



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

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April 23, 2019

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

RE: Sales Tax Exemption for [REDACTED]  
Opinion 20180216

Dear [REDACTED]:

Your email to the Department of Finance and Administration (“DFA”), Revenue Legal Counsel, requesting sales tax exemption information has been referred to me for a response. Specifically, you requested an exemption on purchases made by [REDACTED] (“[REDACTED]”) as a charitable organization. In your inquiry, you stated that [REDACTED] has been a 501(c)(3) charitable organization since inception. The organization functioned under a different name in the 80’s and did have a sales tax exemption at that time. After a few reorganizations and name changes, it has been unclear whether [REDACTED] would still be qualified for a sales tax exemption.

During our follow up conversations, you provided supplemental information, specifically advising me that most of your purchases are supplies and equipment, but you do have a rare occasion to purchase and sell some promotional items as fundraiser items and two fundraising events are held each year which include an auction of donated items.

**RESPONSE**

As explained more fully below, the facts you have provided demonstrate that [REDACTED] is not a “charitable organization” as defined by Arkansas Gross Receipts Tax Rule GR-37(E)(6) and, thus, is not qualified to make purchases or sales that are exempt from sales tax.

**I. DOES [REDACTED] QUALIFY FOR A SALES TAX EXEMPTION ON PURCHASES?**

The Arkansas Gross Receipts tax, commonly referred to as “sales tax”, generally applies to all sales of tangible personal property, specified digital products, digital codes, and certain enumerated services, unless otherwise exempted. *See* Ark. Code Ann. § 26-52-301 (Supp. 2017). Under Ark. Code Ann. § 26-52-401 (Supp. 2017) and Arkansas Gross Receipts Tax

Rule GR-31<sup>1</sup>, certain specified organizations and groups are exempt from sales tax on their purchases of tangible personal property or services. Examples of those specifically exempt organizations include Boy Scouts, Girl Scouts, Boys Clubs, Girls Club, Poets’ Roundtable,

and a number of other organizations. [REDACTED] is not one of the organizations specifically listed in the statute as exempt from gross receipts tax on purchases of all tangible personal property or services.

Another sales tax exemption is provided in Ark. Code Ann. § 26-52-401(2) (Supp. 2017) and Arkansas Gross Receipts Tax Rule GR-39. This exemption provides that sales of tangible personal property and services by (as opposed to sales made to) charitable organizations are exempt from tax under enumerated circumstances. *See also* Gross Receipts Tax Rule GR-39(A). However, as a general rule, purchases by (or sales made to) charitable organizations are not exempt from sales tax unless the items purchased are for resale. *See* Gross Receipts Tax Rule GR-39(B). In order to claim the sale for resale exemption, a charitable organization must have either a resale certificate or a letter opinion issued by DFA verifying that the organization is a “charitable organization” and that it intends to resell the items purchased. Gross Receipts Tax Rule GR-39(B). The supplies and equipment purchased by [REDACTED] are not purchased for resale, so will not qualify for a sales tax exemption even if [REDACTED] is determined to be a charitable organization. If [REDACTED] is a charitable organization, items purchased for resale, such as fundraiser items, could fall under the sale for resale exemption.

## II. IS [REDACTED] A “CHARITABLE ORGANIZATION”?

As a threshold issue, it must be determined whether [REDACTED] qualifies as a “charitable organization”. A charitable organization is defined as “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.” Gross Receipts Tax Rule GR-37(E)(6). While [REDACTED] may be a 501(c)(3) non-profit organization for federal income tax purposes, that does not, by itself, qualify it as a charitable organization for Arkansas sales and use tax purposes. Rather, it must first meet the definition of “charitable organization” as provided in Gross Receipts Tax Rule GR-37(E)(6), *supra*.

The common theme of the terms benevolent, philanthropic, and eleemosynary is providing humanitarian relief or assistance to individuals in need. Examples of such assistance would include providing the necessities of life such as food, clothing, shelter, and medical care to needy individuals. Similarly, an example of a charitable patriotic organization would be an entity that provided aid to wounded or needy veterans. [REDACTED] website lists various services it provides, including: professional cancer support, transportation service, financial assistance, emotional support, free cancer screenings, and cancer prevention education. Based on this information, it appears that [REDACTED] purposes are benevolent, philanthropic, and eleemosynary in nature.

To qualify as a charitable organization, however, an organization must also perform a function that, if not performed by a private party, would have to be performed at public expense. Although [REDACTED] raises funds for programs that benefit the community, it does not appear that the functions of [REDACTED], if not performed by a private party, would have to be performed at public expense. [REDACTED], therefore, does not fall within the scope of a charitable organization as that term is defined in Gross Receipts Tax Rule GR-37(E)(6) and does not qualify for the sales tax exemption. Because [REDACTED] is not a “charitable organization” as defined by Gross

Receipts Tax Rule GR-37(E)(6), that ends the inquiry.

## CONCLUSION

Accordingly, █████ is not a “charitable organization” as defined by Gross Receipts Tax Rule GR-37(E)(6) and, thus, is not qualified to make purchases or sales that are exempt from sales tax.

This opinion is based upon my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any change in the facts or law could result in a different opinion. Please be advised that this opinion may only be binding upon DFA for three (3) years from the date of issuance. *See* Gross Receipts Tax Rule GR-75.

The Gross Receipts Rules cited in this opinion may be viewed on DFA’s website at [http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008\\_3.pdf](http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf).

Sincerely,

Nina Samuel Carter  
Office of Revenue Legal Counsel

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<sup>1</sup> The Arkansas Gross Receipts Tax Rules are available online at [http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008\\_3.pdf](http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf).