



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

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September 10, 2019

[REDACTED]
[REDACTED]
[REDACTED]

RE: Sales by a Humane Society – GR-31
Opinion No. 20190720

Dear [REDACTED]:

Your request for a legal opinion on behalf of the [REDACTED] has been referred to me for response. Your email dated July 16, 2019 provides:

My name is [REDACTED] and I am the new executive director of the [REDACTED] (501c3). I was referred to you by the Sales and Use Tax Office for clarification on whether we should be charging sales tax or not.

Here's the scenario . . . we have a thrift store that sells donated goods and we have a spay/neuter & wellness clinic that sells products like heartworm prevention. The proceeds go back into the organization benefitting both our spay/neuter & sick/injured pet funds. Should we be charging sales tax on the goods that we sell? The previous executive director said she had this clarified through the state at the beginning of time and that we were not required to charge sales tax. I just wanted to clarify that we are doing everything right.

[REDACTED] is a non-profit corporation located in [REDACTED] that has applied for and received exempt status pursuant to Internal Revenue Code § 501(c)(3). [REDACTED] has a spay/neuter & wellness clinic that sells products such as heartworm prevention. [REDACTED] also has a thrift store that sells donated goods. The proceeds from [REDACTED] sales go back into the organization and benefits both the spay/neuter and sick/injured pet funds.

[REDACTED] website at [REDACTED] reflects the following:

The [REDACTED] is an all-volunteer, 501c3 nonprofit animal advocacy and rescue organization. We are funded exclusively by local donations, fundraisers, and grants. [REDACTED] primary purpose is to supply the staff with volunteers and additional funds to help offer low cost spay/neuter surgeries to the public. Our mission is to help pet owners and their animals through spay/neuter assistance programs, affordable vaccination clinics, pet food donations, and financial aid for sick and injured animals.

You have asked whether the products sold through [REDACTED] wellness clinic or donated goods sold through [REDACTED] thrift store qualify for exemption under the sales tax rules.

RESPONSE

No. [REDACTED] does not qualify as a humane society for purposes of claiming the sales and use tax exemption under Ark. Code Ann. § 26-52-414 (Repl. 2014).

a. *Humane Societies*

Arkansas Gross Receipts Tax Rule GR-31(B)(14), which is derived from Ark. Code Ann. § 26-52-414 (Repl. 2014), provides an exemption from sales tax to “Humane Societies not operated for a profit and organized under Ark. Code Ann. § 20-19-101 *et seq.* (Repl. 2018) for the prevention of cruelty to animals.”

Arkansas Code Annotated § 26-52-414 (Repl. 2014) provides that all sales to humane societies which are not operated for profit and which are organized under the provisions of Ark. Code Ann. § 20-19-101 (Repl. 2014), for the prevention of cruelty to animals, are exempt from Arkansas sales and use tax. In order to qualify for the exemption, an organization must demonstrate that it is a “humane society” that is: (1) not operated for profit and (2) that is organized under the provisions of Ark. Code Ann. § 20-19-101 (Repl. 2014), for the prevention of cruelty to animals. The provisions of Ark. Code Ann. § 20-19-101 (Repl. 2014), provide:

- (a) The General Assembly finds and declares that humane societies for the prevention of cruelty to animals organized under the laws of this state now or hereafter in effect are public organizations necessary to protect the health, safety, and general welfare of the citizenry of this state and are discharging a government function.
- (b) The General Assembly finds and declares that the appropriation of public funds for the use of humane societies in the **maintenance and operation of shelters** for stray, diseased, neglected, and other animals and in the protection of the public from disease among such animals is a public use of the funds in the discharge of a government function.

Arkansas Code Annotated § 20-19-101 (Repl. 2014) does not define the term “humane societies,” nor is the term defined elsewhere in the law. In the absence of a statutory definition or other guide to interpretation in the law itself, words are given their ordinary and usually accepted meaning in common language. *See e.g., Weiss v. McFadden*, 353 Ark. 868, 120 S.W.3d 545 (2003). Webster’s New Collegiate Dictionary defines the term “humane” to mean “marked by compassion, sympathy, or consideration for other human beings or animals.” The term “society” is defined as “a voluntary association of individuals for common ends; esp: an organized group working together or periodically meeting because of common interests, beliefs, or profession.”

The language of Ark. Code Ann. § 20-19-101(Repl. 2014) indicates that the law was created to appropriate funds for the benefit of shelters that house stray, diseased, and neglected animals to prevent cruelty to animals and to protect the public from disease.

Although some of the objectives of ██████ may be similar to those of a “humane society” as envisioned under Ark. Code Ann. § 20-19-101(Repl. 2014), the primary focus of your organization appears to concentrate on helping pet owners and their animals by offering a program that feeds, spays/neuters, and provides certain affordable medical services to the public, rather than operating primarily as a shelter. Therefore, even assuming that the first requirement--that the organization not be operated for profit--is satisfied, the second requirement--that the organization be a humane society organized under the provisions of Ark. Code Ann. § 20-19-101(Repl. 2014) for the prevention of cruelty to animals--is not satisfied. Accordingly, HSFC does not qualify as a “humane society” for purposes of claiming the sales and use tax exemption provided in Ark. Code Ann. § 26-52-414 (Repl. 2014).

b. *Charitable Organizations*

Sales made by a charitable organization of tangible personal property or services are specifically exempt from the Gross Receipts Tax under enumerated circumstances. Ark. Code Ann. § 26-52-401(2) (Supp. 2017); *see also* Arkansas Gross Receipts Tax Rule GR-39(A). The determination of whether a particular sales transaction is eligible for the exemption requires a multi-step analysis.

The first step in the analysis is to determine whether the organization is a “charitable organization” within the meaning of the statute. To qualify as a charitable organization under Arkansas law, an organization must be a charitable, non-profit organization that does not compete with for-profit businesses. ██████ qualifies as a non-profit organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. As a 501(c)(3) corporation, the organization is presumed to be a non-profit organization within the meaning of the Arkansas Gross Receipts Tax Rules. Arkansas Gross Receipts Tax Rule GR-39(D)(2). However, an organization’s status as a non-profit entity or as a section 501(c)(3) organization does not automatically qualify the organization as a charitable organization for Arkansas sales tax purposes.

Arkansas Gross Receipts Tax Rule GR-37(E)(6) defines “charitable organization” 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.” Although ██████ mission to “help pet owners and their animals by providing assistance programs and financial aid to sick and injured animals,” could be said to be benevolent, philanthropic, patriotic, or eleemosynary, it cannot be said that these are the functions that, if not performed by ██████, would have to be performed at the public’s expense. Accordingly, ██████ is not a charitable organization as that term is defined in Arkansas Gross Receipts Tax Rule GR-37(E)(6).

This opinion is based on my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any changes 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 only will 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,

Lisa Ables, Attorney
Revenue Legal Counsel