



Georgia Department of Revenue
Policy Bulletin SUT-2020-02
July 1, 2020
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Fundraising Activities Conducted by Organizations Exempt from Federal Income
Tax Under Internal Revenue Code §501(c)(3)

Purpose: This Policy Bulletin provides guidance to organizations exempt from federal income tax under Internal Revenue Code (“IRC”) §501(c)(3) (“§501(c)(3) organizations”) when making purchases and sales as part of a fundraising activity. This bulletin also provides guidance to sellers of tangible personal property when making fundraising-related sales to §501(c)(3) organizations.

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Authority: O.C.G.A. §§ 48-2-7, 48-8-2, 48-8-3, 48-8-30. Ga. Comp. R. & Regs. r. 560-12-1-.14; 560-12-2-.01; 560-12-2-.07; 560-12-2-.13; 560-12-2-.18; 560-12-2-.21; 560-12-2-.22; 560-12-2-.28; 560-12-2-.74; 560-12-2-.79; 560-12-2-.83; 560-12-2-.90; 560-12-2-.100.

Scope: A Policy Bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers, superseding all conflicting documents and oral directives previously issued by the Department. A Policy Bulletin does not have the force or effect of law and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or subsequent Policy Bulletin.

Issues:

- 1. How does sales and use tax apply to purchases made by §501(c)(3) organizations?**
- 2. How does sales and use tax apply to sales made by §501(c)(3) organizations?**
- 3. How does sales and use tax apply to items donated to a §501(c)(3) organization?**

4. How does sales and use tax apply to items given away by a §501(c)(3) organization as a token of appreciation?
5. How does sales and use tax apply to items sold by a religious institution, qualifying nonprofit child caring institution, nonprofit parent teacher organization or association, nonprofit private or public school (grades K-12), nonprofit entity raising funds for a public library, or member councils of the Boy Scouts or Girl Scouts?
6. How does sales and use tax apply when a §501(c)(3) organization charges for food tickets for or admission to a festival, block party, “Taste of” event, carnival, fair, or other event?
 - a. How does sales tax apply to the rental of booth space by restaurants?
 - b. How does sales and use tax apply if a vendor provides rides and games?
 - c. How does sales and use tax apply to sales of items made by a §501(c)(3) organization’s clients?
7. How does sales and use tax apply at galas and silent auctions?
8. How does sales and use tax apply to door prizes and raffles?
9. How does sales and use tax apply at bake sales?
10. How does sales and use tax apply to an educational event?
11. How does sales and use tax apply to church camps, summer camps, day camps, sports camps, and other similar camps?
12. How does sales and use tax apply to charges to participate in a half-marathon, marathon, “fun run”, walk or any other similar race?
13. How does sales and use tax apply to charity golf tournaments?

Discussion of Issues:

1. How does sales and use tax apply to purchases made by §501(c)(3) organizations?

Unless a specific exemption applies, §501(c)(3) organizations (including churches, parent teacher organizations, charitable organizations, and civic organizations) must pay sales and use tax on all purchases made for the organization’s own use. Thus, for Georgia sales and use tax purposes, §501(c)(3) organizations are *generally* taxable just like any other organization.

Examples:

- A church purchases prayer books and office supplies for use by the church. The church owes sales and use tax on the purchase price of the prayer books and office supplies. (Note in Q5, below, that *certain fundraising sales* by a religious institution are exempt from sales tax.)

- A §501(c)(3) parent teacher organization (PTO) purchases band instruments. The PTO owes sales and use tax on the purchase price of the band instruments. The tax is due even if the organization will donate the items to a school or to a student. (Note in Q5, below, that *sales* by a PTO are exempt from sales tax.)

2. How does sales and use tax apply to sales made by §501(c)(3) organizations?

When §501(c)(3) organizations sell tangible personal property at retail (i.e., to the end user), they must comply with all provisions of the law relating to collecting and remitting sales tax. As in issue #1, this is the same general rule that applies to all sellers, whether tax-exempt or not. Thus, unless an exemption applies, §501(c)(3) organizations are generally required to remit tax on their sales at the rate in effect where the customer takes receipt of the item sold and remit the tax to the Georgia Department of Revenue. Sellers of taxable goods or services may separately itemize the tax, include the tax in the charge to the customer, or absorb the tax. Regulation 560-12-2-.21 explains how sellers may add the tax to the sales price or absorb the tax themselves.

Tax collected by a registered §501(c)(3) organization (i.e., an organization that has a Georgia Sales Tax Certificate of Registration) is remitted using the Form ST-3 Sales and Use Tax return. Registered §501(c)(3) organizations may purchase items tax-free for resale by providing the seller with a properly completed Form ST-5 Sales Tax Certificate of Exemption.

Electronic filing and payment are required if an organization owes more than \$500.00 in connection with any return (even if payments later fall below \$500.00). Sales and use tax returns may be filed electronically through the Georgia Tax Center. If a §501(c)(3) organization is not required to file electronically and chooses to file a paper return, then it must file on Form ST-3. A sales tax return must be filed even when no tax is due or no sales were made.

Tax collected by an unregistered §501(c)(3) organization is remitted using Form FS-32 Miscellaneous Event. The §501(c)(3) organization may take a credit for any sales tax previously paid on tangible personal property subsequently resold by subtracting the tax paid from the tax collected and remitting the difference.

3. How does sales and use tax apply to items donated to a §501(c)(3) organization?

When an individual or a business entity donates tangible personal property to a §501(c)(3) organization, the §501(c)(3) organization will not owe any sales or use tax on the receipt of the donated property. The donor is responsible for sales and use tax on the donor's purchase price of the donated property. If the donor paid sales and use tax at the time the donor purchased the item(s), the donor does not owe tax at the time of the donation. If the §501(c)(3) organization then sells the donated property, the §501(c)(3) organization must generally collect tax on the sale, unless the purchaser provides a properly completed exemption certificate. Note, if the donation is not tangible personal property (e.g., intangible property, real property services), the donor does not owe sales or use tax on the donation.

Example: A hotel donates a two-night stay to a §501(c)(3) organization, and the §501(c)(3) organization then sells/auctions the two-night stay. The hotel donating the stay does not owe sales or use tax on the donated stay, but the §501(c)(3) organization must collect tax on the sale at the rate in effect in the jurisdiction where the stay will be provided.

4. How does sales and use tax apply to items given to donors by a §501(c)(3) organization as a token of appreciation?

In general, when a §501(c)(3) organization gives small, token items of tangible personal property to a donor in appreciation for a donation to the organization, the §501(c)(3) organization is the end user of the tangible personal property it gives away and is liable for sales and use tax on the purchase price of the property.

The §501(c)(3) organization must maintain sufficient documentation to identify the substance of the transaction. The §501(c)(3) organization must document the total amount of the donation it received, the amount of the donation that is deductible for federal income tax purposes, the purchase price of the gift and any sales and use tax paid on its purchase of the gift.

Example: A §501(c)(3) organization receives a \$75 cash donation from an individual. The full \$75 is tax deductible for federal income tax purposes, and the §501(c)(3) organization sends a letter to the donor notifying the donor that the full \$75 is deductible for income tax purposes. In appreciation for the donation, the §501(c)(3) organization sends the donor a coffee mug that the §501(c)(3) organization purchased for \$5.00. The §501(c)(3) organization

must pay sales and use tax on its \$5.00 purchase price of the coffee mug at the rate in effect in the jurisdiction where the §501(c)(3) organization received the coffee mug. If the §501(c)(3) organization paid the appropriate tax to the seller, no additional tax is due.

5. How does sales and use tax apply to items sold by a religious institution, qualifying nonprofit child caring institution, nonprofit parent teacher organization or association, nonprofit private or public school (grades K-12), nonprofit entity raising funds for a public library, or member councils of the Boy Scouts or Girl Scouts?
Religious institutions

Religious institutions (such as churches, synagogues and mosques) do not have to collect sales tax on their sales when:

- The sale results from a specific charitable fundraising activity;
- The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;
- No part of the gross sales or net profits from the sales inures to the benefit of any private person; and
- The gross sales or net profits from the sales are used for the purely charitable purposes of:
 - Relief to the aged;
 - Church, synagogue or mosque related youth activities;
 - Religious instruction or worship; or
 - Construction or repair of church, synagogue or mosque buildings or facilities;

Qualifying licensed child services providers

Qualifying licensed child services providers do not collect sales tax on qualifying fundraising sales. To be a qualifying licensed child services provider, an entity must:

- Be a child-caring institution as defined in O.C.G.A. § 49-5-3(3), a child-placing agency as defined in O.C.G.A. § 49-5-3(4), or a maternity home as defined in O.C.G.A. § 49-5-3(13);
- Be engaged primarily in providing child services;
- Be a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code; and

- Obtain an exemption determination letter from the Department. Form ST-CH-1, available on the Department’s website, should be used to apply for an exemption determination letter.

Qualifying sales are sales by a qualifying institution, agency, or home when:

- The sale results from a specific charitable fundraising activity;
- The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;
- No part of the gross sales or net profits from the sales inures to the benefit of any private person; and
- The gross sales or net profits from the sales are used purely for charitable purposes in providing child services.

Parent-teacher organizations

Sales by any parent-teacher organization qualified as a tax-exempt organization under IRC §501(c)(3) are exempt from sales tax.

Schools

Sales by any public or private school containing any combination of grades kindergarten through 12 of tangible personal property, concessions, or tickets for admission to a school event or function, provided that the net proceeds from such sales are used solely for the benefit of such public or private school or its students are exempt from sales tax.

Fundraisers for public libraries

Sales by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries if such organization qualifies as a tax-exempt organization under IRC §501(c)(3) are exempt from sales tax.

Scouts

Sales of food and food ingredients by member councils of the Girl Scouts of the U.S.A. and the Boy Scouts of America in connection with fundraising activities by any such council are exempt from sales tax.

6. How does sales and use tax apply when a §501(c)(3) organization charges for food tickets for or admission to a festival, block party, “Taste of” event, carnival, fair, or other event?

Example: A §501(c)(3) organization applies for a festival license with City to host a Taste of City festival on the streets of City or in City’s park. Access to the Taste of City festival is restricted, and the §501(c)(3) organization charges admission to enter. Admission to the Taste of City festival constitutes admission to a place of amusement or entertainment. The §501(c)(3) organization should collect sales tax on the admission charge and remit the tax to the Georgia Department of Revenue.

Example: §501(c)(3) organization Charity A applies for a festival license with City to host a Taste of City festival on the streets of City or in City’s park. Charity A charges local restaurants \$300 for a booth space in which the restaurant serves food and drink. Anyone can attend the festival without charge. Charity A offers food and drink tickets to the public. At each restaurant space, each restaurant determines the number of tickets required for a sampling of food and/or drink. Each ticket sold by Charity A is \$1, or for \$20, a purchaser receives 25 tickets.

In this example, Charity A should collect sales tax on the amount charged for food and drink tickets. The restaurants in this example must pay sales and use tax on the cost price of any food and drink served.

Example: The same fact pattern as above, but now each restaurant keeps all the tickets collected from attendees, turns the tickets in to Charity A and receives \$0.25 for each ticket from Charity A.

Charity A should still collect sales tax on the entire charge for each ticket sold. The restaurants in this example may purchase food, ingredients and beverages for the event tax-free for resale with a resale certificate (Form ST-5).

a. How does sales tax apply to the rental of booth space by restaurants?

The \$300 charge for booth space is not subject to sales tax. If a §501(c)(3) organization holds an event and charges a restaurant a fee for booth space in which the restaurant sets up and serves food and drink, the fee is for the limited use of real property and is not subject to sales tax.

b. How does sales and use tax apply if a vendor provides rides and games?

Example: Charity A also arranges for some carnival rides and games to be available during the event and sells tickets for the rides and games. Tickets can be used to take rides and play games. Most rides and games require 3-5 tickets to be redeemed.

Charity A should collect sales tax on the entire charge for each ticket. The tickets allow the attendees to participate in games/amusement activities, and sales tax must be collected and remitted on charges to participate in such activities. This result is the same whether Charity A obtains the carnival games and rides for free, at cost, or at a marked-up fair market value.

c. How does sales and use tax apply to sales of items made by a §501(c)(3) organization's clients?

Example: Charity B provides services to disabled adult clients. Charity B offers its clients art classes. As the end user, Charity B pays sales tax on the materials used to produce the art in the art classes. Charity B sets up its own space at a craft market to showcase and sell the clients' work. The space is often "staffed" with some of the clients along with several Charity B employees. Charity B sets the prices of the artwork purposely above fair market value to add a donation component. For example, Charity B has a painting worth \$35 including sales tax and charges \$75 with \$40 as a tax-deductible donation. Charity B provides a receipt stating that \$40 of the amount paid to Charity B is a tax-deductible donation for federal income tax purpose.

Charity B must remit the sales tax that was included in the \$35 price of the painting.

7. How does sales and use tax apply at galas and silent auctions?

Example: Gala: Charity C hosts a fundraising gala event where food and drinks are served. Charity C charges \$100 per person to attend the gala event. Charity C pays sales tax on the food or the caterer/food provider pays the sales tax, if the food is donated to Charity C. Charity C and the caterer/food provider have determined that the value of the meal and drinks including sales tax is \$40 per person. In this example, the value of any entertainment at the gala is de minimis (i.e., the entertainment is not the type of entertainment that people would pay an admission charge to see).

If Charity C provides the attendee a receipt showing that \$60.00 of the \$100.00 per person price is tax deductible for federal income tax purposes, then Charity C must only remit sales tax that was included in the \$40.00 that represented the fair market value of the food and drink provided to the guest, inclusive of tax. Note, Charity C could have purchased the food tax-free for resale by providing a completed Form ST-5 (Certificate of Exemption) to its vendor(s).

Example: Silent Auction: Charity D is a §501(c)(3) organization that holds an event at which it conducts a silent auction. Charity D receives “in-kind” (i.e., non-cash) donations such as hotel packages, spa packages, clothing, home goods, and dining gift certificates. Charity D puts these in-kind donations on display at a silent auction, where attendees may bid to win the in-kind donations (with the highest bidder as the winner). All attendees may participate in the silent auction for no charge, but the highest bidder (“winning bidder”) purchases the item.

If the winning bid exceeds the “fair market value” of the item, then the winning bidder pays sales tax on a portion of the winning bid, with the “fair market value” being the taxable sales price of the item. Charity D can record the excess as a tax-deductible “donation” for federal income tax purposes. For example, if the auctioned item is an autographed football that has a “fair market value” of \$200, and if the winning bidder pays \$500 for the football, then Charity D must remit tax on \$200 (fair market value). If the tax rate is 8%, the tax due would be \$16.00. Assuming Charity D adds that tax amount to what the winning bidder must pay, the winning bidder’s total payment would be \$516.00. The excess of the \$500 winning bid over the \$200 fair market value is considered a \$300 donation. Charity D would provide the winning bidder with a donation receipt reflecting a total payment of \$516 – a tax-deductible donation of \$300, goods and services valued at \$200, and tax of \$16.

Sales tax must be remitted regardless of whether the winning bid is greater than or less than the fair market value. In the above example, if the autographed football has a “fair market value” of \$200, and if the winning bidder pays only \$150 for the football, then Charity D must remit \$12 of tax (8% of \$150).

Example: Charity E is a §501(c)(3) organization that provides supplies and support to local artists. Charity E hosts a silent auction for the works of the

artists. Charity E pays sales tax when it buys the art supplies that the artists use. Note, Charity E could have purchased the art supplies (e.g., paint, canvas) tax-free for resale by providing a completed Form ST-5 (Certificate of Exemption) to its vendor(s). At the silent auction, the highest bidder takes home the piece of art.

Charity E should collect and remit sales tax on the full selling price (i.e., the highest bid) of each piece of art that it sells. The results in this example do not change if a portion of the proceeds from the winning bid go to the artist. Paying the artist for his or her work does not affect the sales tax treatment of the retail sale of the painting.

8. How does sales and use tax apply to door prizes and raffles?

Example: Charity F holds an annual fundraiser and gives each attendee a raffle ticket upon entry. Each attendee pays \$100 to attend the event. During the event, Charity F draws winners who receive gifts which Charity F obtained as in-kind donations.

If the attendee receives a receipt stating that the full \$100 paid to attend the event is deductible for federal income tax purposes, no sales tax is due. If the attendee received food and drink (or other items of value), then the analysis in the Charity C example above would be applicable. If attendees purchase raffle tickets (in addition to paying the attendance fee), Charity F must remit sales tax on the sales price of the raffle ticket. If Charity F were to give a parting gift to each person who attends the event, Charity F should pay sales tax when purchasing the items. If the parting gift items were donated to Charity F, the donor must pay sales tax on the items if the donor purchased the items; however, if the donor paid sales and use tax at the time the donor purchased the parting gift items, the donor does not owe tax at the time of the donation. In either case, if Charity F gives parting gift items to attendees, then the attendees are not liable for sales and use tax on the gifts.

9. How does sales and use tax apply at bake sales?

Example: Charity G is a §501(c)(3) organization for federal income tax purposes and it holds a bake sale, at which Charity G sells homemade baked goods.

Charity G must collect and remit sales tax on the sales of the baked goods. The tax rate is based on the location of the bake sale event. As explained

under question #2, the sales tax may be itemized separately, included in the total charge to the customer, or absorbed by Charity G. Regulation 560-12-2-.21 explains how sellers may add the tax to the sales price or absorb the tax themselves. If Charity G purchases any items that it intends to resell at the bake sale, then Charity G may purchase the items tax-free by using Form ST-5. If Charity G paid tax at the time it purchased items that it sold at the bake sale, then Charity G must still remit tax on the sale of the item at the bake sale.

10. How does sales and use tax apply to an educational event?

Example: Charity H hosts a series of educational presentations by authors who speak to attendees about the content of the authors' books or by experts who speak on a specific educational topic. Charity H sells tickets to these speaking engagements.

Charity H does not need to charge sales tax on the admission charge to these events. Admission charges are taxable when the charges are in connection with places or events of amusement, sports, entertainment, exhibition, or display, but admission charges are not taxable when in connection with an educational event.

11. How does sales and use tax apply to church camps, summer camps, day camps, sports camps, and other similar camps?

Example: Charity I hosts church camps on weekends, during school breaks, and at other times. Each camp is for a limited period of time. Charity J hosts day camps on weekends, during school breaks, and at other times with each camp for a limited period of time. Charity K hosts sports camps on weekends, during school breaks, and at other times with each camp for a limited period of time. Charities I, J, and K charge for children to attend these camps.

Charities I, J, and K are not required to collect sales tax on the charges to attend these camps. Charities I, J, and K, like other operators of summer camps, church camps, school camps, sports camps, day camps, scout camps and similar camps, are the consumers (i.e., end users) of all tangible personal property used in their operations, and thus owe sales and use tax on the purchase of such property.

12. How does sales and use tax apply to charges to participate in a half-marathon, marathon, “fun run”, walk or any other similar race?

Example: Charity L hosts a 5k fun run. Participants register in advance or in person on the day of the event. Participants pay \$30 to participate in the run and receive a shirt and run number.

Charity L should not collect and remit sales tax on the \$30 charge to participate in the fun run as charges to participate in non-motorized road races are not charges for participation in games or amusement activities. Charity L owes tax on its purchase price of the shirts and run numbers.

13. How does sales and use tax apply to charity golf tournaments?

Example: Charity M holds a golf tournament as a fundraiser. A round of golf at this golf club normally costs \$145 including tax. The golf club only charges Charity M \$75 for each player. Charity M provides the golf club with an ST-5 form because Charity M is buying for resale. Charity M charges the golfer \$145 (which includes sales tax) to participate in the tournament. The golfer also receives a gift bag with various items from Charity M. The golfer’s payment to participate is not a donation to Charity M because the value of a round of golf at the golf club is \$145 including sales tax. Charity M must collect and remit the sales tax portion of each golfer’s payment to Charity M to participate in the round of golf.

Charity M also offers Mulligan packages to the golfers that include several “do-over” options and charges \$30 for the package. The \$30 “paid” by a golfer to Charity M for the Mulligan package constitutes a tax-deductible donation for federal income tax purposes. Thus, Charity M, should not charge sales tax on the Mulligan package charge.

The gift bag constitutes gifts provided to the golfer by Charity M, and Charity M owes sales and use tax on the gift bag items.

If Charity M gives 4 rounds of golf to its Gold Sponsor as part of its sponsorship package, Charity M should provide the Gold Sponsor with a receipt noting: 1) how much of the sponsorship charge is a tax-deductible donation, 2) goods and services valued at the fair market value (\$580 in this case because there are 4 rounds of golf at \$145 each) of the rounds of golf were provided to the sponsor, and 3) that the \$580 fair market value of the four rounds of golf includes sales tax.

**For more information, please contact the Department at 1-877-423-6711
from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, excluding holidays.
For forms and other information, visit the Department's website at
dor.georgia.gov.**