

**FINAL PRIVATE LETTER RULING**

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**REQUEST LETTER**

10-003

March 24, 2010

Marc B. Johnson  
Tax Commissioner  
Utah State Tax Commission  
210 North 1950 West  
Salt Lake City UT 84116

Dear Commissioner,

I am writing to request clarification (private letter ruling) from the Utah State Tax Commission regarding the treatment of entities exempt under section 501(c)(2) of the federal tax code. The ORGANIZATION CITY is a private, nonprofit, charitable 501(c)(3) organization that has been continuously serving PEOPLE since DATE. Today the ORGANIZATION is Utah's oldest, largest, and most comprehensive provider of shelter, transitional housing, supportive services, and education for PEOPLE who have experienced family violence.

With the assistance of our attorney we have provided: (I) background regarding this request, (II) a summary of the Internal Revenue Code Section 501(c)(2), (III) a summary of the Utah Tax Code and Administrative Rules related to charitable organizations, (IV) rationale for our request for recognition by the Utah State Tax Commission of a 501(c)(2) entity as a charitable organization.

**I. Background**

NONPROFIT CORPORATION of CITY (ORGANIZATION) is a Utah nonprofit corporation whose mission is to eliminate racism, empower women, and promote peace, justice, freedom and dignity for all. The ORGANIZATION is constructing two new buildings that will contain shelter and transitional housing for NAME who have experienced family violence (the "Building").

Owning real property contains potential risks, such as litigation from an accident that occurs on the property. In order to protect the ORGANIZATION'S other programs from the risks inherent in owning real property, the ORGANIZATION formed a separate nonprofit corporation to hold title to the Building. Holding ownership of real property in a separate single-purpose entity is prudent practice, and often is a requirement of certain financing.

The ORGANIZATION formed ORGANIZATION Building Hope COMPANY a Utah nonprofit corporation. COMPANY is a membership nonprofit corporation whose sole member is the ORGANIZATION. The ORGANIZATION, as the sole member of COMPANY, elects the board of directors of COMPANY. The board of directors of COMPANY is the board of directors of the

ORGANIZATION. The Chief Executive Officer of the NONPROFIT CORPORATION also serves as the Chief Executive Officer of COMPANY. Therefore, although COMPANY is a separate entity, it is controlled by the ORGANIZATION and was formed by the ORGANIZATION to hold real property for the benefit of the ORGANIZATION.

The ORGANIZATION is in the process of obtaining federal tax exempt status for COMPANY. However, although COMPANY may be exempt from federal income taxes, this does not necessarily mean that COMPANY will be exempt from Utah property and sales taxes. Because of this distinction, the ORGANIZATION is requesting guidance from the Utah State Tax Commission.

## **II. Section 501(c)(2) Organizations**

The Internal Revenue Code provides tax exemptions for several types of charitable organizations, although the most well-known type is the exemption granted under Section 501(c)(3). There are, however, other charitable organizations that may not be exempt under Section 501(c)(3), but which have a charitable purpose. For example, a civic league promoting social welfare is a charitable organization under Section 501(c)(4).

Another exemption under the Internal Revenue Code is under Section 501(c)(2): “Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from this section [501(c)].” Therefore, an entity that is exempt under Section 501(c)(2) which is holding property for the benefit of an entity that is exempt under Section 501(c)(3) is furthering the charitable purpose of its parent organization.

As previously mentioned, it is prudent practice for nonprofit corporations to protect their core programs from potential litigation that arises from owning real property. Therefore, a nonprofit corporation should consider not holding title to real property in its own name. Section 501(c)(2) expressly contemplates that a nonprofit 501(c)(3) corporation may choose to form a separate entity to hold real property on its behalf. Because the title-holding entity is clearly acting for the benefit of another charitable organization, the title-holding entity also receives tax exempt status.

## **III. Utah Code and Administrative Rules**

Under Section 59-2-1101(3)(d) of the Utah Code, “property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes” is exempt from property taxation. Similarly, under Section 59-12-104.1(2)(a) of the Utah Code, “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.”

Although the statute only describes the charitable nature of the entity that receives the tax exemption, the Utah Administrative Rules have additional requirements. Under R865-19A-43, “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.” Similarly, the Application for Property Tax Exemption requires a copy of the 501(c)(3) certification issued by the IRS.

Because the Utah Administrative Rules require that an entity be exempt under Section 501(c)(3) of the Internal revenue Code, this limits the ability of a nonprofit corporation to structure its Subordinate organizations. If nonprofit corporations form separate title-holding companies, the separate title-holding companies will not be eligible for the property or sales tax exemption even if they are exempt under Section 501(c)(2). Although entities exempt under Section 501(c)(2) would appear to satisfy the Utah Code, such entities do not satisfy the Administrative Rules.

#### **IV. Request for Recognition of 501(c)(2) Entities as Charitable Organizations**

The Internal Revenue Code specifically provides for an exemption for corporations that are formed to hold real property for the benefit of another charitable organization. Although it may be possible for the title-holding corporation to obtain a separate 501(c)(3) status, this is not what the Internal Revenue Code intended. Organizations whose only activity is holding real property should receive an exemption under Section 501(c)(2), because Section 501(c)(3) is intended for organizations that are more active in their operations.

The ORGANIZATION is requesting that the Utah State Tax Commission recognize organizations that are exempt from taxation under Section 501(c)(2), which hold title to real property for the benefit of a Section 501(c)(3) entity, as charitable organizations that may obtain the state property and sales tax exemption. Organizations that are exempt under Section 501(c)(2) that are organized for the benefit of a Section 501(c)(3) have demonstrated that they are exclusively operating for a charitable purpose because their purpose is furthering the mission of the parent organization.

As described above, the ORGANIZATION has formed COMPANY, a nonprofit corporation which the ORGANIZATION is the sole member of. COMPANY’S only activities are to hold real property for the benefit of the ORGANIZATION. Any excess funds COMPANY receives in its operations of the real property will be given to the NONPROFIT CORPORATION. COMPANY clearly is operating for the same charitable purpose as the ORGANIZATION. It would be appropriate for COMPANY to obtain a tax exemption under Section 501(c)(2).

Because nonprofit corporations often need to form separate entities to hold title to real property, those separate entities functionally are an arm of the main nonprofit corporation. Additionally, the application process for an entity obtaining an exemption under Section 501(c)(2) is much quicker, because the Internal Revenue Service recognizes that the entity is charitable because its activities benefit another charitable organization. There is no private benefit, and if the entity were to dissolve, all of its assets would be distributed to the parent corporation which itself is a charitable corporation.

It is true that requiring entities to provide proof that they are exempt under Section 501(c)(3) is a simple short-hand way of determining whether an entity is charitable and therefore eligible to receive an exemption from state property and sales tax. However, entities exempt under Section

501(c)(2), formed for the benefit of a Section 501(c)(3) entity, have similarly proven their charitable nature.

Thank you for your thoughtful consideration of this request. We would be happy to provide any additional information that you might need regarding this matter. Please contact NAME at PHONE or EMAIL, or me at PHONE or EMAIL with any questions.

Sincerely,

NAME  
TITLE

cc: TITLE, NAME

## RESPONSE LETTER

September 8, 2010

NAME  
ORGANIZATION  
ADDRESS  
CITY, STATE ZIP

Sent via e-mail

**Original to follow in U.S. Mail**

RE: Private Letter Ruling Request–Sales and Property Tax Exemption Treatment for an I.R.C. § 501(c)(2) Organization

Dear NAME:

You have requested the Commission to recognize 501(c)(2) organizations as charitable organizations for purposes of the state property and sales tax exemptions found in Utah Code §§ 59-2-1101(3)(d) and 59-12-104.1(2)(a), respectively.

You explained that your organization, NONPROFIT CORPORATION of CITY is a 501(c)(3) organization that provides shelter, transitional housing, support services and education for PEOPLE who have experienced family violence. To further these charitable purposes, the NONPROFIT CORPORATION is constructing two new buildings (the “Buildings”) for shelter and transitional housing for PEOPLE. NONPROFIT CORPORATION does not want to own the Buildings directly because it does not want the potential risks of ownership, such as litigation from accidents occurring on the property. Therefore, the NONPROFIT CORPORATION formed Building Hope COMPANY to hold title to the Buildings. COMPANY is a Utah membership nonprofit corporation with NONPROFIT CORPORATION being COMPANY sole member. COMPANY is in the process of obtaining I.R.C. § 501(c)(2) status.

You have argued that a 501(c)(2) organization is “a nonprofit entity” and its property “is used exclusively for religious, charitable, or educational purposes” for purposes of Utah Code § 59-2-1101(3)(d) for property tax. Likewise, you have argued that a 501(c)(2) organization is “a religious or charitable institution or organization” for purposes of Utah Code § 59-12-104.1(2)(a) for sales tax. You recognized that Utah Admin. Code R865-19A-43 defines a religious or charitable institution or organization as a 501(c)(3) organization for sales tax purposes. Additionally, you noted that the “Application for Property Tax Exemption” requires a copy of the 501(c)(3) certification for property tax purposes. However, you contend that these Commission rules and instructions have added additional requirements that are not present in the Utah Code. You assert that 501(c)(2) organizations meet the requirements of the Utah Code even if they do not meet the Commission’s rules and instructions. You mentioned that a title-holding

corporation such as COMPANY might be able to obtain the 501(c)(3) status, but obtaining such status would take much longer than acquiring the 501(c)(2) status.

## I. Applicable Law

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### **A. Utah Property Tax**

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

(1) The following are exempt from property tax:

.....

(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes . . .

Property tax is imposed under Utah Code, Title 59, Chapter 2. Utah Code Ann. § 59-2-1101(3)-(3)(d) provides an exemption consistent with the Utah Constitution, stating:

The following property is exempt from taxation:

.....

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes.

Utah Code Ann. § 59-2-1101(1)(a) defines an “exclusive use exemption” as follows:

“exclusive use exemption” means a property tax exemption under Subsection (3) (d), for property owned by a nonprofit entity that is used exclusively for religious, charitable, or educational purposes.

Utah Code Ann. § 59-2-1102 generally requires a nonprofit entity to file an application to qualify for the property tax exemption, stating in part:

(3) (a) Except as provided in Subsection (8) and subject to Subsection (9), a reduction may not be made under this part in the value of property and an exemption may not be granted under this part unless the party affected or the party's agent:

- (i) makes and files with the county board of equalization a written application for the reduction or exemption, verified by signed statement; and
- (ii) appears before the county board of equalization and shows facts upon which it is claimed the reduction should be made, or exemption granted.

.....

(9) (a) Except as provided in Subsections (3)(b) and (9)(b), for property described in Subsection 59-2-1101(3)(d) or (e), a county board of equalization shall, consistent with Subsection (10), require an owner of

that property to file an application in accordance with this section in order to claim an exemption for that property.

- (10) (a) For purposes of this Subsection (10), "exclusive use exemption" is as defined in Section 59-2-1101.

.....

Utah Code Ann. § 59-2-1211(1) instructs the Commission to provide suitable forms and instructions, stating:

The commission shall prescribe and make available suitable forms and instructions for:

- (a) claimants; and
- (b) counties.

Under the Utah Tax Commission's "Property Tax Exemptions Standards of Practice," Standard 2.15.4 instructs county boards of equalization to request a nonprofit entity's IRS 501(c)(3) not-for-profit authorization when the county boards receive a nonprofit entity's written application for exemption.<sup>1</sup> Likewise, the Utah Tax Commission's Form PT-020, titled "Application for Property Tax Exemption," instructs a nonprofit entity applicant to attach a "copy of the 501(c)(3) certification issued by the IRS."<sup>2</sup>

## **B. Utah Sales and Use Tax**

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 additional, procedural requirements to facilitate the administration of the exemption.

Utah Code Ann. § 59-12-118 grants the Commission authority to make rules, stating in part:

Except as provided in Section 59-12-209, the commission shall have exclusive authority to administer, operate, and enforce the provisions of this chapter including:

.....

- (5) prescribing forms and rules to conform with this chapter for the making of returns and for the ascertainment, assessment, and collection of the taxes imposed under this chapter.

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<sup>1</sup> Standard 2.15.4 is available at <http://propertytax.utah.gov/standards/standard02.pdf>.

<sup>2</sup> Form PT-020 is available at <http://propertytax.utah.gov/forms/pt-020.pdf>.

Utah Admin. Code R865-19S-43 (“Rule 43”) clarifies what is a religious or charitable institution, stating in part:

- 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.
- ....
- 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) requires applicants for the sales tax exemption to 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 . . .

....

### **C. Internal Revenue Code**

I.R.C. § 501(c)(2) organizations are:

Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section [I.R.C. § 501]. . . .

I.R.C. § 501(a) provides the organizations that are exempt under § 501, stating:

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

I.R.C. § 501(c) includes a variety of organizations in its subsections (1)-(28). Additionally, I.R.C. § 501(d) includes certain religious and apostolic organizations. Furthermore, I.R.C. § 401(a) includes certain trusts forming part of qualified pension or profit-sharing plans.



I.R.C. § 501(c)(3) organizations are:

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:

- (A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local NONPROFIT CORPORATIONS 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.

## II. Analysis

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### **A. To Qualify for the Property Tax Exemption, Your 501(c)(2) Organization Must Show that It Owns the Buildings and Uses Them Exclusively for Religious, Charitable, or Educational Purposes and Must Bring Its Claim First to the County Board of Equalization.**

The Utah Constitution, Article XIII, Section 3 and Utah Code § 59-2-1101(3)-(3)(d) provide a property tax exemption for “property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes.” Utah Code § 59-2-1102 requires entities seeking the property tax exemption to file applications with the county boards of equalization. Utah Code § 59-2-1211(1) requires the Tax Commission to provide suitable forms and instructions for the counties and claimants to use. Accordingly, the Tax Commission provided Form TC-020 and Standard 2.15.4, which instruct applicants to provide a copy of their 501(c)(3) certifications.

The Commission has considered your contention that all 501(c)(2) organizations should qualify for the property tax exemption because the organizations are nonprofit entities and their properties are required to be used exclusively for religious, charitable, or educational purposes when the organization qualifies for its 501(c)(2) status. However, after reviewing I.R.C. § 501(c)

(2), the Commission finds that the federal statute does not require the property to be “used exclusively for religious, charitable, or educational purposes,” as required by the state statute. Although the property of a 501(c)(2) organization may generate funds for an organization exempt under I.R.C. § 501, the generating of funds alone is not a religious, charitable, or educational purpose simply because the funds are turned over to a religious, charitable, or educational entity. Furthermore, the property of a 501(c)(2) organization may benefit entities that are not religious, charitable, or educational; the property may benefit any of the various organizations that are exempt under I.R.C. § 501. Thus, the Commission finds that property owned by a 501(c)(2) organization is not exempt from property tax based on the language of I.R.C. § 501(c)(2) alone. Rather, such property must be considered on an individual basis.

The county boards of equalization decide whether property qualifies for a property tax exemption. Although Standard 2.15.4 instructs the county boards to request a nonprofit entity’s IRS 501(c)(3) not-for-profit authorization, such authorization is not required in all circumstances. Still, an applicant must show that the property is owned by a nonprofit entity and is used exclusively for religious, charitable, or educational purposes. A county board will make its determinations based on the unique facts and circumstances of the individual property being considered. The county board’s decisions may be appealed to the State Tax Commission for further consideration. For this ruling, the Commission has not determined whether or not the Buildings qualify for the property tax exemption because the exemption decision must first be made by the appropriate county board. The Commission does not issue private letter rulings when affected third parties, in this case the counties, are absent and have not had notice and an opportunity to respond to requesting parties’ claims. Furthermore, a private letter ruling is not the appropriate forum to hear arguments from multiple parties. Rather, a party seeking such a determination should either file an appeal from an action taken by a taxing authority or file a petition for a declaratory order.

**B. Under the Circumstances You Have Provided, Your 501(c)(2) Organization Qualifies for the Sales Tax Exemption Found in § 59-12-104(8).<sup>3</sup>**

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 . . .” The Utah Code does not define “religious,” “charitable,” or “religious or charitable institutions.” However, Tax Commission Rule 43 subsection A requires “religious or charitable institutions” to be 501(c)(3) organizations. For this ruling, the Commission finds that COMPANY qualifies for the sales tax exemption in spite of Rule 43 because COMPANY meets the requirements of the statute.

Based on the circumstances, you have shown that COMPANY is a “religious or charitable institution” and COMPANY is conducting its “regular religious or charitable functions” when it owns and manages the Buildings. We note that COMPANY is a not for profit 501(c)(2) organization, wholly owned and controlled by NONPROFIT CORPORATION, a 501(c)(3) organization; NONPROFIT CORPORATION’S charitable purposes include providing shelter and transitional housing for women and children who have experienced family violence; and the Buildings to be owned and managed by COMPANY will be used for NONPROFIT CORPORATION’S shelter and transitional housing and not for any other purpose. COMPANY is a religious and charitable organization based on its ownership by NONPROFIT CORPORATION and its use by NONPROFIT CORPORATION in meeting NONPROFIT CORPORATION’S charitable purposes. COMPANY’S regular charitable function is to provide shelter and transitional housing. It meets its charitable function when it owns and manages the Buildings for this purpose. However, if the Buildings’ uses change to not include regular charitable functions, then the sales tax exemption for COMPANY would cease to apply.

This decision is distinguishable from the Commission’s prior decisions. In Private Letter Ruling (“PLR”) 09-012, a non-501(c)(3) entity requested a sales tax exemption because its activities served the same purpose as two 501(c)(3) entities.<sup>4</sup> In that ruling, the Commission stated:

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<sup>3</sup> Commissioner Marc Johnson disagrees with the interpretation of sales tax exemption, and instead finds that COMPANY does not qualify for the exemption based on both § 59-12-104(8) and Rule 43. Rule 43 A. clarifies that “religious or charitable institutions” should be 501(c)(3) organizations. Commissioner Marc Johnson believes that COMPANY does not qualify for the sales tax exemption because COMPANY is not a 501(c)(3) organization, nor is there any evidence that it is a charitable institution. Rather, COMPANY is a 501(c)(2) organization, which is not a “religious or charitable institution.” I.R.C. § 501(c)(2) contains no language defining such organizations as religious or charitable institutions. Instead, federal statute includes organizations that “hold[] title to property [for] an organization which itself is exempt under this section [I.R.C. § 501].” Additionally, organizations that may receive funds from a 501(c)(2) organization include all entities exempt under I.R.C. § 501, not just those with a religious or charitable purpose. Commissioner Marc Johnson also believes that requiring COMPANY to be either a 501(c)(3) or a subunit of a 501(c)(3) to qualify for the sales tax exemption would be consistent with the Commission’s prior decisions in PLR 09-012 and PLR 08-011. Both of these decisions upheld the requirements of Rule 43, limiting “religious or charitable institutions” to those with the 501(c)(3) designation. Commissioner Marc Johnson is concerned about the possibility that a charitable organization could own a profitable business enterprise, yet still argue that it qualifies for the sales tax exemption. He believes that any subsidiary of a religious or charitable institution must in and of itself be organized specifically to have a charitable or religious purpose. Simply owning assets does not meet those criteria.

<sup>4</sup> PLR 09-012 is available at <http://tax.utah.gov/research/rulings/09-012.pdf>.

[The non-501(c)(3) entity] may not avail itself of the [501(c)(3) entities'] tax-exempt status. You provided that the [501(c)(3) entities] are charitable entities under I.R.C. § 501(c)(3), and accordingly, qualify for the exemption found in § 59-12-104(8) for sales to such entities. You base your position on the fact that [The non-501(c)(3) entity's] construction projects "serve the same purpose" as those of the [501(c)(3) entities]. However, there is no provision in statute or rule allowing a charitable exemption to be granted to an unqualified entity simply because that entity has a purpose similar or identical to the purpose of a qualified entity.

The Commission denied the non-501(c)(3) entity's request for a sales tax exemption because the entity lacked the 501(c)(3) status. However, situation of COMPANY and NONPROFIT CORPORATION differs from that of PLR 09-012 because COMPANY is a nonprofit 501(c)(2) wholly-owned by a 501(c)(3). In PLR 09-012, the 501(c)(3) entities did not own the non-501(c)(3) entity. Likewise, COMPANY is not merely serving the same purpose as the 501(c)(3) entity, unlike the non-501(c)(3) entity in PLR 09-012.

In PLR 08-011, several related 501(c)(4) entities requested a sales tax exemption.<sup>5</sup> They believed they operated under the umbrella of a foundation with a 501(c)(3) status. In that ruling, the Commission found that the 501(c)(4) entities did not qualify on their own because they were not 501(c)(3) organizations, but they might qualify as subunits of the foundation if the foundation's 501(c)(3) determination letter and IRS group exemption letter specifically named the 501(c)(4) entities as subunits of the foundation. The entities were required to meet the other requirements of Form TC-160, also. Still, the situation of COMPANY differs from that of PLR 08-011. The main difference again involves ownership and control. In PLR 08-011, the 501(c)(3) foundation did not own or control the 501(c)(4) entities, which is unlike NONPROFIT CORPORATION'S ownership and control of COMPANY. Furthermore, 501(c)(4) organizations are defined in a way that suggests they should not be treated as charitable organizations: 501(c)(4) organizations may use their net earnings for recreational purposes; thus, they are clearly not limited to acting for charitable purposes only.

### III. Conclusion

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The Commission finds that your 501(c)(2) organization may qualify for the property tax exemption if the unique facts and circumstances justify the exemption and you first bring your claim to the county board of equalization.

For the sales tax exemption, the Commission finds that your 501(c)(2) organization qualifies for the exemption found in § 59-12-104(8) based on the unique facts and circumstances presented for this ruling. Rule 43 is unduly restrictive in this case. Thus, COMPANY qualifies for the sales tax exemption so long as it is a 501(c)(2) organization wholly-owned by NONPROFIT CORPORATION and it owns and manages the Buildings for the purpose of shelter and transitional housing and not for any noncharitable purpose. If these facts change, then COMPANY may no longer qualify for the sales tax exemption.<sup>6</sup>

<sup>5</sup> PLR 08-011 is available at <http://tax.utah.gov/research/rulings/08-011.pdf>.

<sup>6</sup> Commissioner Marc Johnson disagrees with this conclusion, as explained in the prior endnote. He does not believe Rule 43 is unduly restrictive, and he would uphold the rule in 43 in this situation just as the Commission upheld it

This ruling is based on current law and could be changed by subsequent legislative action or judicial interpretation. Also, 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, you have additional facts that may be relevant, or you have any other questions, you are welcome to contact the Commission.

For the Commission,

NAME  
TITLE

MJC/aln

10-003

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previously in PLR 09-012 and PLR 08-011.