**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-218** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Charges for children to ride on a small replica train operated at school carnivals and other community events.** |
| **Keywords:** |  |
| **Approval Date:** | **10/07/1999** |

**Body:**

Office of Policy & Research

October 7, 1999

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XXXX

RE: Your letter of September 23, 1999

Dear Mr. XXXX:

Thank you for your letter that we received late last month. In it, you ask if charges for children to ride on a small replica train are subject to Kansas sales tax. The train is owned by a non-profit entity and is operated a school carnivals, Wild West Days, Prairie Days, and at other community events. Please be advised that these charges are subject to Kansas sales tax.

Amusement rides are taxed at K.S.A. 79-3603(m). The imposition provisions in subsection (m) that are relevant to this discussion impose sales tax on:

the gross receipts received from fees and charges by . . . organizations and businesses for participation in sports, games and other recreational activities, but such tax shall not be levied and collected upon the gross receipts received from: (1) Fees and charges by any political subdivision, by any organization exempt from property taxation pursuant to paragraph Ninth of K.S.A. 79-201, and amendments thereto, or by any youth recreation organization exclusively providing services to persons 18 years of age or younger which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for participation in sports, games and other recreational activities. . .

Carnival rides and other similar rides, including rides on the non-profit club’s replica train, are considered to be recreational activities. Webster’s defines “recreation” as “a means or refreshment or diversion.” Accordingly, charges for rides on the non-profit club’s train are taxable.

You claim that these rides are not subject to Kansas sales tax under K.S.A. 79-3603(e), which imposes sales tax on admissions to a place providing amusement, entertainment or recreational service. Your argument is similar to the one that was raised in *Grauer v. Director of Revenue*, 193 Kan. 605, 396 P.2d 260 (1964). In *Gauer*, the Kansas Supreme Court accepted a bowling alley’s argument that charges for bowling could not be taxed under K.S.A. 79-3603(e) as charges for admissions. This holding prompted the enactment of K.S.A. 79-3603(m) and K.S.A. 79-3603(n). These two subsections impose sales tax on certain dues and on certain fees for participation in sports and recreation.

You do not claim that the non-profit club qualifies under the first exception contained in K.S.A. 79-3603(n) ---- that is the exception for “any organization exempt from property taxation pursuant to paragraph Ninth of K.S.A. 79-201, and amendments thereto.” I attempted to confirm such an exemption internally for the non-profit club, but could not do so. As far as your other contention, I know that the non-profit club, while charitable and benevolent, is not a “youth recreation organization exclusively providing services to persons 18 years of age or younger.”

Accordingly, the factual recitation in your letter contains nothing that establishes that the non-profit club is exempt from charging sales tax on the train rides. This opinion could change if you provide additional documentation that brings the organization within an exemption or exception.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked by operation of law without further department action if there is a change in the controlling statutes, administrative regulations, revenue rulings or case law that materially effects this determination. Please call me at (785) 296-3081 if you need to discuss this matter further.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 10/18/1999 Date Modified: 10/11/2001**