



Legal Minute

Summer 2007

T-Shirt Sales – Go Directly to Jail (and Other Consequences of Selling Things): What Nonprofits Need to Know about Texas Sales Tax Collection

Lots of nonprofits sell items like t-shirts, food, and publications. Just because a nonprofit organization has applied to the Texas Comptroller of Public Accounts (“the Comptroller”) and received a letter of exemption from **paying** sales and use tax when it buys, leases, or rents taxable items that are necessary to the organization’s exempt function DOES NOT mean that the nonprofit organization is exempt from **collecting** taxes on its sales. In Texas, taxable items include tangible personal property and taxable services (a complete list is available at http://window.state.tx.us/taxinfo/taxpubs/tx96_259.html). Therefore, all sales of these items are taxable unless a specific exemption applies.

What are the specific exemptions?

Meals and Food Products - Nonprofit organizations devoted exclusively to education or to physical or religious training and groups associated with a private or public elementary and secondary schools are not required to collect sales tax on meals and food products (including candy and soft drinks). However, ALL OTHER NONPROFITS must collect tax on food packaged for immediate consumption (see below).

Annual Banquets and Suppers - All nonprofit organizations can hold one tax-free banquet or other food sale per calendar year if all the food is prepared, served and sold by members of the organization and the event is not professionally catered, is not held in a restaurant, hotel or similar place of business, and does not directly compete with a retailer required to collect tax.

Auctions, Rummage Sales and Other Fund Raisers - Most tax-exempt organizations can hold two, one day, tax-free auctions each calendar year. Limitations exist for items sold for more than \$5,000.

Senior Citizen Groups - Nonprofit groups composed of persons aged 65 years and older can hold up to four, tax-free sales per year if the items sold are made by the senior citizens and the four sales do not last for more than a total of 20 days.

Amusement Services - Most nonprofit organizations are not required to collect sales tax when they provide amusements (e.g. live or recorded performances, exhibitions or displays, spectator or participatory sports or games).

Membership Dues and Fees - Most nonprofit groups’ membership dues and fees are tax-exempt, but this exemption does not apply to nonprofit country clubs and similar organizations that provide amusement services.

Publications - Most 501(c)(3) organizations are not required to collect sales tax on periodicals and writings if the organizations both publish and distribute these materials. However, this exemption does not extend to educational organizations.

Do I need to collect sales tax on a cupcake?

Generally, food is taxable in Texas if sold or packaged for **immediate consumption**. Therefore, nonprofit organizations must collect sales tax on the following food products - ice, candy, and bottled water and soft drinks; food prepared for consumption on site; food prepackaged and sold “to go”; food sold in a heated state; unheated food if facilities for heating are provided; food sold with eating utensils provided; food sold at a concession stand; and two or more food ingredients mixed or combined for sale as a single item, unless the only action taken was to cut, repackage, or pasteurize the product.

Fresh fruits, vegetables, cereal, milk, meat products, eggs, and bakery items are NOT taxable unless the vendor prepares them for immediate consumption. For example, the sale of a melon is not taxable, but the sale of sliced melon, is taxable. Similarly, the sale of chocolate, eggs, flour, milk and sugar as individual items are not subject to sales tax, but the sale of a cupcake prepared by the vendor is subject to sales tax.

Sales of alcoholic beverages are always taxable (even during exempt events), and the organization must obtain the appropriate permits to conduct these sales.

What are a nonprofit's responsibilities when collecting sales tax?

Obtain Permit - Before collecting sales tax, a vendor must obtain a sales and use tax permit from the Comptroller for each place of business where it sells goods. An application can be completed online at www.window.state.tx.us/taxpermit/ or downloaded at www.window.state.tx.us/taxinfo/taxforms/ap-201.pdf. There is no fee for a permit, but the Comptroller may require the vendor to post a security bond based on anticipated sales.

Collect the Correct Amount of Tax - The state sales tax rate is 6.25%. However, local taxes may also apply. For information about tax rates for specific locations see www.window.state.tx.us/taxinfo/local/.

Keep Accurate Records - A vendor is required to keep sales and use tax records for at least four years. The records must include total gross receipts, total purchases of taxable items, and adequate information to substantiate deductions and exclusions. These records are subject to review and audit by the Comptroller. Therefore, suggested best practices are to write and keep copies of receipts for each sale.

File Returns - When a vendor obtains its permit, the Comptroller will instruct the nonprofit to file a sales and use tax return on a monthly, quarterly or yearly basis. Returns are due on the 20th day of the month following the end of the reporting period, and the nonprofit must file a return, even if it collects no sales taxes during the reporting period. Sales and use tax returns and instructions are available at www.window.state.tx.us/taxinfo/taxforms/01-forms.html.

Submit Collected Taxes - The nonprofit can pay these taxes by check or money order payable to the Texas Comptroller of Public Accounts through the mail or at any enforcement field office (a list of field offices is available at www.window.state.tx.us/taxinfo/fieldoff.html), by electronic funds transfer, or via WebFile using a credit card or bank draft.

Can't I just call payment for a t-shirt a donation to avoid all the responsibilities listed above?

NO. Do not record sales as charitable donations because the penalties for noncompliance are substantial.

Selling taxable items without a permit is a criminal offense, and each day of operation is a separate offense. A first offense is a Class C misdemeanor, but maximum penalties after a third conviction can include a fine of up to \$4,000 and jail for a term of up to a year.

If a nonprofit fails to keep accurate records or to submit the collected taxes, the Comptroller may take actions that include, but are not limited to, estimating the tax liability based on any available information; using a sample and projection auditing method to calculate the tax liability; suspending the sale and use tax permit; filing criminal charges against a person who intentionally and knowingly alters or fails to keep records (an offense is a felony of the third degree); and taking other action as authorized by law to enforce compliance with the Tax Code. A nonprofit may correct an error in a return by amending the return, noting the changes with corrections on a copy of the original labeled "amended return" or by submitting the appropriate form.

The Comptroller rarely grants extensions to file returns unless a natural disaster has been declared by the Texas Governor or President of the United States. The Comptroller assesses interest and penalty charges for late returns and/or tax payments. Failure to file or pay may also result in collection actions, including, but not limited to, additional late filing penalties, liens, property seizure, and criminal charges.

Who can I contact with further questions?

A wealth of information is available on the Texas Comptroller of Public Accounts website at www.window.state.tx.us/taxinfo/sales/. You can also submit questions via email to tax.help@cpa.state.tx.us or call 1-800-252-5555. The physical address of the Comptroller's office is 111 E. 17th Street, Austin, TX 78744-0100.