

Nonprofit Sales and Use Tax Issues

Presented By:

Steve Russell, Assistant Administrator – Business Tax Division

&

Laura M. Stanley, Esq., Division Counsel – Sales and Use Tax



Department of
Taxation

Agenda

- General Overview of Sales/Use Tax
- Nonprofit Definitions
- Sales to Nonprofits
- Sales by Nonprofits
- Construction Contracts with Exempt Organizations
- Nonprofits and the Commercial Activity Tax

General Overview of Sales/Use Tax

General Overview of Sales/Use Tax

- R.C. 5739.02 levies an excise tax on each retail sale made in Ohio.
- R.C. 5739.01(B)(1) defines “sale” for Ohio sales and use tax purposes to include any transfer of title, possession, or a right to use tangible personal property in Ohio and certain enumerated services.
- All sales of tangible personal property are presumed to be subject to sales tax.



General Overview of Sales/Use Tax

- Exceptions and Exemptions found in R.C. 5739.01 and 5739.02
 - 114 exemptions – most found in R.C. 5739.02(B)
 - Taxpayer must establish it is entitled to the exemption or exception
- Focusing today on nonprofit exemptions

Nonprofit Definitions

Nonprofit Definitions

- Prior to 1994, eligibility for an exemption hinged on whether the organization was operated exclusively for charitable purposes.
- Subsequent to 1994, all sales to a 501(c)(3) organization are exempt as long as the sales are not used by the organization in carrying on a trade or business, i.e., “with the object of gain, benefit, or advantage. . . .”

Nonprofit Definitions



- R.C. 5739.02(B)(12)
- "Charitable purposes" means
 - the relief of poverty;
 - the improvement of health through the alleviation of illness, disease, or injury;
 - the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum;
 - the production of performances in music, dramatics, and the arts; or
 - the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

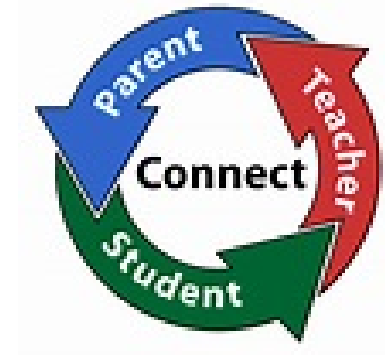
Nonprofit Definitions

- "Charitable purposes" (Continued)
 - the operation of
 - an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions;
 - a home for the aged, as defined in section 5701.13 of the Revised Code;
 - a noncommercial educational radio or television broadcast station that is federally licensed ;
 - a nonprofit animal adoption service or a county humane society;
 - a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school;
 - a community or area center in which presentations in music, dramatics, the arts, and related fields are made;



Nonprofit Definitions

- **Examples:**
 - Churches
 - Cemeteries Associated with Religious Institutions
 - School Groups
- **Examples of Non-Charitable Purpose Organizations**
 - Sporting Leagues
 - Homeowner Associations
 - Labor Unions
 - Flower Societies
 - Fraternal Organization
 - Veterans Organizations (unless Headquarters)



Nonprofit Definitions



- **Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.**

Nonprofit Definitions

- R.C. 5739.01(F) defines “business” as follows:
 - “Business” includes any activity engaged in by any person with **the object of gain, benefit, or advantage, either direct or indirect.**
 - "Business" does not include the activity of a person in managing and investing the person's own funds.



Columbus Colony Hous. v. Limbach, 45 Ohio St. 3d 253, 254, 544 N.E.2d 235, 235 (1989)

- On appeal, the court reversed the BTA, reasoning that the taxpayer did not satisfy the requirements for exemption under R.C. 5739.02(B)(12). [REMEMBER THIS IS UNDER OLD LANGUAGE]
- Although the apartment complex offered social and perhaps therapeutic advantages to the hearing impaired, including some features that were beneficial to the hearing impaired, health and alleviation of illness were not the exclusive purposes of the taxpayer's business.
- Provision of ordinary shelter was the taxpayer's primary service for which it was compensated in full.
- The provision of private housing to disabled persons did not demonstrate the charitable purpose required for exemption under R.C. 5739.02(B)(12).



Akron Golf Charities, Inc. v. Limbach, 34 Ohio St. 3d 11, 12 (1987)



- Had an exemption from taxation for federal purposes
- Sole purpose was to benefit charitable organizations by raising funds for and distributing funds to the organizations (e.g., golf tournament)
- Prior rulings ignored the fundamental purpose of the charity
- The golf tournament itself was a profit-making endeavor, **but the court ruled that the focus should have been placed on the charity's purpose and operation in raising funds for non-profit groups in determining its tax liability.**
- Based on this reasoning Akron Golf Charities was a charitable purpose.

St Joseph Cemetery Association and Catholic Cemeteries Association v. Limbach, Case #89-Z-145, 89-Z-1040, 5/1/1992

- Nonprofit corporation of the Cincinnati and Cleveland diocese, respectively
- Maintained burial grounds for the Catholic Church
- BTA finds that cemeteries are nonprofit corporations organized for the purposes of fulfilling one of the most basic tenets of the Catholic Church
 - Catholic Church exercises total supervision of the Cemeteries therefore operation is indistinguishable
- Cemeteries were formed for religious purposes and that they operate as part of the Catholic Church



Sales to Nonprofits

Sales to Nonprofits

- Exempt entities
 - Churches
 - 501(c)(3)
 - Nonprofit organizations operated exclusively for charitable purposes
 - Offices Administering One or More
 - Homes for the Aged
 - Hospital Facilities Exempt under R.C. 140.08
 - Sales to Organizations described in R.C. 5709.12



Sales to Nonprofits

- Sales to churches, regardless of where they are located, are exempt
- A nonprofit organizations operated exclusively for charitable purposes must be located within Ohio



Sales to Nonprofits

- Who is the consumer?
 - An individual may not avail themselves of the charity's exemption
 - The exemption applies to the church, not the clergy. To be exempt a motor vehicle would have to be titled in the name of the church.
 - TC Opinion 92-0002
 - Nursing home is the consumer
 - Food and equipment consumed by the nursing home in providing its service to the residents

Sales of Emergency and Fire Protection Vehicles and Equipment

- R.C. 5739.02(B)(20)
 - Emergency and fire protection vehicles and equipment
 - to nonprofit organizations
 - for use solely in providing fire protection and emergency services for political subdivisions
 - Volunteer Rescue Service organizations or volunteer firefighter's organizations (not exempt under 501(c)(3) but under other provisions)



Nonprofit's Exemption Certificates

Nonprofit's Exemption Certificates

- Ohio Admin. Code 5703-09-03
 - “Exception” refers to transactions excluded from the definition of retail sale by division (E) of section 5739.01 of the Revised Code.
 - “Exemption” refers to retail sales not subject to the tax pursuant to division (B) of section 5739.02 of the Revised Code.
 - All sales of tangible goods are presumed taxable until contrary is established



Nonprofit's Exemption Certificates

- R.C. 5739.03
 - If a nonprofit claims exemption under 5739.01(E)(resale) or R.C. 5739.02, they must provide fully completed exemption certificate
 - Exemption certificate may be provided electronically or in hard copy
 - Vendor that receives fully completed exemption certificate within ninety (90) days of the sale is relieved of tax liability for the transaction
 - Vendor must retain fully completed exemption certificate in its files



Nonprofit's Exemption Certificates

- Fully completed exemption certificate:
 - Purchaser's name and business address
 - Tax Identification for the purchaser issued by this state (example Vendor's License or Consumer Use Tax account)
 - Purchaser's type of business or organization
 - Reason for exemption
 - Signature of purchaser (if hard copy)
- If missing any elements, the exemption certificate is **INVALID** (See Ohio Admin. Code 5703-09-03)

Nonprofit's Exemption Certificates

- If not fully completed and audited?
 - Allowed one hundred and twenty (120) days to obtain fully completed exemption certificate accepted in good faith

OR

- Letter of usage from the customer

Nonprofit's Exemption Certificates

- “Good faith” means:
 - Exemption was statutorily available on the date of sale

OR

- Could be applicable to the item being purchased

AND

- Is reasonable for the purchaser's type of business



Sales by Nonprofits

Sales by Nonprofits

- Certain entities do not need to collect sales tax unless the number of days on which the TPP or services are sold exceeds six
 - Churches
 - 501(c)(3)
 - Nonprofit organizations operated exclusively for charitable purposes



Sales by Nonprofits



- **Six Day Rule**
 - “[A]ll subsequent sales are subject to the tax.”
 - On the seventh day of sales a qualifying organization is engaged in business
 - Must be properly licensed to make retail sales in this state and collect the tax on such sales.
 - Only those days on which the actual sale is made are to be counted if the sale is a sale of goods subject to the tax

Sales by Nonprofits



- A lease qualifies under the definition of sale and selling in R.C. 5739.01(B)(1)
- A lease is a transaction that takes place every day of either the fixed or indefinite term
- A lease will likely exceed six days in any calendar year

Sales by Nonprofits

Test Your Knowledge:

- Does this mean I have six free sales each year?



Sales by Nonprofits

Answer:

- If the organization does not hold an active vendor's license, once the six days are reached, it is deemed to be engaged in a business and would need to obtain a vendor's license, collect and remit sales tax.
- The holder of an active vendor's license is not entitled to six untaxed days of sales per calendar year.
 - If an organization holds (maintains) a current regular vendor's license than all sales made while the license is active are subject to the tax and tax should be collected on all such sales.



Sales by Nonprofits

- Schools, Student Groups, PTA & Booster Groups
Treatment
 - There is no six-day rule
 - Groups should be cautious how they set this relationship with its suppliers up

Sales by Nonprofits

Test Your Knowledge:



- HS Booster Club provides order forms to its students for the purchase of HS related products(i.e., sweatshirts and seat cushions). The checks are made payable to the vendor or the vendor collects the payment directly from the customer. Is sales tax due or is this a sale made by the HS Booster Club?

Sales by Nonprofits

Answer:

- Sales tax is due, the same as if the sale had been made at a store owned by the vendor. It does not matter if the order forms and payments are collected by the school, or if the products are delivered to the school. The exemption found in R.C. 5739.02(B)(9)(b) does not apply.



Construction Contracts with Exempt Organizations

Property Classification

- Real Property – ORC § 5701.02
- Personal Property – ORC § 5701.03
- Importance to contractors
 - Accurately bid the job
 - Claim resale or pay tax on materials purchases
 - Collect tax (or exemption certificate) on sales of tangible personal property
 - Efficiently set up job documentation and billing procedures
 - Avoid sales tax assessments
 - Avoid use tax assessment on materials



Real Property - ORC 5701.02

- Land
- Building
- Structure
- Improvement
- Fixture



Tangible Personal Property - ORC 5701.03



- Everything not attached to real property
- Things attached temporarily
- Business Fixtures

Construction Contracts with Exempt Organizations



- R.C. 5739.02(B)(13)
 - Building materials and services sold to construction contractors for incorporation into
 - a house of public worship or religious education
 - a building used **exclusively** for charitable purposes under a construction contract with an organization described in R.C. 5739.02(B)(12)
 - A 501(c)(3)'s building to be used **exclusively** for the organization's exempt purpose

Construction Contracts with Exempt Organizations



- Tools, supplies, and other consumables purchased for use on construction contracts with exempt entities are still taxable to the construction contractor.
- Temporary fencing is not incorporated into real property.

Construction Contracts with Exempt Organizations

Test Your Knowledge:



- A construction contractor purchases a new saw blade when starting work on a church. The saw blade will be utilized only for this job and then the saw blade is useless. Is the saw blade exempt?

Construction Contracts with Exempt Organizations

Answer:

- No, this is a tool utilized and consumed by the construction contractor, it is not “incorporated” into the real property of the exempt entity.



Construction Contracts with Exempt Organizations

- Caution!!
 - Some states subject certain materials differently
 - Materials incorporated into real property of an out-of-state entity that are delivered to Ohio are considered “first used” in Ohio and may be taxable.



Construction Contracts with Exempt Organizations

Sales and Use Tax Construction Contract Exemption Certificate

Identification of Contract:

Contractee's (owner's) name _____
 Exact location of job/project _____
 Name of job/project as it appears on contract documentation _____


The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate was purchased for incorporation into:

<input type="checkbox"/> A building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in Ohio Revised Code (R.C.) section 5739.02(B)(12);	<input type="checkbox"/> Real property that is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the state of Ohio or an Ohio political subdivision;
<input type="checkbox"/> Real property under a construction contract with the United States government, its agencies, the state of Ohio or an Ohio political subdivision;	<input type="checkbox"/> A computer data center entitled to exemption under R.C. 122.175;
<input type="checkbox"/> A horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	<input type="checkbox"/> A building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
<input type="checkbox"/> A house of public worship or religious education;	<input type="checkbox"/> A hospital facility entitled to exemption under R.C. section 140.08;
<input type="checkbox"/> The original construction of a sports facility under R.C. section 307.696;	<input type="checkbox"/> Building and construction materials and services sold for incorporation into real property comprising a convention center that qualifies for property tax exemption under R.C. 5709.084 (until one calendar year after the construction is completed).
<input type="checkbox"/> Real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;	

The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

Prime Contractor	Owner/Contractee
Name _____	Name _____
Signed by _____	Signed by _____
Title _____	Title _____
Street address _____	Street address _____
City, state, ZIP code _____	City, state, ZIP code _____
Date _____	Date _____
Subcontractor	Political Subdivision
Name _____	Name _____
Signed by _____	Signed by _____
Title _____	Title _____
Street address _____	Street address _____
City, state, ZIP code _____	City, state, ZIP code _____
Date _____	Date _____

Construction Contracts with Exempt Organizations

 **Department of Taxation**
tax.ohio.gov

[Reset Form](#) STEO CO
Rev. 11/10

Sales and Use Tax Contractor's Exemption Certificate

Identification of Contract:

Contractee's (owner's) name _____

Exact location of job/project _____

Name of job/project as it appears on contract documentation _____

The undersigned hereby certifies that the tangible personal property purchased under this exemption from:

Vendor's name

was purchased for incorporation into:

<input type="checkbox"/> Real property under a construction contract with the United States government, its agencies, the state of Ohio, or an Ohio political subdivision;	<input type="checkbox"/> Real property that is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the state of Ohio or an Ohio political subdivision;
<input type="checkbox"/> A horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	<input type="checkbox"/> A house of public worship or religious education;
<input type="checkbox"/> A building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in Ohio Revised Code (R.C.) section 5739.02(B)(12);	<input type="checkbox"/> A building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
<input type="checkbox"/> The original construction of a sports facility under R.C. section 307.696;	<input type="checkbox"/> A hospital facility entitled to exemption under R.C. section 140.08;
<input type="checkbox"/> Real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;	<input type="checkbox"/> Building and construction materials and services sold for incorporation into real property comprising a convention center that qualifies for property tax exemption under R.C. 5709.084 (until one calendar year after the construction is completed).

This certificate may be used by a contractee or subcontractor when buying materials for a construction contract where the owner/contractee has claimed one of the above exemptions. This certificate covers all sales of materials by the above-named vendor to the contractor or subcontractor for this particular construction contract only.

Contractor/subcontractor

Name _____

Signed by _____ Title _____

Street address _____

City, state, ZIP code _____

Date _____

***Carroll Contractors Corp. v. Joanne Limbach,
Ohio Board of Tax Appeals, No. 89-C-306,
April 3, 1992***

- Parking lots and sidewalks are an essential and integral to the proficient operation of the various church entities.



Nonprofits and the Commercial Activity Tax

Nonprofits and the Commercial Activity Tax

- A **nonprofit organization** is excluded from the definition of a “person” and is therefore not subject to the CAT.
- Under the general law provision, Ohio uses the term “nonprofit *corporations*” and federal law uses the term “*charitable organizations*”.
- An entity that meets both prongs of a test in O.A.C. 5703-29-10 is considered a “nonprofit organization”.



Nonprofits and the Commercial Activity Tax



- *First Prong: Organized Other Than for Pecuniary Gain or Profit*
 - the entity must not be organized for the pecuniary gain or profit of the entity; and
 - no part of the entity's net earnings may be distributable to the entity's members, directors, officers, or other private persons, unless otherwise permitted by law.
- *Second Prong: Operating Consistent with Organization*

Questions?



Steven Russell

Phone Number: 614.466.9635

Steven.Russell@tax.state.oh.us

Laura Stanley

Phone Number: 614-644-5764

Laura.stanley@tax.state.oh.us