



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #90-7

TO: XYZ Foundation

SUBJECT: Exemption
(Admissions Tax)

REFERENCE: S.C. Code Ann. Section 12-21-2410 (1976)
S.C. Code Ann. Section 12-21-2420 (1976, Supp. 1988)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Is the XYZ Foundation exempt from the admissions tax, pursuant to Code Section 12-21-2420(4)?

Facts:

The XYZ Foundation (formerly the XYZ Corporation) was issued its certificate of incorporation by the Secretary of State in 1987.

The Foundation is the general sponsor for sporting and other fund raising events.

By the end of 1989, the Foundation will have contributed approximately \$900,000 to charities since its inception in 1987.

Discussion:

Code Section 12-21-2410 defines several terms found in the admissions tax code, and reads:

For the purpose of this article and unless otherwise required by the context:

(1) The word "admission" means the right or privilege to enter into or use a place or location;

- (2) The word "place" means any definite enclosure or location; and
- (3) The word "person" means individual, partnership, corporation, association, or organization of any kind whatsoever.

Code Section 12-21-2420 imposes the admissions tax and reads, in part:

There shall be levied, assessed, collected and paid upon all paid admissions to all places of amusement within this State a license tax of....four percent.... provided, further, that no tax shall be charged or collected:

* * * * *

(4) On admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; provided, that the license tax herein levied and assessed shall be collected and paid upon all paid admissions to all athletic events of any institution of learning above the high school level; provided, however, that carnivals, circuses, and community fairs operated by eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes shall not be exempt from the assessment and collection of admissions tax on charges for admission for the use of or entrance to rides, places of amusement, shows, exhibits, and other carnival facilities, but not to include charges for general gate admissions except when the proceeds of any such carnival, circus, or community fair are donated to a hospital; provided, further, that no admission tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member.

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The tax imposed by this section shall be paid by the person or persons paying such admission price and shall be collected and remitted to the South Carolina Tax Commission by the person or persons collecting such admission price.

The issue is whether the Foundation qualifies for the exemption from the admissions tax for "admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific or educational purposes".

The By-Laws of the Foundation read, in part:

* * * * *

ARTICLE III ORGANIZATION

Section 1. The Foundation shall be a non-profit organization (i) established and operating in accordance with the provisions of 26 U.S.C. Sections 501(c)(3) and

509(a)(1), (2) or (3) and the regulations thereunder, and Section 12-7-330(3) of the Code of Laws of South Carolina, 1976, as amended; and (ii) incorporated under the South Carolina Non-Profit Corporation Act [Article 1, Chapter 31, Title 33, Code of Laws of South Carolina, 1976, as amended].

The Foundation shall be an independent and autonomous organization.

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ARTICLE IV PURPOSES

The purposes for which the Foundation is established and shall operate are as follows:

Section 1. The Foundation is organized and shall be operated exclusively for charitable purposes within the meaning of 26 U.S.C. Section 501(c)(3); provided, however, no part of the net earnings thereof shall inure to the benefit of any private shareholder or individual; provided further, no substantial part of the activities of the Foundation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; provided further, the Foundation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of a candidate for public office. Notwithstanding any other provision of these By-Laws, the foundation shall not carry on any other activities not permitted to be carried on by (i) an organization described in 26 U.S.C. Sections 501(c)(3) and 509(a)(1), (2) or (3), or (ii) an organization contributions to which are deductible under the provisions of 26 U.S.C. Sections 170(c)(2), 2055, 2106, 2522 or any other corresponding provision of any future United States Internal Revenue Law.

Section 2. The Foundation is organized and shall operate exclusively for charitable purposes, including but not limited to:

- (a) Providing financial assistance to several different types of organizations which are exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954;
- (b) Sponsoring or co-sponsoring activities/events in order to raise funds for the foregoing purposes; and
- (c) Engaging in any and all lawful activities necessary or incident to the foregoing purposes, except as limited herein.

Furthermore, Article XIV of the By-Laws, entitled "Dissolution", provides that upon dissolution, and after all debts and expenses have been paid, that "[a]ll remaining assets of the Foundation shall be conveyed or distributed to such of one or more organizations...[that] qualifies as an organization described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code...". Assets may also be turned over to the Federal, State or local government for public purposes.

Furthermore, in August of 1989, the Internal Revenue Service determined that the Foundation was exempt from federal income tax under IRC Section 501(c)(3). Code Section 501(c)(3) of the Internal Revenue Code exempts from federal income taxes:

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 (emphasis added).

In summary, the Foundation was granted an exemption from federal income taxes as a corporation or foundation "organized and operated exclusively for ...charitable...purposes".

Conclusion

The XYZ Foundation is exempt from the admissions tax, pursuant to Code Section 12-21-2420(4).

However, the Foundation must inform the Commission of any changes in its organization, purpose or federal 501(c)(3) status, as such may deny the Foundation an exemption from the admissions tax.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina

March 7, _____ 1990