



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

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February 3, 2020

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

RE: Sales Tax Exemption
Opinion No. 20190613

Dear [REDACTED]

Your request for a legal opinion has been referred to me for response. You have inquired about the applicability of sales tax to your organization. You stated via email:

I was instructed by the Sales Tax Auditor's Office to ask for a legal opinion regarding the possibility of our organization being exempt from sales tax.

We are the [REDACTED] (Domestic Nonprofit Corporation, Entity# [REDACTED]) - Determination letter from IRS attached. We only recently became incorporated and obtained 501(c)3 status, but [REDACTED] has been providing services for 25+ years.

The State of Arkansas requires that all certified Juvenile Officers (around 270ish of us) complete at least 12 hours of continuing education in our field per year. In exchange for the 12 hours, the State of Arkansas reimburses our counties half of our salaries, up to \$15,000.00 per officer. We are actually county employees, serving at the leisure of Circuit Judges, that are partially paid for by the State of Arkansas (confusing.)

[REDACTED] provides 30 hours of training per year. 12 hours in the Spring, 12 in summer and 6 in November. Many of our speakers are free, some we pay for, some we reimburse meals/ hotels. We pay for our venues, materials, and all things associated with the training. Our annual dues and conference registration fees are nominal to the officers and their counties (\$20 per year dues & \$35 per conference). We have some vendors that help us make up the difference so we can continue to provide training sessions. NO ONE on our board and NO juvenile officer is paid for anything for any reason. (With the exception of one outstanding officer per year that is selected as an award recipient and half of their award goes to the non-profit of their choice).

I regularly see conferences that have excessive fees associated (hundreds of dollars) that the counties would be burdened with if our organization did not provide these trainings. As an example, [REDACTED] has approximately 15 officers. Their entire office can and have received 12 hours of training for only \$825 per year for the dues and conference itself.

With any excess money, we provide scholarships for the youth that have come through our juvenile system. We provide 8 juvenile scholarships (\$500 each) per year. We also provide 2 Juvenile Officer scholarships (\$500 each) to continue their education or complete a degree.

With this information, I hope to hear from you soon regarding a legal opinion.

I called and spoke with you on November 7, 2019 regarding the annual training requirement. In response, you sent me the link to the Arkansas Circuit Courts Juvenile Division Judges' Benchbook published by the Administrative Office of the Courts. The Office of Revenue Counsel has interpreted your question to ask whether [REDACTED] is exempt from payment or collection of sales and use tax.

RESPONSE

As a general rule, sales of tangible personal property and certain enumerated services are subject to gross receipts (sales) and compensating use (use) tax in Arkansas. Ark. Code Ann. § 26-52-301 (Supp. 2019). The exception to this general rule is where an entity-based or use-based exemption applies. Certain organizations enjoy an entity-based exemption when they purchase taxable goods or services. A list of these organizations is identified in Arkansas Gross Receipts Tax Rule GR-31. [REDACTED] is not mentioned in the Rule and, therefore, is not exempt from paying sales tax on the *purchase* of taxable goods or services.

Arkansas Code Annotated § 26-52-401 (Supp. 2019) codifies certain use-based exemptions from the collection of sales and use tax. While most exemptions in § 401 are inapplicable to the situation that you have described, sales by a charitable organization are exempt in certain circumstances. Ark. Code Ann. § 26-52-401 (Supp. 2019).

The gross receipts or gross proceeds derived from the sale of tangible personal property or services by charitable organizations are exempt from tax, except when the organization may be engaged in business for profit. Ark. Code Ann. § 26-52-401(2) (Supp. 2019). "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." Arkansas Gross Receipts Tax Rule GR-37(E)(6).

[REDACTED] is a tax-exempt entity for federal income tax purposes pursuant to section 501(c)(3) of the Internal Revenue Code. Determination by the federal government that an entity is non-profit or qualifies for income tax exemption under section 501(c)(3) does not automatically qualify the organization as a charitable organization for Arkansas sales tax purposes, but it does create a presumption that it is not operated for profit. Arkansas Gross Receipts Tax Rule GR-39(D)(2). Nothing in your request for a legal opinion rebuts that presumption.

Even as a non-profit entity, ██████ must perform a function that, in the absence of ██████ or some other private entity, would *have to be performed* at public expense or it cannot qualify as a charitable organization. Arkansas Gross Receipts Tax Rule GR-37(E)(6).

Each juvenile division of circuit court is required to have at least one juvenile intake officer and one juvenile probation officer. Ark. Code Ann. § 16-13-327(a) (Repl. 2010); Ark. Code Ann. § 16-13-328(a) (Repl. 2010). Currently, each of those officers must complete 12 hours of continuing education each year. Ark. Code Ann. § 16-13-327(c)(1) (Repl. 2010); Ark. Code Ann. § 16-13-328(c)(1) (Repl. 2010); Administrative Office of the Courts, Arkansas Circuit Courts Judges' Benchbook Juvenile Division at 4 (2014) (describing continuing education requirement for certification). If this requirement persists, and no private party is providing continuing education events, then either local or state government would have to hold continuing education events to comply with the statutory juvenile officer requirements.

The purpose served by ██████ is benevolent, philanthropic, patriotic, or eleemosynary. It provides low-cost training to officers who interact directly with troubled children and is not operated for profit. Any money remaining after training events is distributed in the form of scholarships to juveniles and officers. Because ██████ meets the regulatory definition of charitable organization and is not operated for profit, it is exempt from collecting sales and use tax pursuant to Arkansas Code Annotated § 26-52-401(2).¹

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. Only the requestor may rely on this opinion, and, pursuant to Arkansas Gross Receipts Tax Rule GR-75(B), this opinion will only be binding on the Department for three (3) years from the date of issuance.

A copy of the Arkansas Gross Receipts Tax Rules referenced in this letter is available online at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

Sincerely,

Keith K. Linder,

Attorney

¹This exemption does not apply where an organization is competing with for-profit organizations in the sale of new tangible personal property. You have not indicated that ██████ sells new tangible personal property, but where it does so in competition with for-profit organizations, sales tax would need to be collected and remitted to the state. For guidance on when ██████ may be competing with for-profit organizations, see Arkansas Gross Receipts Tax Rule GR-39.