

# FREEDOM FROM RELIGION *foundation*

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July 20, 2017

SENT VIA MAIL & EMAIL TO:  
don.parkinson@ky.gov

Mr. Don Parkinson  
Office of the Secretary  
Kentucky Tourism, Arts, and Heritage Cabinet  
100 Airport Road  
Frankfort, KY 40601

**Re: Violation of Tourism Agreement by Ark Encounter, LLC**

Dear Secretary Parkinson:

I am writing on behalf of the Freedom From Religion Foundation (“FFRF”) regarding the recent sale of a tourism attraction by Ark Encounter, LLC, which the Kentucky Tourism Development Finance Authority (“Authority”) previously approved for sales tax rebates. FFRF is a national nonprofit organization with more than 29,000 members across the country, including members in Kentucky and an FFRF Kentucky chapter. Our purpose is to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism.

It was reported that Ark Encounter, LLC sold its main \$48 million parcel and Ark attraction on June 28 for \$10.<sup>1</sup> It is believed that the sale to Crosswater Canyon, Inc., a nonprofit ministry, was a maneuver by the operators of the Ark to avoid paying state and local property taxes.<sup>2</sup> Ark operators appear to have made the change as retaliation against the City of Williamstown for adopting a \$.50 safety fee on ticket sales that would fund emergency services.

Given the significant public subsidies that have gone to this attraction, it is concerning that Ark operators are playing games with the ownership of the property. Of particular concern to the Authority and the Kentucky Tourism, Arts, and Heritage Cabinet should be that the change in ownership does not allow for continued sales tax rebates without new authorization. The Authority and the Department of Revenue cannot distribute sales tax

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<sup>1</sup> Blackford, Linda. “Could a \$10 sale mean no more taxes for Noah’s Ark theme park?” Lexington Herald Leader 17 July 2017. Available online: <http://www.kentucky.com/news/state/article161782438.html>

<sup>2</sup> Blackford, Linda. “Williamstown council unmoved by offer from Noah’s Ark park on safety tax.” Lexington Herald Leader 19 July 2017. Available online: <http://www.kentucky.com/news/state/article162508368.html>

rebates to Ark Encounter, LLC or the new owner of the Ark for any sales taking place after June 28, 2017.

Sales tax rebates are only available to an “approved company,” which is limited to a company that has received final approval under KRS 148.853. See KRS § 148.851(2).

While Ark Encounter, LLC is an approved company, we have found no evidence that the Authority approved Crosswater Canyon, Inc. Along with this letter, we are requesting a copy of any Tourism Development Agreement(s) that the Authority has with the operators of the Ark. A review of the Tourism Development Agreement dated May 19, 2011, states that Ark Encounter, LLC may not transfer its rights under the agreement without the express prior written consent of the Authority.

Kentucky law explicitly limits the transfer of tax rebates to a new company without the approval of the Authority:

The agreement, including the incentives provided under KRS 148.853, shall not be transferable or assignable by the approved company without the written consent of the authority and a passage of a resolution approving the proposed assignee of the incentives as an approved company.

KRS § 148.859(2).

[T]he approved company shall notify the authority if any change in ownership of the tourism attraction is contemplated. The authority shall reserve the option to renegotiate the terms of the agreement or, if the change in ownership is detrimental to the Commonwealth, the authority may terminate the agreement.

KRS § 148.859(1)(h).

We are unaware of any notice provided to the Authority and any resolution that the Authority has passed approving of payments to the new owner of the Ark. The agendas from recent Authority meetings do not include a discussion of the Ark Encounter.

If such a request does come before the Authority, the transfer should be denied because the change in ownership is detrimental to the Commonwealth. Selling the attraction for a nominal amount to avoid taxes that are owed to the state and local community is not a bona fide justification that the Authority should accept. Ark Encounter, LLC was an approved company by the Authority due in part to the fact that the development was taxable. For example, a May 5, 2014 letter from the Ark Encounter’s attorney noted, “[T]he Project will be operated as a private entity and will be taxed as such by the Commonwealth of Kentucky and other taxing districts.”<sup>3</sup>

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<sup>3</sup> May 5, 2014 Letter from John Pence to William Dexter. Available here: <https://ffrf.org/images/AiGIRSExhibits3.pdf>

We request that the Authority take immediate action to: 1) Suspend the availability of tax rebates to the operators of the Ark; 2) Terminate any applicable agreements with Ark Encounter, LLC.

Thank you for your attention to this matter.

Sincerely,



Patrick Elliott  
Senior Counsel  
Freedom From Religion Foundation