



Special Sales And Use Tax Rules For Nonprofit Organizations

Major changes to the consumers sales and service tax and use tax laws affecting nonprofit organizations were enacted by the West Virginia Legislature in 1989. The purpose of this publication is to provide general information concerning these changes. It is not a substitute for tax laws or regulations.

NONPROFIT ORGANIZATIONS ARE NOT EXEMPT FROM THE SALES AND USE TAX BY REASON OF THEIR NONPROFIT STATUS ALONE but must meet the very specific requirements contained in the sales and use tax laws and legislative regulations. Nonprofit organizations which do not meet these requirements are required to pay tax on their purchases and collect and remit tax on their sales (unless their purchases or sales are exempt under some other provision of the law). All sales and purchases are presumed to be taxable. It is the responsibility of both the person making a purchase and the person making a sale to prove that the purchase or sale is for an exempt purpose.

PURCHASES BY CERTAIN NONPROFIT ORGANIZATIONS

Certain nonprofit organizations purchasing tangible personal property or taxable services to be used or consumed in the organization's nonprofit activities are exempt from payment of the consumers sales tax or use tax on those purchases. To qualify for this exemption the organization must meet ALL FOUR of the following conditions:

- (1) The organization must have a current annual registration certificate with the West Virginia State Tax Department; AND
- (2) The organization must be exempt from paying federal income tax under § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code; AND
- (3) The organization must be ONE of the following (A or B or C or D):
 - A. A church or a convention or association of churches as defined in section 170 of the Internal Revenue Code of 1986, as amended; OR
 - B. An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on; OR
 - C. An organization which receives more than one-half of its support from any combination of gifts, grants, direct or indirect "charitable contributions" or "membership fees"; OR
 - D. An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise such gross income (or the tangible personal property or services purchases with such net income) is donated to an organization which is exempt from income taxes under § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code; OR
 - E. A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program, and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members; AND
- (4) The items or services purchased by the organization will be used or consumed in the activities for which the organization qualifies for exemption from federal income taxes.

Some important points to remember about this limited exemption for certain purchases by nonprofit organizations follow:

- This exemption does not apply to purchases of gasoline and special fuels.
- This exemption does not apply to purchases of items or services used or consumed in generating unrelated business income by the nonprofit organization.
- To qualify for this exemption, the organization must have a current business registration certificate. To obtain a registration application (BUS APP) contact the West Virginia State Tax Department.
- If the nonprofit organization has received a determination from the Internal Revenue Service that the organization qualifies as a § 501(c)(3) or § 501(c)(4) organization and the determination has not been revoked, withdrawn or nullified, the nonprofit organization need not apply to the Tax Commissioner for determination of whether the organization qualifies as a § 501(c)(3) or § 501(c)(4) organization. If the nonprofit organization has not received a determination from the Internal Revenue Service, the organization must receive a prior written ruling from the Tax Commissioner regarding its qualification by filing a copy of its articles of incorporation, bylaws and a sworn statement by an officer of the organization setting forth reasons for qualification.

Examples of this exemption:

"The Cure" is an organization which raises funds for medical research. The organization has a current registration certificate from the Department of Tax and Revenue and has received a written ruling from the Tax Commissioner that it meets the requirements for qualification under section 501(c)(3) of the Internal Revenue Code. All of its support comes from charitable contributions. This organization meets the requirements necessary to make tax exempt purchases and may purchase office supplies and equipment and fund raising materials tax free by presenting a properly completed exemption certificate to its vendors.

"Have Mercy Hospital" is a private nonprofit hospital which has a current registration certificate and has been qualified as a 501(c)(3) organization by the Internal Revenue Service. "Have Mercy Hospital" is primarily funded by charges it makes to its patients for providing medical care. Thus, this hospital does not meet the requirements for making tax exempt purchases and must pay sales or use tax on all of the purchases it makes for use in providing medical care.

In addition to its normal activities a church conducts a community outreach program which provides information and counseling on drug abuse. The church also provides food and clothing to the needy. The church makes no charge for these services. The church may purchase exempt from tax office equipment and supplies, drug abuse literature, the services of a professional or nonprofessional drug abuse counselor, food and clothing which will be given free of charge and any other materials, supplies or equipment (except gasoline or special fuel) which will be directly used or consumed by the church in its normal church activities and in its community outreach program.

The church also operates a Day-Care Center for which it charges a fee of thirty dollars per week per child. The church will not collect sales tax from its customers on the fee because there is a specific exemption in the sales tax law for services provided by Day-Care Centers. The church must pay sales or use tax on all of its purchases for use in providing the day-care service. If the church uses the supplies, equipment, food or materials which were purchased tax free for use in its exempt activities in the nonexempt Day-Care Center, it must pay use tax on these items.

METHOD OF CLAIMING THE EXEMPTION

Persons claiming an exemption for sales or use tax must be registered with the West Virginia Department of Tax and Revenue. Registration is accomplished by completing an application for business license (WV/BUS APP). In an effort to promote efficiency and cost savings, the Department uses this form for all types of registration. Churches and nonprofit organizations are not considered to be "businesses" or engaged in business or subject to any other tax laws by the mere completion of this form.

Churches and nonprofit organizations that meet the requirements set forth above may claim the exemption from sales or use tax on their exempt purchases by providing the vendors from whom they make purchases with a properly completed Certificate of Exemption (Form F0003). When a vendor in good faith accepts a properly completed tax exemption certificate from his customer at the time of the sale, he is relieved of the responsibility of collecting the sales tax from the customer. The vendor must update his exemption certificate file each year and retain exemption certificates for at least three years. When a church or nonprofit organization uses a tax exemption certificate to make purchases, the burden of proof that the purchase was exempt is on the organization. Misuse of the tax exemption certificate is a serious offense and will subject the purchaser to penalties in addition to any tax, interest and additions to tax due on the purchase.

SALES BY CHURCHES AND NONPROFIT ORGANIZATIONS

Churches and nonprofit organizations that meet the requirements (set forth above) for making tax exempt purchases may also make casual and occasional sales for fund raising purposes and not be required to collect the sales tax from the persons to whom they sell. This exemption from the collection of sales tax is "per se" (in and of itself) and does not require any special documentation as proof of the exemption.

For the purpose of this exemption, "casual and occasional sales" means fund raising events not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions. These fund raising events are limited to six events (which last no more than eighty-four consecutive hours each) in any twelve month period. Any fund raising event which lasts more than eighty-four hours will be considered as two or more events, depending upon the duration of the event. If an organization holds more than six events it must begin to collect the sales tax on sales made at the seventh event and any others held thereafter.

Organizations that know at the outset that their fund raisers will exceed the six time/eighty-four hours limit or organizations which regularly and routinely make repetitive sales in the ordinary course of their activities do not qualify for this exemption and must collect sales tax on all of their sales.

In addition to the exemption for casual and occasional fund raisers by churches and nonprofit organizations, certain other special exemptions may apply. For example, the following special exemptions apply to certain sales of food even though in some cases sales may not meet the "casual and occasional" test:

1. Sales of food by a nonprofit organization or a governmental agency under a program funded by a state of the United States to low-income elderly persons at or below cost are exempt. No exemption certificate is necessary.
2. Sales of food in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, are exempt if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose. No exemption certificate is necessary.
3. Sales of food by any religious organization at a social or other gathering conducted by it or under its auspices are exempt if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and revenue obtained from selling the food is actually used in carrying on such functions and activities: Provided, That purchases made by such organizations shall not be exempt as a purchase for resale.
4. Sales of food by little leagues, midget football leagues, youth football or soccer leagues and similar types of organizations including scouting groups and church youth groups if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food are actually used in supporting or carrying on functions and activities of the groups: Provided, that such purchases made by such organizations shall not be exempt as a purchase for resale.

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