

Vatman of the Opera — tax exemptions for cultural organisations

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Eligible bodies that supply qualifying cultural services, including admission to performances and exhibitions, are exempt from registering for VAT. To be eligible, an organisation must: be precluded by its governing document from distributing any profits; spend any profits on continuing and improving the cultural services it provides and be managed and administered on a voluntary basis by people who have no direct or indirect financial interest in the organisation's activities. Recent editions of this newsletter have considered the courts' developing interpretation of these restrictions, in particular the meaning of 'financial interest' as reported in the London Zoo, Zoological Society of Wales and Bournemouth Symphony Orchestra decisions.

From Animals to Opera

Longborough Festival Opera has been fighting a similar case. Longborough Festival Opera is a charity that stages musical entertainments in a barn that has been converted into a Palladian-style opera house by its owners, Mr and Mrs Graham, who are also trustees of the Opera. In May 2005 the VAT and Duties Tribunal was asked to determine

whether or not Longborough Festival Opera was eligible for the cultural services VAT exemption. The Tribunal decided that, while the production of opera was a qualifying cultural activity, Longborough Festival Opera was not an eligible body as Mr Graham had a financial interest in its activities. This conclusion was based on Mr Graham's promise to the other trustees that he, or his company, would cover any financial deficit arising out of the 2002 and 2003 productions staged at Longborough Festival Opera and on the terms of the Opera's governing document, which allowed Mr Graham to charge rent for the use of the opera house and interest on any loan, though no such rent or interest was in fact charged.

In January 2006 this decision was overturned in the High Court. The judge held that a 'financial interest' connotes 'possible enrichment' and does not include a guarantee, which is merely a risk of financial loss. Further, a director of an eligible body is not necessarily precluded from

entering into contracts with the organisation provided that the terms of each contract are reasonable and the director does not take part in decision making regarding the proposed contracts to which he would be a party. So the High Court ruled that Longborough Festival Opera was an eligible body exempt from VAT registration.

Why Does This Matter?

This case expands still further the range of organisations that may be eligible bodies for the purposes of VAT. It confirms that a trustee will not necessarily have a financial interest in an organisation simply by entering into a contract with it or by guaranteeing its losses. It is important to realise that this VAT exemption is not voluntary; it applies to all eligible bodies supplying qualifying cultural services. If you are in any doubt about the VAT status of your organisation you should consult a professional adviser.