



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

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December 6, 2019

[REDACTED]  
 [REDACTED]  
 [REDACTED]

RE: Tax Exempt Status of [REDACTED]  
 Opinion No. 20191101

Dear [REDACTED]:

Your request for a legal opinion has been referred to me for response. You requested a determination whether [REDACTED] is eligible for the exemption from Arkansas gross receipts tax as a charitable organization. Your email dated October 28, 2019 states:

*I am putting together a New Year's Eve fundraiser for the animal rescue that I work with. We are calling it [REDACTED], and it's a roaring 20's costume party fundraiser for [REDACTED].*

*I was working with Melissa at DFA on getting our event application taken care of, and in going through that, I realized that our director has never applied for our group to have tax exempt status. Our event on NYE is a ticketed event, and all proceeds of the tickets, auction, etc will be going to the rescue. I would like to apply for tax exempt status for our rescue, not only for this event, but for future endeavors for the homeless pets in Central AR. Can you help me on what steps I need to take to apply for this?*

Your request specifically seeks information concerning the taxability of ticket sales to your organization's New Year's Eve fundraising event, [REDACTED].

**RESPONSE**

As more fully explained below, [REDACTED] does not qualify as a charitable organization for purposes of Arkansas gross receipts tax and will be required to collect, report, and remit Arkansas gross receipts tax on its ticket sales to the [REDACTED] event.

[REDACTED] is a 501(c)(3) non-profit "foster-based rescue" organization whose stated purpose is to "improve the lives of animals in need by providing rescue, foster care, transportation, education, and adoption into loving homes." I will assume for purposes

of this opinion that the [REDACTED] event will provide paying attendees with the opportunity to enjoy music, consume prepared food and drinks, and may include the purchase of various items through auctions, and that all proceeds from the event will benefit your organization.

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. The exception to this general rule is where an entity-based or a 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 identified as a specifically exempt organization.

An exemption is also available for qualifying charitable organizations. Sales made by a charitable organization of tangible personal property or services are specifically exempt from the Gross Receipts Tax under certain enumerated circumstances. *See* 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.

Although [REDACTED] is a tax-exempt entity for federal income tax purposes pursuant to § 501(c)(3) of the Internal Revenue Code, it must be noted that an organization’s status as a non-profit entity or as a § 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 [REDACTED]’s mission could be said to be benevolent, philanthropic, patriotic, or eleemosynary, it cannot be said that these are the functions that, if not performed by [REDACTED], would have to be performed at the public’s expense. [REDACTED] is not a charitable organization as that term is defined in Arkansas Gross Receipts Tax Rule GR-37(E)(6). Accordingly, [REDACTED] must collect, remit, and report Arkansas gross receipts tax on its ticket sales to the [REDACTED] event.

In accordance with Arkansas Gross Receipts Tax Rule GR-75, 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. This opinion will not be binding upon the Department for any topic not specifically addressed herein. Please be advised that this opinion may only be binding upon the Department for three (3) years from the date of issuance.

Respectfully,

Lisa Ables, Attorney  
Revenue Legal Counsel

LA/md