



## **SALES TAX LIABILITY OF NON-PROFIT CORPORATIONS**

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New Jersey Volunteer Lawyers for the Arts (“NJVLA”) provides legal services to various non-profit organizations in New Jersey’s arts community. This pamphlet provides information about a non-profit organization’s rights and responsibilities concerning New Jersey sales and use taxes.

New Jersey imposes a 7% sales tax on sales of tangible personal property, certain services, admission charges, and candy, soft-drinks, and prepared food.<sup>1</sup> The tax is collected by the seller from the customer and remitted to the state.<sup>2</sup> But an organization that is organized and operated exclusively for one or more exempt public purposes is

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<sup>1</sup> N.J.S.A. 54:32B-3, -8.2(a).

<sup>2</sup> N.J.S.A. 54:32B-12. If, for some reason, the seller does not collect sales tax, the purchaser is obligated to remit the amount of tax due directly to the state. N.J.S.A. 54:32B-6. This self-imposed and remitted tax is called “use tax.” For purposes of this pamphlet, we do not distinguish between sales tax and use tax, and refer to them collectively as “sales tax.”

exempt from sales tax on purchases (except energy) that are directly related to the organization's purposes.<sup>3</sup>

A non-profit organization is not automatically exempt from New Jersey sales tax;<sup>4</sup> rather, it must apply for exemption by filing a Form REG-1E with the New Jersey Division of Taxation.<sup>5</sup> Once approved, it will receive an "ST-5" Exempt Organization Certificate. To make purchases tax-free, the organization must make payment using organization funds and provide the seller with a copy of its ST-5 certificate.<sup>6</sup> Note that if the person making the purchase pays with personal funds, the exemption does not apply, even if the purchaser ultimately will be reimbursed by the organization.<sup>7</sup>

In addition to making purchases, many NJVLA clients engage in activities that involve selling goods or services in New Jersey. Certain sales made by exempt organizations are not subject to sales tax.<sup>8</sup> In general, an exempt organization is not required to collect sales tax if it makes only occasional fundraising sales, the sales events

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<sup>3</sup> N.J.S.A. 54:32B-9(b). The following are exempt purposes: religious, charitable, scientific, testing for public safety, literary, educational, prevention of cruelty to children or animals, volunteer fire, emergency, veterans, and PTA/PTO. Other types of organizations—such as social, fraternal, senior citizen, or recreational clubs; unions; or business, civic, or tenants' associations—do not qualify for exemption from sales and use tax. See Form REG-1E.

<sup>4</sup> N.J.A.C. 18:24-8.2

<sup>5</sup> N.J.A.C. 18:24-8.4.

<sup>6</sup> N.J.A.C. 18:24-10.2.

<sup>7</sup> Information about the ST-5 certificate and its use, as well as a link to Form REG-1E, can be found on the Division of Taxation's website at <http://www.state.nj.us/treasury/taxation/index.html?exemption.htm>.

<sup>8</sup> N.J.S.A. 54:32B-9(b).

are relatively short in duration, and all of the proceeds go to the exempt organization.<sup>9</sup>

An exempt organization that operates a store or continuous mail-order business is not exempt from collecting sales tax (except, as described below, for certain thrift stores).<sup>10</sup>

NJVLA's clients often engage in the following types of activities:

- Sales of tickets to an annual fundraiser and sales during an auction at that annual fundraiser.
- Sales of tickets to seasonal or year-round performances and sales of merchandise at those performances.
- Sales of various items at an organization's gift shop, which is open year-round.

The application of New Jersey's sales tax rules to these situations is discussed below.

**1. Is a non-profit organization that has been granted an exemption from New Jersey sales and use tax required to collect sales tax on its sales of tickets to its annual fundraiser? And is that organization required to collect sales tax on sales during an auction at that annual fundraiser?**

In New Jersey, admissions charges by a qualified exempt organization<sup>11</sup> are exempt as long as all of the proceeds exclusively benefit a qualified exempt organization or certain other enumerated organizations.<sup>12</sup> In addition, an exempt organization is not

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<sup>9</sup> N.J.A.C. 18:24-9.11.

<sup>10</sup> N.J.A.C. 18:24-9.11.

<sup>11</sup> For purposes of this pamphlet, we refer to a non-profit organization that has been granted exemption from New Jersey sales and use tax as a "qualified exempt organization" or an "exempt organization."

<sup>12</sup> N.J.S.A. 54:32B-9(f)(1). See also New Jersey Division of Taxation, Sales and Use Publication 11, at 3 (1998), available at <http://www.state.nj.us/treasury/taxation/pdf/pubs/sales/su11.pdf>.

required to collect sales tax on occasional fundraising sales, which are sales made through fundraising events as long as the fundraiser is of relatively short duration, is not held on a regular basis throughout the year, and all of the proceeds exclusively benefit the qualified exempt organization.<sup>13</sup>

Therefore, as long as these basic requirements are met, a qualified exempt organization is not required to collect New Jersey sales tax on its sales of tickets to its annual fundraiser or its sales during an auction at that annual fundraiser.

**2. Is a qualified exempt theatre company required to collect sales tax on its sales of tickets to its seasonal or year-round performances and sales of merchandise at those performances?**

As discussed above, admissions charges by a qualified exempt organization are exempt from sales tax as long as all of the proceeds exclusively benefit a qualified exempt organization or certain other enumerated organizations.

A qualified exempt organization could, however, be required to collect sales tax on its sales of merchandise if the company regularly puts on performances throughout the year and sells merchandise regularly at the performances. But if a qualified exempt organization puts on performances only occasionally—and therefore sells merchandise only occasionally—those sales of merchandise could, as discussed above, be exempt as occasional fundraising sales as long as all of the proceeds exclusively benefit the qualified exempt organization.

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<sup>13</sup> N.J.A.C. 18:24-9.11(d)2. See also New Jersey Division of Taxation, Technical Bulletin 46, at 1-2 (2002), available at <http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb46.pdf>.

The Division of Taxation has provided some informal guidance to illustrate whether an exempt organization's sales are "occasional" and thus exempt from sales tax.<sup>14</sup> For example, an exempt organization is not required to collect sales tax in the following situations: an annual book and greeting card sale that lasts a few weeks; sales of gift merchandise, plants, or crafts for one or two days several times a year; and concession sales at a little league's seasonal hot dog and refreshment stand, which is open only while games are being played. By contrast, if an exempt organization has a gift shop or café that is open one day a week or on weekends throughout the year, the organization must collect sales tax on all taxable items.

Therefore, if a qualified exempt theatre company operates a souvenir or concession stand that is open only during performances, it would not have to collect sales tax if it puts on productions on a seasonal basis or only a few times per year. If, however, the productions follow a regular schedule or are more-or-less continuous, the theatre company would have to collect sales tax on any taxable sales.

Of course, sales of certain items are not subject to tax regardless of the identity of the seller. A qualified exempt organization's sales of these items would be exempt regardless of how often such sales are made. There is an exemption for food (not including alcoholic or carbonated beverages, candy, and prepared food).<sup>15</sup> And clothing

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<sup>14</sup> New Jersey Division of Taxation, Technical Bulletin 46, at 2 (2002).

<sup>15</sup> N.J.S.A. 54:32B-8.3. Prepared food includes food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller. N.J.S.A. 54:32B-3(c)(3).

is exempt from tax as long as it is suitable for general use.<sup>16</sup> So, for example, a qualified exempt theatre company's sales of t-shirts would generally be exempt from sales tax.

**3. Is a qualified exempt organization required to collect sales tax on its sales of goods at its gift shop, which is open year-round?**

If an exempt organization runs a gift shop year-round, the sales tax consequences of its sales depends on the what kind of merchandise is sold and how the gift shop is operated.<sup>17</sup>

A qualified exempt organization's gift shop is not required to collect sales tax on sales of merchandise that qualify as "thrift store sales."<sup>18</sup> In order to qualify as a thrift store sale, (1) the sale must be of donated merchandise, (2) at least 75% of the store's merchandise must be donated, and (3) at least 75% of the work to carry on the store business must be performed by volunteers.<sup>19</sup>

If these criteria are met, then the qualified exempt organization's gift shop is not required to collect sales tax on sales of donated merchandise. This store must, however, still collect sales tax on sales of merchandise that has not been donated—just as any for-profit store is obligated to do. And, if the gift shop does not meet the "thrift store sale"

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<sup>16</sup> N.J.S.A. 54:32B-8.4(a), (d).

<sup>17</sup> If the exempt organization's store was operated only occasionally, its sales might be exempt as occasional fundraising sales as long as all of the proceeds exclusively benefit the qualified exempt organization. N.J.A.C. 18:24-9.11(d).2. See also New Jersey Division of Taxation, Technical Bulletin 46, at 1-2 (2002).

<sup>18</sup> N.J.S.A. 54:32B-9(c)(2); N.J.A.C. 18:24-9.11(e); New Jersey Division of Taxation, Technical Bulletin 46, at 2 (2002).

<sup>19</sup> N.J.A.C. 18:24-9.11(e). See also New Jersey Division of Taxation, Technical Bulletin 46, at 2 (2002).

criteria, then the gift shop must collect and remit sales tax just as any other store is obligated to do—even on donated merchandise.<sup>20</sup>

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<sup>20</sup> N.J.S.A. 54:32B-9(c)(2); N.J.A.C. 18:24-9.11(d)1.