 115 states:

Gross income does not include -

- (1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia; or
- (2) income accruing to the government of any possession of the United States, or any political subdivision thereof.

I.R.C. § 7701(a)(3) defines corporation, as follows:

The term “corporation” includes associations, joint-stock companies, and insurance companies.

Treas. Reg. § 301.7701-1(a) states:

Organizations for federal tax purposes—

- (1) In general. The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.
- (2) Certain joint undertakings give rise to entities for federal tax purposes. A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not create a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

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II. Analysis

Before beginning our analysis, we note that definitions and provisions under the different tax types and corresponding statutes are not always uniform. In particular, the property tax and sales tax statutes each have their own, separate definitions of political subdivision. Therefore, we will address the applicable statutes separately, determining how they may affect your organization.

A. For Property Tax Purposes, ORGANIZATION is Not a Tax-Exempt Political Subdivision under the Utah Constitution or § 59-2-1101(1)(b).

Generally, the counties, local government entities, and school districts are authorized to impose property tax. However, the Utah Constitution provides an exemption: “property owned by the state [or] by a political subdivision of the State” is exempt. Utah Constitution, Article XIII, Section 3. Furthermore, § 59-2-1101(1)(b) provides a “government exemption” that relates to § 59-2-1101(3)(a)-(c). Under § 59-2-1101(3)(b), “property of: (i) the state” is exempt. Under § 59-2-1101(3)(c), certain “property of: (i) counties; (ii) cities; (iii) towns; (iv) local districts; (v) special service districts; and (vi) all other political subdivisions of the state” is exempt.

Therefore, to be exempt from property tax, the entity must be “the state” or a “political subdivision of the State.” Although, “political subdivision” is not explicitly defined by statute or the constitution, the uses of the words, as discussed above, do provide guidance. Based on § 59-2-1101(3)(c), examples of political subdivisions include counties, cities, towns, local districts, special service districts, and similar entities. Each of the political subdivisions listed is a *subdivision* of the State. Likewise, an “other political subdivision of the state” under § 59-2-1101(3)(c)(vi) would still need to be a subdivision of this State.

In this case, ORGANIZATION is clearly not the State of Utah. Neither is it a subdivision or a part of the State. Rather, Utah is one of many member states of the ORGANIZATION. Therefore, ORGANIZATION is not exempt from property tax under Utah law as a political subdivision.

B. For Sales Tax Purposes, ORGANIZATION is Not a Tax-Exempt State Entity Under § 59-12-104(2).

For sales tax and other taxes besides property tax, the Utah Constitution provides no limitation on the Legislature’s ability to tax. Utah Constitution, Article XIII, Section 4. Section 59-12-103(1) imposes sales tax and § 59-12-104 provides exemptions. One of these exemptions is for certain “sales to the state, its institutions, and its political subdivisions.” § 59-12-104(2). For this exemption, “‘State’ means the state of Utah, its departments, and agencies.” § 59-12-102(106). Rule 54B. further provides: “Sales to the following state . . . agencies, institutions, and instrumentalities are exempt: . . . 2. state institutions and departments, 3. counties, 4. municipalities, 5. school districts, public schools, 6. special taxing districts . . .” We conclude that an exempt state entity would be of the same nature as those listed in Rule 54B.

Neither “institution” nor “instrumentality” is defined in statute, particularly with respect to being part of the state. Although we are unable to find specific case law defining either term within the context of state taxation, the Utah Supreme Court has found that “the [Central Utah Counseling Center] was not an office or instrumentality of the State. It was a properly formed interlocal agency; the State played no part in its creation.” *Davis v. Cent. Utah Counseling Ctr.*, 2006 UT 52; 147 P.3d 390 (Utah 2006). On the other hand, the Court held that “[the city court] is for civil cases the instrumentality of the state, an agency set up to execute sovereign functions of the state.” *Rich v. Industrial Commission et al.*, 80 Utah 511; 15 P.2d 641 (Utah 1932). Looking to federal case law, we find the United States Supreme Court has found that “[Production Credit Associations] are instrumentalities of the United States because the statute which charters them says so.” *Arkansas v. Farm Credit Services of Central Arkansas et al.*, 520 U.S. 821 (1997).

We take from this case law that an instrumentality or, by association, an institution of the state must be created, first, by the state and second, for the purpose of carrying out the sovereign functions of the state.

Finally, we note that you stated in your letter, “the ORGANIZATION is not a Utah agency.” You represent that nonetheless the ORGANIZATION “has tried to approximate Utah’s policies with respect to salaries, travel, and other human resources issues,” and that its staff also “participates in INSURANCE PROGRAM and in its disability insurance program.” These actions are insufficient to establish ORGANIZATION as an institution or instrumentality of the State.

For sales tax, as with property tax, ORGANIZATION is not the State or a political subdivision. Because ORGANIZATION is not a part, branch, or other smaller division of the state, ORGANIZATION cannot be a department or agency of the State. Furthermore, ORGANIZATION is not an institution or instrumentality of the State; there is nothing in statute or rule designating the ORGANIZATION as such, nor is there anything in your representations to lead us to such a conclusion. Therefore, ORGANIZATION is not exempt from sales tax under § 59-12-104(2) as a political subdivision of the State

Our conclusions here are consistent with our previous ruling, PLR 06-019 (copy attached). In that ruling, the Commission found that a private organization governed by an Executive Committee comprised of state legislatures and legislative staffs was not a tax-exempt entity for sales tax. In that ruling, the Commission stated:

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

Similarly, ORGANIZATION cannot qualify under § 59-12-104(2) because it does not appear to be a government instrumentality or institution of the state, and it is not specifically exempted from taxation by Utah law.

C. For Corporate Taxes Imposed Under Title 59, Chapter 7, ORGANIZATION is Currently Not Subject to Tax for Reasons Unrelated to Whether ORGANIZATION is a Tax-Exempt Political Subdivision.

Unlike the statutes for sales and property taxes, no specific exemption exists for a political subdivision for corporate taxes.¹ See § 59-7-102. Utah Code Title 59, Chapter 7 imposes a franchise or income tax on C corporations; a tax on certain S corporation income (excluding specific exemptions); and a tax on unrelated business income.² You have represented that ORGANIZATION is not a corporation. A corporation is defined to include “entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue Code.” See Utah Code Ann. § 59-7-101(10). Even though an organization is not incorporated, it may still qualify as an “association” treated as a corporation under Internal Revenue Code (I.R.C.) § 7701(a)(3). Thus, an unincorporated entity could still qualify as a C corporation under federal and state income tax law if it is recognized as “an entity separate from its owners” or if it is a “joint venture or other contractual arrangement.” See Treas. Reg. § 301.7701-1(a). You have represented that the IRS has recognized your organization as exempt under I.R.C. § 115. That fact indicates that ORGANIZATION is being treated as a separate entity for federal tax purposes. Accordingly, it appears that ORGANIZATION may be an “association” that would be treated as a corporation for purposes of state income tax law. Finally, although your income is exempt under I.R.C. § 115, you are not an entity that is exempt under I.R.C. § 501 or § 528. Thus, you do not qualify for the specific Utah statutory exemption for such organizations in Utah Code Ann. § 59-7-102(1).

Notwithstanding the fact that you are not exempt from Utah corporate income tax, you will have no Utah corporate income or franchise tax on your earnings. This is because Utah income, for corporate income and franchise tax purposes, is based on federal taxable income with various adjustments. Because your income is exempt under I.R.C. § 115, you will have no federal taxable income on which Utah taxable income can be computed. Although you will not be subject to tax on your income per se, you will be subject to the \$100 minimum tax required by Utah Code Ann. § 59-7-104(3) if it is ultimately determined that you are an association taxable as a corporation.

For unrelated business income, we rely on the facts you have provided and conclude that ORGANIZATION is currently not subject to this tax. Section 59-7-802 imposes Utah unrelated business income tax on “[a]n organization which is exempt from taxation as provided in Subsection 59-7-102(1) or Section 59-10-126 . . .”³ Based on your representations, ORGANIZATION is currently not one of the exempt entities listed in § 59-7-102(1).⁴ However, it is less clear whether ORGANIZATION is an exempt entity under § 59-10-126. Section 59-10-126(2) states: “A business entity that is exempt from federal income taxation is exempt from the

¹ The Commission has not analyzed the exemption provided in § 59-7-102(1)(f), which applies to certain public agencies, because this exemption is limited to agencies with interests in electric generation and transportation facilities (see § 11-13-103(11)), which does not apply to ORGANIZATION.

² Corporate taxes are also imposed on homeowners’ associations.

³ Section 59-7-801 defines unrelated business income and Utah unrelated business income.

⁴ However, this conclusion would change if ORGANIZATION becomes “an organization exemption under Section 501, Internal Revenue Code.” See § 59-7-102(1)(a).

tax imposed by this chapter.” You have provided that ORGANIZATION is a tax-exempt government entity for federal taxes, which suggests that § 59-10-126 might apply. However, you have also provided that the operations of ORGANIZATION do not include any business interests and that ORGANIZATION’s funding only comes from dues. Based on these facts, we find that ORGANIZATION is currently not a “business entity” for purposes of § 59-10-126(2). Therefore, ORGANIZATION is not an entity listed in either § 59-7-102(1) or § 59-10-126 and is not subject to Utah unrelated business income tax.

Based on your representations, ORGANIZATION is not currently subject to any of the taxes imposed in Title 59, Chapter 7, other than the \$100 minimum tax. We note that the nontaxability of ORGANIZATION is based on reasons other than whether ORGANIZATION is a tax-exempt political subdivision, department, agency, institution, or instrumentality of the State of Utah.

D. The Utah Taxes Imposed Under Other Chapters of Title 59 Are Not Addressed in this Letter.

Although you requested a ruling on ORGANIZATION’s status as a tax-exempt political subdivision with respect to sales tax, income tax, and any other taxes, the Commission will not analyze the other chapters of Title 59 for this letter. We find that the analyses under the other chapters would result in the same legal conclusion that ORGANIZATION is not a tax-exempt political subdivision, department, agency, institution, or instrumentality of the State of Utah for Utah tax purposes.

E. The Conclusions of the YEAR Letter Do Not Apply Under the Current Utah Law.

The conclusions of the YEAR letter do not apply for the five reasons discussed below. First, the YEAR letter does not analyze the meaning of “political institution or subdivision.” As discussed above, ORGANIZATION is not a political institution or subdivision when ORGANIZATION is not a branch or subdivision of the state and is instead an organization of which the State is only one member.

Second, the conclusion of the YEAR letter is unsupported by facts. The letter states only the following:

[ORGANIZATION is a] political institution or subdivision of the State of Utah, *the property of which belongs to the State of Utah* and other states which are members of the council, [and ORGANIZATION] is exempt from sales and other taxes under Utah law.
(Emphasis added.)

There are no facts in the letter showing that the property actually belongs to the State of Utah. Additionally, the following quote from the letter suggests that the property is not owned by the State:

The difficulty in granting exemption from sales tax arises out of the fact that purchases are made directly by the Council rather than through the State Purchasing Agent and Department of Finance.

Because there are no facts showing that the property belongs to the State, the conclusion that the property is exempt because it belongs to the State is unsupported.

Third, the 1975 letter provides another, unsupported conclusion. The letter states:

Since all of the property being purchased with state general funds belongs to the State of Utah and, upon dissolution of the ORGANIZATION, *will revert to the State of Utah* and be sold either as surplus property or consumed by other divisions of the State of Utah, it is exempt from sales tax pursuant to [Utah Constitution, Article XIII, Section 2 (1975) and Utah Code Ann. § 56-15-6 (1975)].

(Emphasis added.)

We think that it is questionable that the property of ORGANIZATION would revert to the State of Utah upon dissolution of the ORGANIZATION.

Fourth, the Utah Constitution has changed since the YEAR letter was written. Under a previous version of the Utah Constitution, ATTORNEY interpreted the Utah Constitution as treating property of the State as exempt from all Utah taxes. Subsequently, the Utah Constitution was revised to exempt certain entities from property taxes only.

Fifth and finally, the Commission adopted Rule 54 after the YEAR letter was issued. This rule further clarified what entities are exempted from Utah sales tax, and for reasons stated previously, we do not consider ORGANIZATION to be similar to those entities.

For the above reasons, this Commission cannot accept the conclusions of the YEAR letter under current Utah law. *However, because of the YEAR letter, the Commission will require of ORGANIZATION prospective compliance only, effective as of the date of this ruling.*

F. The IRS Determination Does Not Make ORGANIZATION a Tax-Exempt Political Subdivision for Utah Taxes.

In PLR 06-019, the private organization was related to multiple state governments, and the IRS “determined that [the organization] qualifie[d] as a Section 170(c) organization.” In that ruling, the Commission explained:

Under [the IRS] ruling, the IRS allows income tax deductions for donations made to [the organization]; 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.

Similarly, the IRS determination that ORGANIZATION is a governmental entity under I.R.C. § 115 does not create a sales tax exemption for the State and “cannot establish [ORGANIZATION as] a political subdivision of the state.”

III. Conclusion

The Commission finds that ORGANIZATION is not a tax-exempt political subdivision, department, agency, institution, or instrumentality of the State of Utah for Utah tax purposes. ***Furthermore, the Commission finds that prospective compliance is appropriate and that ORGANIZATION may no longer rely on the YEAR letter as of the date of this ruling.*** 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
09-011

enc.