



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

REVENUE LEGAL COUNSEL

P.O. Box 1272 – Room 2380
Little Rock, Arkansas 72203
Phone: (501) 682-7030
Fax: (501) 682-7599
www.arkansas.gov/dfa

December 22, 2020

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

RE: Sales Tax Exemption for Charitable Organizations
Opinion No. 20200803

Dear [REDACTED]:

This letter is in response to your request for a legal opinion on behalf of your client, [REDACTED], (the “Organization”), confirming that their sales are exempt from sales tax under Ark. Code Ann. § 26-52-401(2) (Supp. 2019) because the Organization’s sales do not compete with sales by for-profit businesses under Ark. Code Ann. § 26-52-430(a) (Supp. 2019).

Your letter states that the Organization is an Internal Revenue Code Section 501(c)(3) organization, and a foreign non-profit corporation. The letter goes on to state in relevant part:

The Organization is organized and operated exclusively for Christian religious purposes. The Organization was founded approximately 70 years ago to reach boys and girls with Bible centered youth programs. The Organization provides a proprietary Bible education program for churches that is designed for children as young as two years old and youth through the end of high school. The Organization licenses the program to churches, which conduct the day-to-day Bible instruction and other components of the program at their respective church locations....

The Organization sells curricula, game equipment, shirts, awards, and other supplies used to conduct the programs. The curricula consist of proprietary booklets that contain Bible verses, original material explaining the Bible lessons, and a system for memorizing weekly Bible verses. As part of the curricula, the Organization provides guides to assist leaders and others who teach or facilitate the programs and also DVDs, CDs, and downloadable videos and audio recordings created specifically for the program. In addition to Bible instruction, the program includes games that have been designed by the Organization. The Organization sells equipment and supplies needed to conduct the games....

All products sold by the Organization are for use in conducting the program. Most of the products are proprietary or created, designed, or customized specifically for the program. All sales are made directly by the Organization and not by franchisees

or licensees. Sales are made through the Organization's website and catalog and delivered via common carrier services or digital download. Nearly all of the products are sold exclusively by the Organization and are not available in stores or through any other sales channels or sources. Since most of the products sold by the Organization are proprietary or have been customized for the Organization, reasonable substitutes are not available from other sources.... The vast majority of sales are directly to churches, but occasional sales are made to individual consumers, usually for use in their church programs. Sales take place throughout the year, but the two primary selling seasons are in late summer/early fall for curricula, game equipment, and shirts and in the spring for awards. All proceeds from the sales go to the Organization.

RESPONSE

No. Sales by [REDACTED] are not exempt from the collection of sales tax. The Organization must collect sales tax because, as explained below, it is not a "charitable organization" as defined by Arkansas Gross Receipts Tax Rule GR-37(E)(6).

The "Arkansas Gross Receipts" tax, also referred to as the "Sales Tax," is generally applicable to the sale of tangible personal property and certain enumerated services. Ark. Code Ann. § 26-52-301 (Supp. 2019). The tax is computed based on the total value of consideration paid for the taxable property or service. *Id.*; *see also* Ark. Code Ann. § 26-52-103(19) (Supp. 2019). Sales made by a charitable organization are specifically exempt from the Gross Receipts Tax under enumerated circumstances. Ark. Code Ann. § 26-52-401(2) (Supp. 2019); *see also* Arkansas Gross Receipts Tax Rule GR-39(A).

As a threshold issue, it must be determined whether the Organization is a "charitable organization" for Arkansas sales tax purposes. To be considered a charitable organization under Arkansas law, an organization must be a charitable, non-profit organization that does not compete with for-profit businesses. You have stated that the Organization is a 501(c)(3) non-profit corporation. 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 § 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." The Organization's website states that "[REDACTED] is a world-wide nonprofit ministry focused on providing Bible-based evangelism and discipleship solutions for ages 2 – 18." While the Organization was founded to reach children with Bible centered youth programs, which can be said to be benevolent, philanthropic, patriotic, or eleemosynary, it cannot be said that this is a function that, if not performed by the Organization, would have to be performed at the public's expense. Although the Organization serves a commendable function, it does not meet the narrow regulatory definition of charitable organization for the purposes of the sales tax exemption. Accordingly, the Organization does not fall within the scope of a charitable organization as that

term is defined in Arkansas Gross Receipts Tax Rule GR-37(E)(6) and does not qualify for the exemption.

Because the Organization is not a “charitable organization” as defined by Arkansas Gross Receipts Tax Rule GR-37(E)(6), that ends the inquiry. It therefore is not necessary to address whether the Organization’s sale of curricula, game equipment, shirts, awards, and other supplies competes with for-profit business within the meaning of Ark. Code. Ann. § 26-52-430 (Supp. 2019).

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 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,

Leslie Fryxell, Attorney
Revenue Legal Counsel