



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

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February 3, 2020

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

RE: Sales Tax – Charitable Organization
Opinion No. 20190928

Dear [REDACTED]

I am writing in response to your September 5, 2019 request for a legal opinion concerning whether the [REDACTED] is exempt from sales tax as a charitable organization:

You will find enclosed a form concerning Sales Tax Exemption. We made several calls trying to make sure we had the correct form but are not sure we do.

We are a 501 c.(3) organization, organized 1896 in [REDACTED], Arkansas. National Headquarters are located in [REDACTED]

We were Incorporated [REDACTED] under the laws of the State of Arkansas. I have enclosed a page from our yearly min. book with this information and some History of the organization, a long with some of the charitable work we do.

What we are trying to do is get a certificate stating we are exempt from paying State Sales Tax. We are already exempt from Federal Tax our Federal EIN# is [REDACTED].

We hold a convention each year to take care of our business and plan our projects for the coming year. This year it will be held Sept 26-28 in [REDACTED] [REDACTED], as you are well [aware] this is not cheap and being exempt from sales tax would give us more money toward our projects such as Historical Preservation , Veterans Projects and Children Hospital ,which our founder [REDACTED] was instrumental founding and her picture hangs in the lobby, just to name a few things we do..

If this is not the correct form please advise.

The Office of Revenue Legal Counsel has interpreted your question to ask whether the [REDACTED] is a charitable organization exempt from Arkansas sales tax.

RESPONSE

No. The Arkansas Division of the [REDACTED] is not exempt from sales tax because it does not meet the definition of a charitable organization under Arkansas Gross Receipts Tax Rule GR-37(E)(6). Specifically, the function of [REDACTED] is not one that would have to be performed at public expense if [REDACTED] was no longer performing that function.

Discussion

Arkansas Gross Receipts tax, more commonly known as sales tax, levies a tax on the gross proceeds or receipts resulting from the sale of tangible personal property and certain items and services outlined by statute. Ark. Code Ann. § 26-52-301 (Supp. 2019). Charitable organizations not engaged in business for profit are exempt from the collection of sales tax. Ark. Code Ann. § 26-52-401(2) (Supp. 2019). Therefore, your organization must meet the definition of charitable organization contained in Arkansas Gross Receipts Tax Rule GR-37(E)(6) and must not be engaged in business for profit to be exempt from the collection of Arkansas sales tax.

As a 501(c)(3) corporation exempt from federal income tax, [REDACTED] is presumed to be a non-profit organization. Arkansas Gross Receipts Tax Rule GR-39(D)(2). None of the limited information provided in your request for an opinion rebuts that presumption. If additional facts indicated [REDACTED] is engaged in business for profit, this portion of the analysis would change. However, [REDACTED] status as a non-profit entity or section 501(c)(3) organization is not alone sufficient to qualify the organization as a charitable organization for Arkansas sales tax purposes.

A charitable organization is one “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.” In your request for a legal opinion, you indicated that [REDACTED] has projects that include “Historical Preservation, Veterans Projects and Children Hospital.” The government is not obligated to engage in historical preservation. Public funds are only used on projects for veterans to the extent the government has obligated itself to provide those funds by law. In the absence of private parties, the government would have no obligation to engage in additional projects for veterans. Although public funds may be expended to provide medical care to children in some circumstances, nothing in your request for opinion indicates that [REDACTED] is fulfilling a government function in this area. Based on the information provided, [REDACTED] does not perform a function that, in the absence of [REDACTED] or some other private party, would have to be carried out at public expense.

While your organization supports numerous praiseworthy endeavors, [REDACTED] current function prevents it from meeting the definition of charitable organization necessary to qualify for the

exemption. Therefore, it is not necessary to consider whether its purpose is benevolent, philanthropic, patriotic, or eleemosynary. [REDACTED] is not entitled to an exemption from Arkansas 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. 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
Revenue Legal Counsel