



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

Nina Carter, Attorney at Law
nina.carter@dfa.arkansas.gov

October 21, 2022

Via Email: [REDACTED]

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

RE: Sales Tax Exemption – Charitable Organizations
Opinion 20220601

Dear [REDACTED]:

Your letter to the Department of Finance and Administration (“DFA”) requesting a legal opinion concerning an exemption from Arkansas sales tax for the [REDACTED] [REDACTED] (“Requestor”) has been referred to me for response. Your letter states:

Requestor is requesting that we be exempt from collecting and paying sales tax on the sales of hot food at festivals and other community events in and around [REDACTED] [REDACTED], Arkansas. We are a non-profit church affiliated group attempting to raise money for missions.

Requestor is associated with the [REDACTED] [REDACTED], Arkansas. Our club uses these food selling events to fund our missions work in our community. All the workers are volunteers. All the profits from these events are used for our mission work. All our patrons understand our profits are used for funding our mission work.

Our primary hot food sales are Hot Dogs with chips and a drink. We provide condiments such as homemade hot relish, mustard, and etc. We have on some rare occasions sold other items such as breakfast sandwiches. All of which is prepared on site.

Our mission work in the community is best known for building ramps into homes for individuals who need wheelchair or walker access to their home. We also support the [REDACTED] food programs for kids in the school. We also support youth programs in the community through monetary assistance. All the money we raise is used for mission projects outside our church.

Some of the community events include [REDACTED], Octoberfest, Fourth of July parade festivities, and Easter Egg hunt for area youth. Some of these events have other festival vendors some do not. We generally refrain from working a festival that have other food vendors because we prefer not to compete with “for profit” food vendors. We have also helped with youth events sponsored by the local police and fire departments by providing Hot Dogs for the kids and their parents at no cost to them.

Requestor pays sales tax on all food and supplies bought to be used and sold at these events. We do not want to pay sales tax twice, once for the product we buy and then again for the product we sell. We participate in a limited number of events per year and not enough events to justify getting a tax permit that would have monthly reporting requirements. In the event [REDACTED] we had sales of \$699. Our product cost was \$350 on which we paid \$33.25 in sales tax for the product and then we paid \$66.41 in sales tax on the total sales resulting in us having to pay \$33.15 in additional taxes. Since we only netted \$349 before taxes in this event, having to pay additional sales tax cuts into our profit we need to fund our projects.

Feel free to check out our church’s web site at [REDACTED] and click on the tab for Requestor for additional information. Also included are some pictures of what we do.

You have asked whether your organization qualifies for the sales tax exemption under Arkansas Gross Receipts Tax Rule GR-39.

RESPONSE

No. Your organization does not qualify as a “church” or a “charitable organization” as defined in Arkansas Gross Receipts Tax Rule GR-39.

The Arkansas Gross Receipts (“Sales”) Tax is generally applicable to the sale of all tangible personal property and certain enumerated services unless a specific exemption applies. *See* Ark. Code Ann. § 26-52-301 (Supp. 2021). Sales made by a church or charitable organization are specifically exempt from sales tax except where the organization is engaged in business for profit. *See* Ark. Code Ann. § 26-52-401(1) and (2) (Supp. 2021); *see also* Arkansas Gross Receipts Tax Rule GR-39(A). However, as a general rule, purchases by (or sales made to) churches or charitable organizations are not exempt from sales tax unless the items purchased are for resale. *See* Gross Receipts Tax Rule GR-39(B).

Based upon the information provided in your request, your organization is a “non-profit church affiliated group.” Your letter specifically states that you are “associated” with the [REDACTED], Arkansas, which means that you are not the same organization as the church but rather an auxiliary organization of the church. Because your organization is not a church, you do not qualify for the sales tax exemption as a “church.” Likewise,

as further explained below, you do not meet the requirements of a “charitable organization” as set forth under Gross Receipts Tax Rule GR-39.

The provisions of Ark. Code Ann. § 26-52-401(2) (Supp. 2021) provide that “sales of tangible personal property, specified digital products, a digital code, and services by charitable organizations are exempt from tax, except when the organization may be engaged in business for profit.” *See also* Gross Receipts Tax Rule GR-39(A). Additionally, sales of new tangible personal property, specified digital products, or a digital code made by charitable organizations which compete with sales made by for-profit businesses are not exempt. *See* Ark. Code Ann. § 26-52-430(a) (Supp. 2021).

A charitable organization is defined 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.” Gross Receipts Tax Rule GR-37(E)(6). While your organization may be a non-profit group, you did not state whether it is a 501(c)(3) non-profit organization for federal income tax purposes. 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. Rather, it must first meet the definition of a “charitable organization” as provided in Gross Receipts Tax Rule GR-37(E)(6), *supra*.

The common theme of the terms benevolent, philanthropic, and eleemosynary is providing humanitarian relief or assistance to individuals in need. Examples of such assistance would include providing the necessities of life such as food, clothing, shelter, and medical care to needy individuals. Similarly, an example of a charitable patriotic organization would be an entity that provided aid to wounded or needy veterans. To qualify as a charitable organization, however, an organization must also perform a function that, if not performed by a private party, would have to be performed at public expense.

Based on information contained on your request, your organization provides food distribution, monetary assistance to youth programs, and a wealth of community support. While you have a mission to meet the needs of the community, 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 you, would have to be performed at the public’s expense. Although your organization serves a commendable function, it does not meet the narrow regulatory definition of a charitable organization and does not qualify for the sales tax exemption.

Because your organization is not a “charitable organization” as defined by Gross Receipts Tax Rule GR-37(E)(6), that ends the inquiry. It therefore is not necessary to address whether your sales compete with for-profit businesses within the meaning of Ark. Code. Ann. § 26-52-430 (Supp. 2021).

CONCLUSION

Requestor does not fall within the scope of a church or a charitable organization and therefore does not qualify for the exemption. Accordingly, Requestor must collect and remit sales tax on all sales of tangible personal property or services made by it.

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. Please be advised that this opinion may only be binding upon DFA for three (3) years from the date of issuance. *See* Gross Receipts Tax Rule GR-75.

The Arkansas Tax Rules cited in this opinion may be viewed on DFA's website at http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/et2008_3.pdf.

Sincerely,

Nina Samuel Carter
Office of Revenue Legal Counsel