

# LOUISIANA SALES TAX & NON-PROFIT ORGANIZATIONS

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A Brief Overview of the Louisiana Sales Tax Laws  
and How they Apply to Non-Profit Organizations

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# Sales Taxes: The Basics

- **Sales Tax:** a tax imposed on retail transactions; it typically applies to all retail sales of tangible personal property and on some services deemed taxable by the state
- Sales tax is generally payable by the users, consumers, lessees, and persons receiving services that are taxable by law
- If a seller qualifies as a “*dealer*” by law, they must apply for a sales tax certificate, collect sales tax, file sales tax returns, and remit sales taxes owed. (R.S. 47:301(4))
  - Examples include those who:
    - Sell/rent tangible personal property in the state
    - Furnish services in the state (taxable under statute)
    - Hold property in the state for resale
    - Maintain a business location in the state
    - Have salesmen/agents in the state

# Sales Taxes: The Basics

- Sales and use taxes are collected by the people who are in the business of making retail sales of tangible personal property or service providers selling taxable services
- The DEALER, however, is not the taxpayer. The taxpayer is the consumer buying the tangible personal property or the taxable service. Taxes are paid by the CONSUMER.
- It is the DEALER's obligation to collect and remit the tax

# Sales Tax: The Basics

- Sales tax is generally due on the sales price for transactions subject to sales tax. The taxable base is:
  - The total amount the property was sold for, plus the cost of any services rendered in connection with the sale
  - The gross amount of rental of tangible personal property
  - The gross amount charged for taxable services

# Sales Tax Compliance

- As of April 1, 2016, the sales tax rate is 5%
  - 4.97% is for state sales tax
  - .03% is for a Louisiana Tourism Promotion District sales tax
  - NOTE: certain transactions are taxed at a different rate (R-10002)
- Sales tax returns and payments are due on the 20<sup>th</sup> of each month following the close of the calendar month
- The 2016 interest rate on sales tax not paid by the deadline is .5833%/month (7% per year) (R.S. 47:1601)
- A late filing penalty of 5% of the tax accrues if a sales tax return is filed less than 30 days past the deadline; another 5% accrues for each additional 30 days that pass, never to exceed 25% (R.S. 47:1602)
- A late payment penalty of 5% of the tax not paid accrues each 30 days that the failure to pay continues, not to exceed 25% (R.S. 47:1602)

# Non-Profits: The Basics

- **Non-Profit Organizations** exist to provide a public benefit, whether charitable, educational, for health care, etc.
- Although, like for-profits, non-profit organizations can also generate “profits”, the difference is in how the organization is *organized* and *operated*
  - Organizational Differences: not owned by any individual or for-profit business
  - Operational Differences: operated for public purposes and the net earnings are devoted to public purposes, not private interests
- A non-profit’s “*profit*” generally comes from donations, membership fees, program service fees, etc.

# Non-Profits: The Basics

- There are many different types of non-profit entities, including:
  - 501(c)(2)- Title Holding Corporation for Exempt Organization
  - 501(c)(3)- Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations
  - 501(c)(4)- Civic Leagues, Social Welfare Organizations, Local Associations of Employees
  - 528- Homeowners Associations
  - 501(c)(5)- Labor, Agricultural, and Horticultural Organizations
  - 501(c)(6)- Business Leagues, Chambers of Commerce, Real Estate Boards
  - 501(c)(7)- Social and Recreational Clubs
  - 501(c)(8)- Fraternal Beneficiary Societies and Associations
  - 501(c)10)- Domestic Fraternal Societies and Associations

# Non-Profit Organizations & Tax Obligations

- Once a non-profit organization has received IRS tax-exempt status (An IRS Form 1023 has been approved by the IRS), in addition to exemption from federal income taxes, qualifying non-profit organizations can also be exempted from certain Louisiana state tax obligations also
  - If a non-profit is exempt from paying federal income taxes, it is typically also exempt from paying Louisiana state income taxes
  - Exemption from parish property taxes for certain exempt organizations is provided for in the State Constitution
  - *NOTE:* There are NO general exclusions/exemptions from sales tax, only specific laws
- *NOTE:* Louisiana does require that income taxes are collected on unrelated business taxable income (income derived from the conduct of a trade or business, not income substantially related to the exempt function)



# Non-Profits and Sales & Use Taxes in Louisiana

- Non-Profits, other than those with specific exemptions for particular purposes, will typically pay sales taxes on transactions in which the non-profit was the *CONSUMER* of the good or services purchased
  - However, under Acts 25 and 26 of the 2016 First Extraordinary Session of the Louisiana Legislature, many exemptions have been suspended
- When the non-profit organization is the *DEALER*, Louisiana generally offers many exclusions/exemptions from the requirement that the organization collect sales tax
  - IMPORTANT TO NOTE: Again, under Acts 25 and Acts 26, many exemptions/exclusions have been suspended

# Changes to Sales Tax Exemptions/ Exclusions

- There were several exemptions/exclusions available to nonprofits on the sale of certain tangible personal property; tax now must be collected on these transactions
- Public and private school lunches served under the “National School Lunch and School Breakfast Programs” will not be required to collect sales tax, nor will those in which the fees were included in tuition; however, if food service is billed separately and is NOT served under the above-listed program, sales taxes must be collected (Revenue Information Bulletin 16-024)
- Exemptions/exclusions for sale of admissions tickets to fundraisers, performances, and entertainment events have been suspended (amusement, entertainment, athletic, or recreational facilities)

# Changes to Sales Tax Exemptions/ Exclusions

- Admission to educational events are NOT taxable
- Dues collected to gain access to a club that does NOT have a physical facility is NOT taxable; they ARE if the club does have a physical facility and the dues are in consideration to gain access to the club (Revenue Information Bulletin No. 16-014)
- Food donated to a food bank will still be considered “valueless” for use tax purposes (Revenue Information Bulletin No. 16-026)

# Specific Examples from Acts 25 and 26

- 47:301(6)(b)- room rentals at camp and retreat facilities owned by non-profit organizations UNLESS guests participate in the nonprofit activity (5% total tax until 6/30)
- 47:301(6)(c)- room rentals at certain homeless shelters when room rental charge is less than \$20/day (5% total tax until 6/30)
- 47:301(8)(d)- sales of bibles, songbooks, literature used for religious classes by churches and synagogues (5% total tax until 6/30)
- 47:305.13: Sales of admissions to entertainment events sponsored by domestic nonprofit charitable, religious and educational organizations (5% total tax until 6/30)
- 47:305.59- purchases of construction materials by Habitat for Humanity affiliates for use in constructing new residences (5% total tax until 6/30)
- 47:301(13)(l)- specialty items sold to members for fundraising purposes by nonprofit carnival organizations participating in a parade sponsored by a carnival organization (5% until 6/30)

# Specific Examples from Acts 25 & 26

- 47:305.40- specialty items purchased by carnival and nonprofit organizations sponsoring a Mardi Gras parade (5% total tax until 6/30)
- 47:305.42- tickets to dance, drama or performing arts performance sponsored by domestic nonprofit organizations (5% total tax until 6/30)
- 47:305.18- all outside gate admissions and parking fees at fairs and festivals sponsored by nonprofit organizations (5% total tax until 6/30)
- 47:305.14(A)(1)(a)- sales of newspapers by certain nonprofit organizations (5% total tax until 6/30)
- 47:301(14)(b)(i)- admission charges to athletic events (5% total tax until 6/30)
- 47:301(14)(b)(i)- membership fees or dues of nonprofit, civic associations including the YMCA, CYO, and YWCA (5% total tax until 6/30)

# Issue: Is this a Taxable Service?

- There is an argument to be made that certain laws recently put in place taxing admission/dues are NOT a taxable service
- LDR has taken the position that these specific, definable admissions are an otherwise taxable service but for an exemption/exclusion; however, it is arguable that because services are not taxable under the law in the first place unless specifically defined as taxable, specific references to them now should not add an otherwise nontaxable service to the tax rates now

# Personal Liability Issues

- If an organization is required to collect sales tax and the organization does not remit the necessary taxes timely, certain individuals can become personally liable for the taxes owed