

Sales Tax Exemptions for Nonprofit Organizations

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IMPORTANT CHANGES

- **Dollar amount of standard relating to a nonprofit organization's receipts increased to \$25,000.** Page 1.
- **Dollar amount of entertainment standard increased to \$500.** Page 2.

I. INTRODUCTION

A nonprofit organization is required to charge Wisconsin sales tax on sales of tangible personal property and taxable services, unless such sales are exempt occasional sales or are otherwise exempt. This publication explains the standards for determining whether sales by nonprofit organizations qualify for the occasional sales exemption. This publication also explains, in Part V, whether purchases by nonprofit organizations are exempt.

II. WHAT IS A NONPROFIT ORGANIZATION?

A nonprofit organization includes a neighborhood association, church, civic group, garden club, social club, or similar organization not organized for profit where no part of the net earnings inures to the benefit of any private shareholder or individual.

For purposes of the occasional sale exemption, a governmental unit is considered a nonprofit organization.

III. STANDARDS FOR THE OCCASIONAL SALE EXEMPTION

All of the three standards listed below must be met by a nonprofit organization for its sales to qualify as exempt occasional sales:

Standard 1: The organization is not engaged in a "trade or business."

Standard 2: Entertainment is not involved at an event for which charges by the organization constitute admissions, except as noted in Part III.B.3.

Standard 3: The organization does not have and is not required to have a seller's permit, except organizations listed in Part III.C.

A more detailed explanation of each standard follows:

A. Standard 1: *The organization is not engaged in a "trade or business."*

Two standards are used to determine whether a nonprofit organization is engaged in a "trade or business": (a) a 20-day standard, and (b) a \$25,000 receipts standard. Both of the standards must be exceeded before a nonprofit organization is considered to be engaged in a trade or business.

Note: The standard relating to a nonprofit organization's receipts was increased to \$25,000, effective January 1, 2006. Under prior law, the receipts standard was \$15,000.

A nonprofit organization is **not** considered to be engaged in a "trade or business" if:

1. Its sales of otherwise taxable tangible personal property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales, **or**

Example: Boy Scout Troop takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the Troop on December 15 and 16. For purposes of determining whether its events meet the 20-day test, Boy Scout Troop should use the days of delivery, rather than days orders are taken.

2. Its "receipts" for the calendar year are \$25,000 or less, regardless of the number of days on which its sales or events occur. (For this purpose, "receipts" means the gross receipts from all sales in Wisconsin of otherwise taxable tangible personal property and services after subtracting allowable exemptions.)

Example 1: Church B sells cookies and cakes at a bake sale for off-premises consumption. Since the sale of cookies and cakes for off-premises consumption is exempt from sales tax,

Church B's sale of these items is not counted as receipts for purposes of the \$25,000 receipts test.

Example 2: Nonprofit Organization C, which sells hundreds of Christmas trees, sells five Christmas trees for \$100 to a Wisconsin public school. Although Christmas trees are taxable tangible personal property, a Wisconsin public school may purchase tangible personal property exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as receipts for purposes of the \$25,000 receipts test.

Example 3: Nonprofit Organization D sells 1,000 raffle tickets at \$5 each for a total of \$5,000. Since the sale of raffle tickets is not subject to sales tax, the \$5,000 that Nonprofit Organization D receives from its sale of raffle tickets is not counted as receipts for purposes of the \$25,000 receipts test.

B. Standard 2: Entertainment is not involved at an event for which charges constitute admissions.

1. Entertainment defined

For this purpose, "entertainment" means entertainment provided at an "admission" event by all persons or groups (for example, band or singers) who are paid in the aggregate more than \$500 per event by all persons for performing, for reimbursement of expenses, or prize money. See Part III.B.2. for the definition of "admissions."

Note: The standard to determine whether entertainment is involved at an event was increased to \$500, effective January 1, 2006. Under prior law, the entertainment standard was \$300.

Example 1: Four different bands are paid \$200 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment for entertainment (\$800) exceeds \$500, entertainment is deemed to be involved. As a result, receipts from the event are taxable.

Example 2: Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the

band \$300. Since the total payment for entertainment (\$600) exceeds \$500, entertainment is deemed to be involved. As a result, receipts from the event are taxable.

Example 3: Nonprofit Organization E holds an admission event in which a celebrity is paid \$800 to appear. Nonprofit Organization E does not pay the celebrity. Sponsor F pays the \$800 fee to the celebrity on behalf of Nonprofit Organization E. Since the total payment for entertainment (\$800) by all persons exceeds \$500, entertainment is deemed to be involved. As a result, receipts from the event are taxable.

2. Admissions defined

For purposes of Standard 2, "admissions" are involved if access to the event involving entertainment is generally restricted to only those who pay a required fee, make a "required donation*," or who must make a purchase of some kind (for example, meal or raffle ticket).

*A donation is considered a "required donation" unless the payment is totally voluntary and no restriction whatsoever is placed on the entrance of persons not making a donation. To be considered a true donation, it must be obvious that admittance is not restricted to those making a donation. A set amount for the donation indicates that the charge is not a donation, but that the payment is required.

Note: Admissions to amusement, athletic, entertainment, or recreational events or places where entertainment is provided are subject to tax. Admissions to events that are primarily educational in nature are not taxable, even though some entertainment may be provided. Sales of tangible personal property and taxable services at an admission event where entertainment is provided, whether for amusement, athletic, entertainment, recreational, or educational purposes, are subject to tax. See Example 4 below.

Example 1: Nonprofit Organization F sponsors a dinner and dance in the high school gymnasium. The dance band is paid \$750. There is no separate admission charge; however, access to the dance is restricted to those who have pur-

chased the meal. The “meal” charge constitutes an admission charge to an event involving entertainment; therefore, sales of tangible personal property and taxable services by Nonprofit Organization F at this event are taxable.

Example 2: Nonprofit Organization G holds a pig roast at the city park and pays a band \$600 to play at the park gazebo, so that patrons, if they so wish, can be entertained while they eat. There is no admission charge and access to the band is open to anyone, whether they purchase the meal or not. Sales of tangible personal property and taxable services by Nonprofit Organization G may still qualify as exempt occasional sales.

Example 3: Nonprofit Organization H holds a carnival at the high school football stadium. A carnival company is paid \$1,000 to operate rides and games. Upon entrance to the stadium, a sign is posted that states “Suggested Donation \$10.” The \$10 “suggested donation” is considered to be a required payment, since it sets the amount of the payment by the attendee. The “donation” constitutes an admission charge to an event involving entertainment. Therefore, sales of the admission (i.e., the \$10 “suggested donation”), tangible personal property, and other taxable services by Nonprofit Organization H at this event are taxable.

If an attendee chooses to pay a higher amount for admission (i.e., more than the \$10 suggested donation), the amount over the \$10 suggested donation is considered a donation that is not subject to sales tax.

Example 4: Nonprofit Organization I holds an educational seminar to train counselors in crisis prevention. Each participant pays a fee to attend. Nonprofit Organization I hires a musical group for \$650 to play during a 30-minute intermission between speakers. The admissions to the educational seminar are not subject to Wisconsin sales and use tax because the event is not an amusement, recreational, entertainment, or athletic event.

However sales of food, beverages, T-shirts, books, tapes, and any other items of tangible personal property and taxable services (e.g.,

parking for motor vehicles) at the seminar are taxable.

3. Exception

A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may do the following:

- Obtain a seller’s permit from the Department of Revenue for the day or days of the event involving entertainment,
- Pay the sales tax on sales of tangible personal property and taxable services on these days, and
- Request inactivation of the seller’s permit after the event by contacting the Department of Revenue. (See Part VI.)

If the above three steps have been taken, the nonprofit organization may still make exempt occasional sales on days not covered by the permit.

Note: Days and receipts from events involving admissions to entertainment for which a seller’s permit was obtained **are** included with all other sales in determining the 20-day test and the \$25,000 taxable receipts test in Standard 1.

Caution: A nonprofit organization that obtains a seller’s permit for an event and does not request inactivation of the seller’s permit after the event does not qualify for the occasional sale exemption on sales of tangible personal property and taxable services subsequent to the event, regardless of the number of days and dollar amount of its sales.

Example: For the year 2006, Nonprofit Organization J plans five events covering three days each (total of 15 days). Entertainment will be involved at one event only. Sales by Nonprofit Organization J would qualify as exempt occasional sales, except for the involvement of entertainment at the one event. Nonprofit Organization J should obtain a seller’s permit for the one event involving entertainment (3 days) and inactivate the seller’s permit immediately

after the event. Its sales at the other four events qualify as exempt occasional sales.

C. Standard 3: *The organization does not have and is not required to have a seller's permit.*

A nonprofit organization is not required to hold a seller's permit if its sales are exempt from sales and use tax (that is, it meets Standards 1 and 2).

A nonprofit organization qualifies for the occasional sales exemption on nonbingo sales, even though it holds a seller's permit, if it otherwise meets Standards 1 and 2, and the nonprofit organization meets one of the following:

1. It is required to hold a seller's permit solely for the purpose of conducting bingo games.
2. It obtains a seller's permit solely for an admission event involving entertainment, if the seller's permit is inactivated immediately after the event. (See Part III.B.3. for additional information.)
3. It holds a seller's permit solely for the purpose of conducting bingo games and making taxable sales at an admission event involving entertainment.

Note: A nonprofit organization's bingo receipts **are not** included with all other sales in determining the 20-day test and the \$25,000 taxable receipts test in Standard 1.

Example: Nonprofit Organization K has receipts of \$30,000 per year from bingo sales. It holds a seller's permit solely for conducting bingo games. Nonprofit Organization K's only other sales throughout each year are \$5,000 of food and soda sales at a concession stand. Nonprofit Organization K held no admission event involving entertainment. Nonprofit Organization K's sales of food and soda qualify for the occasional sale exemption, because its taxable sales, except bingo, are \$25,000 or less. The \$30,000 of bingo receipts are not included in determining the \$25,000 taxable receipts test in Standard 1.

IV. SELLER'S PERMIT INFORMATION

A. General

If a nonprofit organization makes sales of tangible personal property or taxable services that do **not** qualify as exempt occasional sales, it is required to obtain a seller's permit and pay sales tax on its taxable sales.

A nonprofit organization may apply for a seller's permit using one of the following methods:

- Complete Form BTR-101, *Application for Business Tax Registration*, and mail it to the Department of Revenue. Form BTR-101 may be obtained from any Department of Revenue office or online at www.dor.state.wi.us/forms/sales/index.html.
- Use the Department of Revenue's online registration system and submit the application electronically. Go to <https://ww2.dor.state.wi.us/GenericFile/application?interview=1086489>.

B. Change in Activities

1. If a nonprofit organization holds a seller's permit in the current year but intends and believes "in good faith" that its activities in the following year will qualify as exempt occasional sales, except for its holding of a seller's permit, it may request inactivation of its seller's permit and have its sales in the following year qualify as exempt occasional sales.

The requested inactivation of its seller's permit must be made "in good faith." The answers to two questions will help in the examination of good faith: (1) what did the organization do in the current calendar year, and (2) what does it expect to do differently in the following year and why?

Example: Nonprofit Organization L has held seven 3-day events for a total of 21 days each year for the past five years. Receipts were always over \$30,000, and there were no admissions to professional entertainment. One event has lost money for the past two years. Nonprofit Organization L intends to discontinue

that event for the year 2006 and anticipates coming under the 20-day standard. It may request inactivation of its seller's permit in good faith.

2. If a nonprofit organization requested inactivation of its seller's permit in good faith but later, due to unforeseen circumstances, exceeds the standards, only the sales occurring after the standards are exceeded are subject to sales tax.

Example: Church M held 18 days of events or sales in 2005 (receipts equaled \$30,000 and no entertainment was involved). It expects to hold the same 18 days of events in 2006. Church M requested inactivation of its seller's permit effective December 31, 2005; however, in mid-2006, Church M's garage is destroyed by fire. An additional 4-day event is held to raise funds to help replace the garage. Only the receipts from days 21 and 22 (the days exceeding the standard) are subject to sales tax.

3. If a nonprofit organization holds a seller's permit and then requests inactivation of its seller's permit, any sales made **before** requesting inactivation of its seller's permit do not qualify as exempt occasional sales, even if all of the other standards for the occasional sale exemption are met.

Example: Nonprofit Organization N holds 15 days of sales in 2006. Nonprofit Organization N holds a seller's permit and files and pays sales tax on its sales of tangible personal property and taxable services. At the end of 2006, the organization realizes that its sales would have qualified as exempt occasional sales except for its holding of a seller's permit. Nonprofit Organization N may not claim a refund of taxes paid while it held a seller's permit.

V. PURCHASES OF ITEMS BY A NONPROFIT ORGANIZATION

Nonprofit organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, are exempt from Wisconsin sales and use tax on all purchases of tangible personal property or taxable

services. Such organizations may apply on Form S-103, *Application for Wisconsin Sales and Use Tax Certificate of Exempt Status*, with the Department of Revenue for a Certificate of Exempt Status (CES), and, if approved, will be issued a CES number by the department. An organization should provide its CES number to sellers when making purchases, and may use Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*, when claiming exemption. See Publication 201, *Wisconsin Sales and Use Tax Information*, Part XI.D., for additional information. Publication 201, Form S-211, and Form S-103 are available from any Department of Revenue office or from the department's web site at www.dor.state.wi.us.

Other nonprofit organizations are subject to Wisconsin sales or use tax on their purchases of tangible personal property or taxable services, unless some other exemption applies (for example, resale). Tangible personal property or taxable services that will be resold by a nonprofit organization may be purchased without Wisconsin sales or use tax, assuming the nonprofit organization makes no use of the property other than retention, demonstration, or display while holding it for sale. The items may be purchased without tax even if the nonprofit organization's sale of the items qualifies as an exempt occasional sale. The nonprofit organization should provide the seller with a properly completed exemption certificate indicating resale.

Example: Nonprofit Civic Organization N sells cans of soda at parades. The sales of the soda are not subject to Wisconsin sales or use tax, because they are exempt occasional sales. Nonprofit Civic Organization N does not hold a Certificate of Exempt Status issued by the Department of Revenue. Since the soda is resold by Nonprofit Civic Organization N, it may purchase the soda without Wisconsin sales or use tax by providing the soda supplier with a properly completed exemption certificate (Form S-211) indicating resale. In the space for the seller's permit number, Nonprofit Civic Organization N should state that it is not required to hold a seller's permit because all of its sales are exempt.

VI. QUESTIONS?

If you have questions, need additional copies of this publication, need an application form, or wish to inactivate your seller's permit, you may contact any Department of Revenue office or:

Write... Wisconsin Department of Revenue
 Mail Stop 5-77
 P.O. Box 8949
 Madison, WI 53708-8949

Telephone... (608) 266-2776

FAX... (608) 267-1030

E-mail... sales10@dor.state.wi.us

Web site... www.dor.state.wi.us

Location of Department of Revenue offices: Appleton, Baraboo, Beaver Dam, Eau Claire, Elkhorn, Fond du Lac, Grafton, Green Bay, Hayward, Hudson, Janesville, Kenosha, La Crosse, Lancaster, Madison, Marinette, Milwaukee, Oshkosh, Rhinelander, Sheboygan, Superior, Tomah, Waukesha, Wausau, and Wisconsin Rapids.