



STATE OF ARKANSAS
**Department of Finance
and Administration**

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July 22, 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Gross Receipts Tax - Charitable Thrift Store Exemption
Determination Opinion No. 20160703

Dear [REDACTED],

This letter is in reference to your request of July 14, 2016 for a legal opinion from the Department. It is my understanding that you are the Executive Director of the non-profit organization, [REDACTED]. [REDACTED] (“Thrift Store”) is a wholly owned subsidiary of [REDACTED]. According to your letter, [REDACTED] “...serves as a collection point for donations that are then distributed to clients of [REDACTED] and are sold in the in resale store.” The store also “provides a site for job training activity” and also acts as “a source of revenue for [REDACTED] through the sale of donated merchandise.”

Your letter explains that [REDACTED]’s mission involves providing services to the homeless or near homeless in order to empower them to “succeed in the workforce, in school and in life through hard work, wise decision-making and active participation in the community.” These services include early childhood development programs, housing programs, youth programs, job training, and adult education. [REDACTED] is registered with the Arkansas Secretary of State as a domestic non-profit corporation.

Question: Whether sales made at [REDACTED] [REDACTED] are exempt from gross receipts tax?

Response:

Arkansas gross receipts tax (sales tax) is applicable to the sale of all tangible personal property unless the sale is specifically exempted from the tax. Ark. Code Ann. § 26-52-301(1)(Repl. 2014). “The gross receipts or gross proceeds derived from the sale of tangible personal property or service by charitable organizations, except when the organizations may be engaged in business for profit” are specifically exempted from gross receipts tax. Ark. Code Ann. § 26-52-401(2) (Repl. 2014). However, the sales tax exemption for sales by a charitable organization does not extend to sales of new tangible personal property by the

organization if the sale competes with sales by for-profit businesses pursuant to Ark. Code Ann. § 26-52-430(a)(Repl. 2014).

Sales by a charitable organization are considered not to compete with a sale by a for-profit business if:

- (1) The sales transaction is conducted by members of the charitable organization and not by any franchisee or licensee;
- (2) All the proceeds derived from the transaction go to the charitable organization;
- (3) The transaction is not a continuing one and is held not more than three times a year; and
- (4) The dominant motive of the majority of purchasers of the items sold is the making of a charitable contribution, with the purchase of the item being merely incidental and secondary to the dominant purpose of making a gift to the charity.

Ark. Code Ann. §26-52-430(a)(Repl. 2014).

Registration as an Arkansas nonprofit corporation with the Arkansas Secretary of State's office does not in and of itself qualify a taxpayer as a charitable organization for Arkansas gross receipts tax purposes. Rather, a taxpayer must first meet the definition of "charitable organization" as provided in Arkansas Gross Receipts Tax Rule GR-37(E)(6), which states:

"Charitable organization" means an organization whose purpose is benevolent, philanthropic, patriotic or eleemosynary and whose function if performed, and not performed by a private party, would have to be performed at public expense.

Because the purpose of your organization is to assist the homeless and near homeless with educational, vocational and housing services, [REDACTED] (and, by extension, the Thrift Store) qualifies as a charitable organization for Arkansas gross receipts tax purposes. As described in your letter, the Thrift Store will serve as a collection point for donated items that are then distributed to clients or sold for resale. Therefore, the exemption for charitable sales applies to the sale of used tangible personal property donated by third parties and then sold in the Thrift Store. Because the items have been donated, the items will qualify for the definition of "used" personal property under Ark. Code Ann. §26-52-430(a)(Repl. 2014).

Please note that only sales of used items donated to the Thrift Store would be exempt from the collection of sales tax. Should the Thrift Store purchase or receive by donation new items for resale in the store, these items would **not** qualify under the rules set out above and would require the collection of sales tax. Additionally, any items purchased by the Thrift Store for operational purposes (e.g., receipt paper, pens, etc.) would not be exempt from sales tax at the time of purchase.

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion.

Sincerely,

Lauren Ballard
Revenue Legal Counsel