

## YES, THEY DID IT AGAIN!

During their 2019 Regular Session, the Kentucky General Assembly made changes to Kentucky's sales tax laws as they apply to nonprofit organizations, but these changes are designed to help the nonprofit community. The Department of Revenue has not had the opportunity to issue much guidance about how the law will be applied. Thus, the questions and answers set forth below should be viewed as guidelines. Dean Dorton cannot guarantee the Department of Revenue will agree with the answers provided.

## INTRODUCTION TO THE 2019 CHANGES

The 2019 changes exempt from sales tax sales of admissions and fundraising event sales by nonprofit organizations, with the exception of fundraising sales that are in competition with for-profit retailers (for example, sales by thrift stores). *Please note* there was no change in the law in 2018 or 2019 for public and private elementary and secondary schools.

## TO WHOM DOES THE NEW LAW APPLY?

**Q:** The law applies to "nonprofit organizations." How is "nonprofit organization" defined?

**A:** "Nonprofit organization" is broadly defined to include:

- Educational, charitable, and religious organizations exempt from income tax pursuant to Section 501(c)(3) of the Internal Revenue Code;
- Nonprofit civic and other nonprofit organizations; and
- Governmental organizations

**Q:** We know what constitutes a 501(c)(3) and a governmental organization, but what is a "nonprofit civic or other nonprofit organization?"

**A:** There is no definition of "nonprofit civic or other nonprofit organization" in the law (old or new). But, there are numerous "nonprofit" entities that are exempt from income tax under Section 501(c) of the Internal Revenue Code, but not under subsection (3). Examples of other 501(c) organizations include:

- Civic leagues – 501(c)(4)
- Business leagues/chambers of commerce – 501(c)(6)
- Social and recreational clubs (think country clubs) – 501(c)(7)
- Fraternities and sororities – 501(c)(8)

These appear to be the types of entities contemplated by the legislature's use of "nonprofit civic or other nonprofit organization." Let's use "501(c)(others)" as shorthand for this group.

## WHAT IS EXEMPT FROM SALES TAX?

The new law exempts:

- Sales of "admissions," and
- "Fundraising event sales," but not
- "Sales related to the operation of a retail business...or any ongoing operations in competition with for-profit retailers"

## WHAT ARE "ADMISSIONS?"

This question takes us back to 2018 when the General Assembly took a very broad approach to defining "admissions."

"Admissions" means the fees paid for:

1. The right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment or amusement event or venue; and
2. The privilege of using facilities or participating in an event activity, including but not limited to:
  - a. Bowling centers;
  - b. Skating rinks;
  - c. Health spas;
  - d. Swimming pools;
  - e. Tennis courts;
  - f. Weight training facilities;
  - g. Fitness and recreational sports centers; and
  - h. Golf courses, both public and private;

regardless of whether the fee paid is per use or in any other form, including but not limited to an initiation fee, monthly fee, membership fee, or combination thereof.

"Admissions" **does not** include:

1. Any fee paid to enter or participate in a fishing tournament; or
2. Any fee paid for the use of a boat ramp for the purpose of allowing boats to be launched into or hauled out from the water

Thus, if a 501(c)(3), 501(c)(other), or governmental entity sells tickets to or charges a fee for "admission" to any of the listed places, events, or activities, that sale or charge is **EXEMPT** from sales tax. The admission is not taxable.

**Q:** What if a tennis facility or golf course is open to the public *but owned by a private individual or company*—is that "admission" taxable?

**A:** Yes, that admission is taxable because the tennis facility or golf course admission is not being sold by a 501(c)(3), 501(c)(other), or governmental entity.

**Q:** Is admission to a golf course, swimming pool, or tennis courts owned by a local government taxable?

**A:** No, because this admission is being sold by a governmental entity.

**Q:** Are admissions to theatres or museums operated by nonprofits taxable?

**A:** No, because this admission is being sold by a nonprofit organization.

**Q:** Are annual memberships to museums and theatres taxable?

**A:** No, provided the seller is a nonprofit organization or governmental entity.

**Q:** Are membership fees that include access to a museum, sporting event, gym, golf course, swimming pool, etc., taxable?

**A:** No, provided the seller is a nonprofit organization or governmental entity.

**Q:** Are memberships to "friends of" organizations taxable?

**A:** No, provided the seller is a nonprofit organization or governmental entity.

# Nonprofits and the 2019 Kentucky Tax Changes

## WHAT ARE "FUNDRAISING EVENT SALES?"

The new law doesn't provide a definition of "fundraising event sales." Instead, the law tells us what is not a fundraising event sale. The law states: "Fundraising event sales" does not include sales related to the operation of a retail business, including but not limited to thrift stores, bookstores, surplus property auctions, recycle and reuse stores, or any ongoing operations in competition with for-profit retailers."

In part, this definition is not hard for us to understand. The examples provided cause us to think of enterprises such as thrift shops run by Goodwill and the Salvation Army or surplus sales by educational institutions or governmental entities. But, what does "any ongoing operations in competition with for-profit retailers" mean? Let's come back to this after some questions and answers about fundraising, generally.

- Q:** Are tickets for fundraising events taxable? **A:** No!
- Q:** Are sponsorships with tickets or admissions taxable? **A:** No!
- Q:** Do I have to keep billing the sponsorship and the tickets separately? **A:** No.
- Q:** Are items sold at live or silent auctions taxable? **A:** No.
- Q:** Are raffles taxable? **A:** No.
- Q:** Are registration fees for a charitable run, walk, or golf tournament taxable? **A:** No.
- Q:** Are clothes sold by a nonprofit thrift store taxable? **A:** Yes.
- Q:** Are bingo cards taxable? **A:** No.
- Q:** Are pull-tabs taxable? **A:** No.
- Q:** Are entry fees, sponsorships, hole sponsors, or mulligans for a golf tournament hosted by a 501(c)(3) taxable? **A:** No.

## WHAT DOES "ANY ONGOING OPERATIONS IN COMPETITION WITH FOR-PROFIT RETAILERS" MEAN?

This can be a difficult determination, but the examples below, with answers provided by the Department of Revenue, offer some guidance.

- Q:** Are sales by a nonprofit café, the proceeds of which are used to support the café, taxable?  
**A:** Yes.
- Q:** Is the sale of used goods at a church rummage sale taxable?  
**A:** No, unless the rummage sale is operated out of a thrift store retail location run by the church.
- Q:** Are sales of T-shirts or other logo items purchased and used by volunteers of an organization taxable?  
**A:** No, as long as the T-shirts or other logo items are not part of the inventory of a retail store operated by the nonprofit.
- Q:** If a "friends of the library" nonprofit sells used books, are the book sales taxable?  
**A:** The book sales are taxable if the "friends of" organization continually offers books for sale, either through a brick and mortar location or online, using a platform such as Amazon.com. If the book sales are for fundraising, and the sales are offered on a periodic basis (for example, annually or semi-annually), the sales would be exempt.

## WHAT ABOUT TAXES ALREADY COLLECTED AND REMITTED?

There are **no refunds** for sales prior to March 26, 2019. The monies already collected and remitted stay with the state treasury.

## WHAT ABOUT TAXES ALREADY COLLECTED, BUT NOT YET REMITTED?

If you have funds you have already collected, but not remitted, the **monies must be sent in** with your next regularly scheduled sales tax return.

## WHAT ABOUT INVOICES FOR AN EVENT THAT OCCURRED PRIOR TO MARCH 26, 2019?

Sales tax should be collected and remitted in either of the following instances: invoices that have been sent but not paid, or invoices that have not yet been sent if the event was prior to March 26, 2019.

## DO I HAVE TO CONTINUE TO FILE SALES TAX RETURNS?

The Department of Revenue has provided the following guidance about closing your sales tax account:

Sales of admissions by nonprofits prior to the effective date of HB 354 on March 26, 2019 are taxable, and the tax collected on these transactions should be remitted by the organization when they file their regularly scheduled sales tax return. In many cases, nonprofit sellers file returns on a quarterly basis. For example, their January through March 2019 return will be due by Monday, April 22.

Any of these organizations whose only sales activities are no longer taxable (admissions or fundraising event sales) should cancel their sales tax account numbers effective at the end of March. When filing the final return for the March ending period, the organizations should include a request for the Department to accept the return as the final report and to close out the account. Filers that submit returns by paper may include the cancellation request with their returns. Those filing electronically should submit a request in writing to the address below or by email to [KRC.WEBResponseSalesTax@ky.gov](mailto:KRC.WEBResponseSalesTax@ky.gov). In fact, paper or electronic filers may submit their cancellation request by email if preferred.

Kentucky Department of Revenue  
Division of Sales and Use Tax  
Station 67  
P.O. Box 181  
Frankfort, KY 40602-0181

Organizations should make sure all sales tax on admissions or fundraising event sales held before March 26, 2019 has been collected and remitted to the Department of Revenue prior to requesting cancellation of their sales tax account.

## QUESTIONS?

Erica Horn, CPA, JD  
Associate Director of Tax Services  
[ehorn@deandorton.com](mailto:ehorn@deandorton.com)  
859.425.7674