



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

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December 18, 2020

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

*Via Email:* [REDACTED]

RE: Gross Receipts Tax – Non-Profit Organization Event Sales  
Opinion No. 20200124

Dear [REDACTED]

Your letter of January 21, 2020 requesting a legal opinion regarding the taxability of sales made at a non-profit organization event on behalf of the [REDACTED] (“Requestor”) has been assigned to me for response. Your request states in pertinent part:

[Requestor] is a non-profit organization that works in conjunction with the City of [REDACTED] to promote and add life to our downtown, thru leadership, partnership and initiative, sustaining and growing our vibrant urban core.

One of the many ways we do this is by producing a variety of different events in our downtown. At some of these events, we sell alcohol. This is an amenity attendees expect, and it provides our organization additional support to underwrite the cost of the events, as almost all of the events we host are free to attend. In recent years we have been paying the sales tax on these alcohol sales, as well as ticket and merchandise sales. If we did not have to pay these sales taxes, we would be able to invest these resources back into our community and mission. . . .

In addition to the events, we also manage the ambassador Program, which currently puts 4 individuals in uniforms on the street to help citizens with directions, to answer questions about downtown, to promote, safety and deter crime, and to report broken windows and street lights that are not working. The “Clean and Green” crew that we manage works to keep the streets of downtown clean and aesthetically appealing by operating a street sweeper, planting flowers and placing seasonal decorations primarily on [REDACTED].

It should also be noted that the Mayor, City Manager, CEO of the [REDACTED], [REDACTED], and a City Board member all serve on the [REDACTED]. We work very closely with them, and assist them on a variety of requests related to downtown. The City of [REDACTED] also pays

\$145,000 a year to the [REDACTED] to provide this extra level of service to Downtown that they do not have the current resources to provide.

[What] we would like to know is should we be required to pay these sales taxes, based on our mission and efforts?

In subsequent communications, you described six (6) events that Requestor put on in the year 2019 and at which sales took place:

1. [REDACTED]: These were free events held twice in 2019 with a single food truck vendor. Beer was sold by volunteers.
2. [REDACTED]: This is a yearly event free to the public. However, an admission fee is charged for dogs taking part in the parade. There were approximately twenty (20) vendors on the street selling various items. Requestor sold mixed drinks and beer through volunteers.
3. [REDACTED]: This is a yearly music event taking place on the lawn of the [REDACTED]. Requestor charges an admission fee for the event and there are food truck vendors selling food. Requestor sold mixed drinks and beer through volunteers.
4. [REDACTED]: This event was held once inside the old [REDACTED] and featured a video DJ, 80s era impersonators, vintage arcade games and a slot car racing track. Tickets were \$20 or \$40 for a VIP ticket that included food. Requestor sold beer and mixed drinks through volunteers and “temp” employees. Vendors sold food only.
5. [REDACTED] Food Truck Festival: This is a yearly free event where vendors sell crafts and food to the public. Requestor sold beer through volunteers.
6. [REDACTED]: This was a free event held at the [REDACTED] to promote Arkansas agriculture. The event featured music, food, and other family friendly events. Vendors sold food and merchandise. Requestor sold beer through volunteers.

In short, Requestor is asking the Department of Finance and Administration (“Department”) whether Requestor should be required to collect and remit Arkansas sales tax on the purchases of alcohol, merchandise, and tickets at the above events.

## **RESPONSE.**

Yes. As more fully explained below, although Requestor meets the definition of a charitable organization under the Arkansas Code, the sales at the described events are nonetheless subject to sales tax because they compete with sales by for-profit businesses under the test set forth in Ark. Code Ann. § 26-52-430(a) (Supp. 2019).

In general, all sales of tangible personal property and certain specifically enumerated services within the state are subject to Arkansas sales tax unless a specific exemption applies. Ark. Code Ann. § 26-52-301 (Supp. 2019). *See also* Gross Receipts Tax Rule GR-4(A). The Arkansas Code provides a sales tax exemption for sales of tangible personal property by charitable organizations, except when the organization may be engaged in business for profit. Ark. Code

Ann. § 26-52-401(2) (Supp. 2019); *see also* GR-39(A). The tax exemption does not apply, however, to sales of new tangible personal property by a charitable organization if the sales compete with sales by for-profit businesses. Ark. Code Ann. § 26-52-430(a) (Supp. 2019); *see also* GR-39(A). Therefore, the question of whether sales made by Requestor are subject to Arkansas sales tax depends on (1) whether the organization qualifies as a “charitable organization” as it is defined by the Arkansas Code and (2) whether their sales at the events compete with for-profit businesses.

### **1. Whether Requestor Meets the Definition of a “Charitable Organization”**

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.” Thus, in order to meet the criteria to be a “charitable organization,” the organization must meet both the purpose and the function tests.

As stated above, Requestor must first have a “benevolent, philanthropic, patriotic or eleemosynary” purpose. GR-37(E)(7). Here, Requestor’s stated purpose is “to promote and add life to [REDACTED] downtown, thru leadership, partnership and initiative, sustaining and growing our vibrant urban core.” The rules do not define with any specificity what constitutes a “benevolent, philanthropic, patriotic or eleemosynary” purpose as it is used in GR-37(E)(6). However, Webster’s dictionary defines “benevolent” as “marked by or disposed to doing good,” or “organized for the purpose of doing good.” As defined there, Requestor’s purpose is easily “benevolent” because they are organized for the purpose of doing good for downtown [REDACTED] [REDACTED] business and cultural community. Therefore, Requestor meets the purpose facet of the “charitable organization” test of GR-37(E)(6).

Next, Requestor must perform functions that “if performed, and not performed by a private party, would have to be performed at public expense.” GR-37(E)(6). As stated in your request for opinion, Requestor performs a variety of functions that would be performed at public expense if not for the organization. Requestor’s [REDACTED] places uniformed individuals throughout downtown to assist citizens, to promote safety and deter crime, and to report broken windows and streetlights that are not working. The [REDACTED] therefore performs safety functions that assist the police force in carrying out their duties to the public. If not for the functions of programs like the [REDACTED], these functions would have to be entirely carried out by the police at public expense.

Moreover, Requestor’s [REDACTED] crew functions to “keep the streets of downtown clean and aesthetically appealing by operating a street sweeper, planting flowers and placing seasonal decorations primarily on [REDACTED].” This function also helps city workers in keeping the downtown area clean and if not for Requestor, would have to be entirely performed at the public expense. The fact that the City of [REDACTED] pays Requestor to carry out these functions and that the Requestor works so closely with the City provides further evidence that Requestor performs functions that would otherwise be entirely funded by the public. If not for Requestor’s resources, the functions Requestor performs would have to be carried out by the City at even greater expense to the public. The contractual relationship with a public entity alone is not sufficient, but in the context of other activities and the specific and discrete contractual duties,

Requestor meets the standard of a charitable organization. Requestor thus meets the purpose and function test and is a “charitable organization” as it is defined by GR-37(E)(6).

## **2. Whether Sales by Requestor Compete with Sales by For-Profit Businesses**

Although Requestor meets the definition of a “charitable organization,” their sales of new tangible personal property at the events will nonetheless be subject to sales tax if they compete with sales made by for-profit businesses. *See* Ark. Code Ann. § 26-52-430(a); *see also* GR-39(A).

Arkansas Code Annotated § 26-52-430(b)(Supp. 2019) states that:

A sale by a charitable organization does not compete with a sale by a for-profit business if:

- (1) The sale transaction is conducted by a member of the charitable organization and not by a franchisee or licensee;
- (2) All the proceeds derived from the sales transaction go to the charitable organization; and
- (3) The sales transaction is not a continuing one and is held not more than three (3) times a year.

(Supp. 2019). *See also* GR-39(C).

In this case, Requestor’s sales at the events compete with sales made by for-profit businesses because the sales fail the last prong of the test set forth in Ark. Code Ann. § 26-52-430(b). The sales made by Requestor are conducted by Requestor’s volunteers and all the proceeds derived from those sales are used by Requestor to carry out their mission. However, the sales made at these events happen more than three (3) times per year. Although the events contain different themes and varied activities, each event is held as a fundraiser for Requestor and consist of public gatherings where merchandise, food, and alcohol are sold. The sales transactions at these events are continuing sales that are held more than three (3) times a year and, accordingly, the sales made by Requestor at the events compete with sales made by for-profit businesses and are not exempt from sales tax. *See* Ark. Code Ann. § 26-52-430(b); 26-52-401(2); *see also* Arkansas Gross Receipts Tax Rule GR-39.

Requestor explained that both volunteers and “temp” employees were used during some events. If the Requestor used any proceeds from the sales transactions at the events to compensate paid employees, the sales would likewise be disqualified from the exemption for failing to meet the requirement that all proceeds go to the charitable organization under § 26-52-430(b)(2)(Supp. 2019).

This opinion is based on my understanding of the facts as set out in your inquiry as those facts are governed by current Arkansas laws, rules and regulations. Any change in the facts or law could result in a different opinion. You may rely on this opinion for three years pursuant to Ark. Gross Receipts Tax Rules GR-75(B).

Regards,

Caroline Calvert  
Revenue Legal Counsel