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Texas Comptroller of Public Accounts STAR System

201904001L

April 18, 2019

Re: Private Letter Ruling No. 20180411150637

*****, Taxpayer No. *****

We issue this private letter ruling in accordance with Rule 3.1, Private Letter Rulings and General Information Letters.[\[1\]](#) We are responding to your request dated March 28, 2018. Detrimental reliance is provided in accordance with Rule 3.10, Taxpayer Bill of Rights.

You requested guidance on whether a trolley-style bike rental service is a taxable amusement service or a nontaxable transportation service.

Facts Presented:

***** (Taxpayer), provides a trolley-style bike rental service. Each bike trolley can seat up to 16 riders and relies entirely on the riders' pedaling power to move along a designated route. Customers rent the bike trolley on an hourly basis.

Taxpayer provides a captain with each bike trolley. The captain is ultimately responsible for the safety and operations of the bike trolley. Taxpayer allows riders to bring food, beverages, and music onto the bike trolley. Taxpayer also allows riders to bring kegs and attach them to the bike trolley's on-board tap system.

Taxpayer's bike trolleys generally operate on designated routes. Riders may pick their stops along the designated routes. For an additional fee, customers may request a custom route. These additional fees include

the costs Taxpayer incurs in accommodating a customer's request, such as transporting the bike trolley to the customer's desired location.

Taxpayer advertises its service as a "group-oriented rental amusement activity" that does not necessarily require stopping during the rental period. According to the Taxpayer's website, the bike trolley service is "perfect for all social outings, including: birthdays, anniversaries, bachelor/bachelorette parties, church outings, singles mixers, company parties, conventions, sports teams, pub crawls, picnics, family reunions, unique team building, group rewards, promotional opportunities, and social gatherings." Please refer to Taxpayer's website at *****.

Question, Ruling, and Analysis:

Our restatement of your question is shown below, followed by our response and analysis.

Question: Is Taxpayer's bike trolley service a nontaxable transportation service or a taxable amusement service?

Ruling: Taxpayer's bike trolley service is a taxable amusement service. Taxpayer provides rides for amusement, entertainment, and recreation, which is a taxable amusement service.

Analysis: Texas imposes a sales tax on each sale of a taxable item in this state. Section 151.051 (Sales Tax Imposed). The term "taxable item" includes tangible personal property and taxable services. Section 151.010 ("Taxable Item"). Only those services listed in Section 151.0101 ("Taxable Services") are taxable. Amusement services are included among the listed taxable services. Section 151.0101(a)(1).

The term "amusement services" means "the provision of amusement, entertainment, or recreation, but does not include the provision of educational or health services if prescribed by a licensed practitioner of the healing arts for the primary purpose of education or health maintenance or improvement." Section 151.0028 ("Amusement Services").

Rule 3.298(a)(1) (Amusement Services) defines amusement services as entertainment, recreation, sport, pastime, diversion, or enjoyment that is a pleasurable occupation of the senses. The rule also provides examples of amusement services and places that offer amusement services, including rides for pleasure, such as rides in hot-air balloons, helicopters, trains, ships, and boats, and tours of tourist attractions. *See* Rule 3.298(a)(1)(F)(iv)–(vi).

Taxpayer's bike trolley service is an amusement service. The bike trolley service intends to provide riders a self-powered ride for pleasure, recreation, and entertainment.

Taxpayer's service offers rides along designated routes. These routes are designed to give riders many opportunities to stop at points of interest along the ride if they wish to stop at all. Additionally, Taxpayer provides a captain to guide the bike trolley so the riders may enjoy music, food, and beverages during their ride.

Taxpayer's website describes its service as being "perfect for all social outings, including: birthdays, anniversaries, bachelor/bachelorette parties, church outings, singles mixers, company parties, conventions, sports teams, pub crawls, picnics, family reunions, unique team building, group rewards, promotional opportunities, and social gatherings." The common thread among these examples is amusement, entertainment, and recreation.

Furthermore, Taxpayer rents tangible personal property with an operator for a single charge, which implies that the purchaser is paying for the performance of a service. Rule 3.294(c)(2) (Rental and Lease of Tangible Personal property), states:

The furnishing of tangible personal property with an operator for which a single charge is made to the customer shall be presumed to be the performance of a service. The customer should not be charged tax, unless the service is taxable under other provisions of the Tax Code, Chapter 151.

The statement in Rule 3.294(c)(2) that no tax may be charged to the customer only applies if the service is not a taxable service under Section 151.0101. Therefore, Rule 3.294(c)(2) exclusion from taxes does not apply to Taxpayer.

Taxpayer believes it provides a nontaxable transportation service. Although, a stand-alone service that offers transportation from one location to another is not a taxable service under Section 151.0101, Taxpayer's bike trolley service offers more than just transportation. As noted above, the bike trolley primarily operates on designated routes that Taxpayer designed and tested to give riders plenty of chances to stop at area hot spots during their ride. Taxpayer's website does not advertise its service as providing anything other than amusement, entertainment, or recreation.

The purpose of a bike trolley system is to provide riders amusement, entertainment, and recreation, not to transport riders from one location to another. A person who rents a time slot to experience a bike trolley is paying for a taxable amusement service.

The Texas Tax Code and Texas Administrative Code are accessible at www.comptroller.texas.gov/taxes/.

If you have questions about this private letter ruling, please email us through our website at <https://comptroller.texas.gov/web-forms/tax-help/> and reference Private Letter Ruling No. 20180411150637.

Sincerely,

Tax Policy Division – Indirect Taxes
Texas Comptroller of Public Accounts

ENDNOTES:

[1] Unless otherwise indicated, all references to “Section” are to the Texas Tax Code, and all references to “Rule” are to Title 34 of the Texas Administrative Code.

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