

July 9, 1974

OPINION LETTER NO. 164  
Answer by letter-Mittleman

Mr. James R. Spradling  
Director of Revenue  
Department of Revenue  
Jefferson State Office Building  
Jefferson City, Missouri 65101



Dear Mr. Spradling:

This official opinion is issued in response to your request for a ruling on the following question:

"Are organizations such as, for example, neighborhood festivals, drama clubs, symphony orchestras, art clubs, kennel clubs, riding clubs and model train clubs required to remit Missouri sales tax on the gross receipts collected from activities which they sponsor?"

You have stated the following facts in connection with this question:

"Although sales tax is collected in many instances on the gross receipts of neighborhood festivals, drama club productions, symphony orchestra presentations, etc., the Director of Revenue has found a widespread uncertainty on the part of taxpayers as to the applicability of Missouri Sales Tax to these events. This uncertainty is based on more than a mere ingrained suspicion of tax laws. Many taxpayers, being generally aware of the charitable exemption granted in Missouri sales tax law, expect that the non-profit status of a festival, artistic organization, or hobby

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club brings these groups within the charitable exemption. The usually extended lengths of time between events sponsored by these organizations misleads some taxpayers into thinking that the receipts from these events are not subject to sales tax under the theory of the 'occasional sale'."

In answer to your question, we note that the exemption from the Missouri sales tax accorded to "occasional sales" would not ordinarily be available to the organizations which you describe, if these organizations exist on a continuing basis and engage in activities which fall within the scope of the sales tax law in the regular course of their operation. The exemption for isolated or occasional sales has its source in Section 144.010.1(2), RSMo 1969, which defines the term "business" in the sales tax law as follows:

". . . any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.510. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business does not constitute engaging in business, within the meaning of sections 144.010 to 144.510." (Emphasis added.)

We believe that the infrequency of sales transactions is not necessarily determinative of whether sales are isolated or occasional within the meaning of this statutory provision. A more appropriate test is the regularity with which such sales activities take place among the functions of the organization which engages in them. See our Opinion No. 31, Burns, May 5, 1971, copy of which is attached hereto.

The principal issue raised by your question is whether the activities of the above-mentioned organizations qualify for sales tax exemptions under Section 144.040.1, RSMo 1973 Supp., as amended by House Bill No. 1593, 77th General Assembly (1974), signed by the Governor and effective by virtue of its emergency clause on May 7, 1974. This section provides as follows:

"In addition to the exemptions under section 144.030, there shall also be exempted from the provisions of sections 144.010 to 144.510

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all sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities." (Emphasis added.)

The recent opinion of the Supreme Court of Missouri in the case of St. John's Medical Center v. Spradling, No. 58191 (Mo. June 10, 1974) has interpreted this statute by focusing its analysis on the nature of the charitable organization and the purposes to which its income is devoted, rather than the character of its specific sales activities. If the organization itself is charitable and the income from its sales activities is devoted to its charitable purposes, those activities will be exempt from sales taxation.

We would point out that the term "charitable" is ordinarily interpreted liberally. See Community Memorial Hospital v. City of Moberly, 422 S.W.2d 290, 295 (Mo. 1967). In 14 C.J.S. Charities §12, pp. 439-441, we find the following descriptions:

". . . To constitute a charitable use or purpose, it must be a public as distinguished from a private one; it must be for the public use or benefit; and it must be for the benefit of the public at large, or of a portion thereof, or for the benefit of an indefinite number of persons. . . .

"Charitable uses take such varied forms that a specific enumeration of the classes or objects is necessarily defective, and they cannot be limited by any narrow and stated formula . . . A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man. In its legal sense, charity comprises four principal divisions: (1) Trusts for the relief of poverty and distress; (2) trusts for the advancement of education; (3) trusts for the advancement of religion; and (4) trusts for other purposes beneficial to the community not falling under any of the preceding heads."

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In Defenders' Townhouse, Inc. v. Kansas City, 441 S.W.2d 365, 370 (Mo. 1969), it was also noted that:

" . . . '(o)ne ground on which a statute exempting charitable institutions from taxation can be justified in the constitutional sense is that these institutions administer to human and social needs, which the state itself might and does undertake to do, so that the ultimate obligation of the state is thus discharged by the private charity.' . . ."

Under these tests we believe that, among the organizations you have mentioned, drama clubs, symphony orchestras, and art clubs would ordinarily qualify as charitable organizations, from our understanding of their usual activities and purposes. We note that the activities of some such organizations have been supported by the Missouri State Council on the Arts. Section 185.040, RSMo, which describes the duties of the State Council on the Arts, clearly indicates that it is the policy of the state of Missouri to encourage such activities. That section provides as follows:

"The duties of the council shall be:

(1) To stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation therein;

(2) To make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including, but not limited to, music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources; and

(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts."

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An art museum has been held to constitute a charity in this state. Parsons v. Childs, 136 S.W.2d 327, 330 (Mo. 1939).

It is difficult to see how kennel clubs, riding clubs, and model train clubs could be regarded as charitable organizations. These hobby and recreation organizations apparently are intended to serve primarily their own members rather than the public at large, and we have found no authority which would lead us to believe that their purposes are charitable, even within a liberal construction of that term.

We express no opinion as to the taxability of neighborhood festivals, in the absence of a more detailed description of their particular purposes and activities.

Therefore, it is our view that drama clubs, symphony orchestras, and art clubs ordinarily are exempted from the requirements of collecting and remitting Missouri sales tax on the gross receipts of the activities which they sponsor, if the income from these activities is devoted to the charitable purposes of such organizations. Kennel clubs, riding clubs, and model train clubs are not so exempted from the Missouri sales tax law.

Yours very truly,

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 31  
5-5-71, Burns