

SUMMARY

Taxpayer is a 501(c)(3) organization operating an aquarium. The organization endeavors to determine whether its admission charges will be exempt from tax. The statutes and rules both provide that admissions charges imposed by section 501(c)(3), I.R.C., sponsoring organizations are exempt from sales tax. The rule standardizes the criteria for determining sponsorship. The information contained in the request, indicates that the organization meets all of the sponsorship criteria. The organization is the operator of the aquarium. The organization is responsible for the safety and success of the aquarium. The terms of the lease agreement require the organization to maintain various types of insurance coverage, including general public liability insurance. Finally, the organization is entitled to the gross proceeds of the aquarium and the net proceeds after payment of costs, and bears the responsibility for payment of costs and suffering any loss if costs exceed the proceeds. Therefore, the charges for admissions to the aquarium are exempt.

Nov 20, 1998

Re: Technical Assistance Advisement 98A-085

Sales and Use Tax - Admissions to Aquarium Operated by
Exempt Organization

Section: 212.04, F.S. Rule: 12A-1.005, F.A.C.

Petitioner: XXX (herein "Foundation")

FEI:

Dear :

This letter is a response to your petition dated May 15, 1998, for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced party and matter. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite

criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

FACTS

From your request:

The [Foundation] was incorporated on January 14, 1992, and has received a determination letter from the Internal Revenue Service that it is described in Section 501(c)(3) of the Internal Revenue Code of 1986 [determination letter provided]. The records of the Department of Revenue should reflect that the Department has issued the [Foundation] a Consumer Certificate of Exemption.

The [Foundation] has leased space from [landlord], in order to operate an aquarium dedicated to the research and preservation of waterways and marine life in [Florida city] and surrounding areas. The pertinent lease is attached hereto as Exhibit 2. The aquarium consists of a series of exhibits, including water drawn from local sources being subjected to various methods of purification, as well as tanks containing local sea life, such as fish, crab, etc. The aquarium also contains hands-on exhibits, labs, and classrooms. The sole purpose of the [Foundation] is to educate the public and generate interest in protecting the environment.

The [Foundation] anticipates that the operating costs of the aquarium will be funded from admissions charged to enter the aquarium and contributions from the general public. However, the [Foundation] will make tickets available at reduced cost or for free to local elementary, middle, and high schools students, and to individuals who cannot afford to pay. The [Foundation] has made it clear that no one will be refused admission to the aquarium based upon an inability to pay the admissions charge.

REQUESTED ADVISEMENT

You endeavor to determine whether charges by Foundation for admissions to the aquarium are exempt.

Discussion, Analysis, and Conclusion of Law

Section 212.04(2)(a)2.a., Florida Statutes, provides:

No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations. To receive this exemption, the sponsoring organization must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954, as amended.

Rule 12A-1.005(3), Florida Administrative Code, implements the above law, and provides in pertinent part:

(g) Dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations or community or recreational facilities are exempt. To receive this exemption, the organization making any such charges must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

(h) For the purposes of this rule, sponsorship of an event or program is determined by using the following criteria:

1. Active participation by the entity in the planning and conduct of the event or program;
2. Assumption by it of responsibility for the safety and success of the event or program, such that it will be subject to a suit for damages for alleged negligence in its conduct;
3. Entitlement by it to the gross proceeds from the event or program and to the net proceeds after payment of its costs; and
4. Responsibility by it for payment of costs of the event

or program and for bearing any net loss if the costs exceed gross proceeds.

The statutes and rules both provide that admissions charges imposed by section 501(c)(3), I.R.C., sponsoring organizations are exempt from sales tax. The rule standardizes the criteria for determining sponsorship. The information contained in the request, as well as the supporting documentation provided with the request, indicates that the Foundation meets all of the sponsorship criteria. The Foundation is the operator of the aquarium. The Foundation is responsible for the safety and success of the aquarium. The terms of the lease agreement require the Foundation to maintain various types of insurance coverage, including general public liability insurance. Finally, the Foundation is entitled to the gross proceeds of the aquarium and the net proceeds after payment of costs, and bears the responsibility for payment of costs and suffering any loss if costs exceed the proceeds. Therefore, the charges for admissions to the aquarium are exempt.

This response constitutes a Technical Assistance Advisement under Section 213.22, F.S., which is binding on the department only under the facts and circumstances described in the request for this advice, as specified in Section 213.22, F.S. Our response is predicated upon those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment from that which is expressed in this response.

You are further advised that this response and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of Section 213.22, F.S. Your name, address, and any other details that might lead to identification of the taxpayer must be deleted by the Department before disclosure. In an effort to protect the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

Sara D. Faulkenberry

Tax Law Specialist

Technical Assistance and Dispute Resolution

850/414-9838

faulkens@dor.state.fl.us

Control #34629