

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 01-05**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to [AN ATHLETIC] tournament to be hosted by 501(c)(6) organization at a Tennessee location.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

Ruling Request Dated September 27, 2000

[THE TAXPAYER] will serve as the host organization for the [ATHLETIC EVENT] in [CITY], Tennessee. The taxpayer is a not-for-profit organization and holds a determination of exemption from the Internal Revenue Service, under 26 U.S.C. Sec. 501(c)(6). The [GROUP] is an organization¹ of [NUMBER] [INSTITUTIONS] located throughout the [GEOGRAPHICAL AREA] that, in athletic competition, compete at the [LEVEL] in the [ASSOCIATION].

According to the ruling request, the taxpayer bears the financial risk of the event, including the guarantee of the sale of the tickets and the revenue generated from those sales.² The taxpayer is also responsible for the cost of providing food and hospitality to the media, VIPs, and officials attending the event in an official capacity as guests of the [GROUP].

The taxpayer is responsible for providing all game and convention facilities including the cost of operations, staffing, maintenance, and other costs associated with the use of the facilities over the five days of the event. The taxpayer is required to provide liability insurance coverage for the event. The taxpayer is required to provide parking and transportation services for media, VIPs, officials, and participating teams attending the event in an official capacity.

The [COUNCIL], a division of the taxpayer, will primarily carry out the above responsibilities.

Additional Facts Presented November 16, 2000

The participants in the [ATHLETIC EVENT] will be [TEAMS] representing the [#] members of the [GROUP], except for any member that is on probation that would exclude its team from postseason competition. None of the members of the [GROUP] presently on probation. The taxpayer cannot exclude the team of a member of the [GROUP] from the [ATHLETIC EVENT], nor may the taxpayer cause the inclusion of a team from an institution that is not a [GROUP] member or a team from a [GROUP] member on probation.

The pairings for the [ATHLETIC EVENT] are automatically set based on the regular-season records of the teams. The pairings use a standard bracket normally used in [ATHLETIC EVENTS] involving [#] competitors. The use of this

¹ The contract (described more fully hereinafter) states that the [GROUP] is a "voluntary organization."

² The financial provisions of hosting the [ATHLETIC EVENT] are more fully described in the description of the contract.

system of pairings is determined by the [GROUP], and the taxpayer has no control over the pairings.

The [GROUP] holds contracts with television networks for televising the event, and all monies payable by the networks under these contracts are paid to the [GROUP]. The starting times for the games are set by the [GROUP], in consultation with the televising network(s). The game officials are procured, assigned, paid, and supervised by the [GROUP].

Representatives of the [GROUP] handle matters involving the conduct of the event. Committees consisting of representatives of the [GROUP] members have been designated to handle such items as operations, competition, and ticketing. During the event, the taxpayer will not have any control in the conduct of the event, except that it would be consulted in the case of an unusual emergency. The [LEADER] of the [GROUP], the [GROUP] supervisor of [ATHLETIC] officials, and other [GROUP] representatives will be present during the [ATHLETIC EVENT].

Contract with the [GROUP]

The taxpayer has provided, in conjunction with the ruling request, a copy of its contract with the [GROUP], which is titled "Letter of Agreement" and is dated [DATE]. There are three parties to the contract, the taxpayer, the [GROUP], and the [NAME OF ARENA]. The contract is in the form of a lease of the arena to the [GROUP]. In the contract, the taxpayer and the arena are jointly referred to as [CITY] and this ruling will use the term "the host" to refer to the taxpayer and the arena jointly when describing an obligation under the contract.

The contract provides that "All receipts from the sale of tickets for the [ATHLETIC EVENT] shall be paid directly to and be the property of the [GROUP]." Under the contract the host guarantees gross ticket revenue equal to the sale of [#] ticket books, and will pay to the [GROUP] the difference between [#] and actual ticket sales. The host is also responsible for payment of any additional sales tax due as the result of an increase in the tax rate between the date of the contract and the date of the event.

The [GROUP] will pay a rental to the host, for the rights and services granted to it in the contract, which is [#] percent of the gross ticket revenue, net of sales tax at the rate of [tax rate] and all seat user fees.

The host shall commit to and guarantee the purchase of [X] ticket books at face value, which may be resold at a premium with a limit of [X] ticket books per individual package. The host is prohibited from advertising these ticket books for sale to the general public after [date].

The host is required to maintain comprehensive general public liability insurance, with specified limits, throughout the conduct of the event. The [GROUP] is to be named as an additional insured, and the host shall furnish a certificate of insurance to the [GROUP] prior to the [ATHLETIC EVENT].

The host will furnish and pay for ushers, ticket sellers, ticket takers, clerical ticket workers, watchmen, security personnel, medical personnel, public address announcer, scoreboard operators, statisticians, official scorers, [TIMEKEEPERS], sound system operators, message center and/or video display operators, maintenance personnel, and clean up personnel. The [GROUP] must specifically approve the selection and compensation of the public address announcer, scoreboard operators, statisticians, official scorers, [TIMEKEEPERS]. All personnel are to be under the sole direction and control of the arena and are not employees or agents of the [GROUP].

The contract contains a number of detailed requirements for the conduct of the event, which the [GROUP] requires the host to comply with. Examples include a prohibition on the sale or serving of alcohol, a prohibition on advertising displays mentioning professional sports organizations, alcohol, tobacco, or gambling organizations, a prohibition of illuminated advertising, details on how the [PLAYING AREA] is to be constructed, lighting, telephone and electrical power requirements, a prohibition on distribution of handbills without the approval of the [GROUP], and availability of medical assistance.

The host is required to provide specific facilities, such as locker rooms, media rooms, training room, dark rooms, television facilities and cabling, and parking. The host is required to provide shuttle service for certain persons connected with the event, and to provide [#] cars for the use of [GROUP] and institutional personnel.

The host is required to assign to the [GROUP] exclusive rights for television, radio, and internet broadcasting and filming.

The [GROUP] shall have the exclusive right to permit commercial signage on the [PLAYING AREA]. The [GROUP] retains exclusive control of and will distribute media credentials, game management credentials, pre-game meal passes, and hospitality passes.

The [GROUP] will have exclusive rights to market and sell game programs and souvenir products at the arena complex. The host will pay for all vendors that sell programs and souvenir, and will retain a commission on these sales. The contract provides that the parties may mutually agree for the [GROUP] to provide vendors for the souvenir sales, in which case the percentage of the commission paid to the host is reduced.

The host reserves the right to refuse admission or remove from the arena any person it determines is a risk to the health and safety of others, who interferes with the event, or for other reasonable cause.

Additional Facts

The [ARENA] is [CITY] owned and, since the signing of the contract to host the event, has become known as the [NEW NAME]. The seating capacity of the arena for this event will be approximately [#].

QUESTION

Are admission tickets for the [ATHLETIC EVENT] subject to Tennessee sales tax?

RULING

The tickets for the event are subject to sales tax pursuant to T.C.A. Sec. 67-6-212, since the taxpayer does not promote, produce, and control the entire function.

ANALYSIS

Generally, admissions to athletic events are subject to the Tennessee sales tax. See T.C.A. Sec. 67-6-212. However, there are a number of exemptions to the tax contained in T.C.A. Sec. 67-6-330. The taxpayer has inquired as to whether one of these exemptions, found at T.C.A. Sec. 67-6-330(a)(7), would exempt the sale of admissions to the event. That exemption states, in pertinent part:

(a) There is exempt from the sales tax upon admission, dues or fees imposed by § 67-6-212:

* * * *

(7) Gross proceeds derived from admissions to amusement or recreational activities conducted, produced, or provided by:

* * * *

(B) Organizations which have received and currently hold a determination of exemption from the internal revenue service pursuant to 26 U.S.C. § 501(c);

* * * *

provided, that this exemption shall not apply unless such entities, societies, associations or organizations promote, produce and control the entire production or function;³

The exemption by its terms clearly applies only to a sponsoring entity that is a 501(c) organization and that promotes, produces, **and** controls the entire production or function. The use of the word “and” indicates that all three factors listed in the statute must be carried out by a 501(c) sponsor before the exemption applies.

The taxpayer does assume some financial risk in hosting the event. However, the ticket price is set by the [GROUP]. The ticket revenue is fixed, since the taxpayer has guaranteed the sale of a minimum number of tickets. That guarantee exceeds the seating capacity of the arena by approximately [#] seats. The contract provides that the ticket revenue is the property of the [GROUP]. The taxpayer receives a rent payment based on ticket sales, which in effect is a fixed amount, due to the guarantee exceeding the seating capacity. The taxpayer is responsible for providing, at its expense, virtually all of the items and services necessary for the conducting of the event, with the exception of the payment of the game officials. The taxpayer also has agreed to pay any sales tax on the ticket receipts caused by an increase in the tax rate between the date of the contract and the date of the event. The taxpayer may charge a premium above face value if it resells the [#] tickets it has committed to purchase, and it will receive a commission on souvenir and game program sales. However, the financial arrangements for the [ATHLETIC EVENT] are quite limited, based on the terms of the contract with the [GROUP], and the areas where the taxpayer can increase its profits are in the sale of souvenirs, which is separate and apart from the receipts for the [ATHLETIC EVENT], and the resale of its allotment of tickets at a profit, which could be done by anyone who purchased tickets, not just by the promoter of an event. It is doubtful that the taxpayer is the promoter of the event, based on these financial arrangements. However, in light of the analysis regarding production and control that follows, it is not necessary to conclude whether or not the taxpayer promotes the event.

It is even clearer that the taxpayer does not produce or control the event. The [ATHLETIC EVENT] participants, pairings, and game times are set by the [GROUP], not the taxpayer. The taxpayer has virtually no control of the conduct of the event. It is clear from the contract that the [GROUP] mandates a myriad of details, both major and minor, as to the conduct of the event, leaving very little to the discretion of the taxpayer. Therefore, the taxpayer does not produce or control the event.

³ This exemption is not applicable to “interscholastic sports held or sponsored by private or public colleges or universities.” T.C.A. § 67-6-330(b). However, since the taxpayer is not a college or university, this limitation on the exemption is not considered.

In light of the taxpayer not producing or controlling the event, it is clear that the event does not qualify for exemption.

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DATE: 5/2/01