Massachusetts Department of Revenue

Sales and Use Tax

Tax Exempt Organizations Engaging in Fundraising Activities

DOR DIRECTIVE

DOR-D 91-1

Issue 1: When are sales of tangible personal property made by tax exempt organizations for fundraising purposes subject to sales tax?

Directive 1: Sales of tangible personal property made by tax exempt organizations for fundraising purposes are subject to sales tax when they are made in the regular course of the organization's business. Generally, sales at fundraisers are made "in the regular course of the organization's business" when they are sales of tangible personal property of the same or a similar nature occurring at more than two fundraising events in a calendar year. Sales of tangible personal property made by tax exempt organizations for fundraising purposes that are not sales made in the regular course of business are exempt from sales tax as casual and isolated sales. *See* G.L. c. 64H, § 6(c).

Issue 2: When must tax exempt organizations making sales of tangible personal property for fundraising purposes register as vendors and collect the sales tax?

Directive 2: Tax exempt organizations making sales of tangible personal property for fundraising purposes are required to register as vendors with the Department of Revenue and collect sales tax when their sales are made in the regular course of business. Tax exempt organizations making sales of tangible personal property at fundraising events that are not made in the regular course of business (i.e. because such sales qualify as casual and isolated sales) are not required to register as vendors or collect the tax from purchasers. Instead, such tax exempt organizations must pay sales tax to their vendors at the time they purchase the tangible personal property.

Discussion of Law: Massachusetts General Laws Chapter 64H, imposes an excise on sales at retail of tangible personal property or telecommunications services performed in Massachusetts by any vendor, unless otherwise exempt. G.L. c. 64H, § 2. A complementary use tax is imposed on the storage, use or other consumption of tangible personal property within the Commonwealth at the rate of five percent of the sales price of the property or services. G.L. c. 64I, § 2. In general, the tax is collected from the purchaser by the vendor, who then remits it to the Commissioner. G.L. c. 64H, §§ 2, 3. Sales exempt under Chapter 64H are also generally exempt from use tax. G.L. c. 64I, § 7(b).

1. Sales to tax exempt organizations

General Laws Chapter 64H, section 6(e), in pertinent part, exempts from the sales tax sales of tangible personal property *to* any corporation, foundation, organization or institution, which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, provided that (1) the tangible personal property or services which are the subject of such sales is used in the conduct of such religious, charitable, educational or scientific enterprise, (2) the corporation, foundation, organization or institution has first obtained a Certificate of Exemption (Form ST-2) from the Commissioner stating that it is entitled to such exemption, and (3) the vendor keeps a record of the sales price of each such separate sale, and the number of such certificate. Sales to 501(c)(3) or other tax exempt organizations of tangible personal property *to be resold* at fundraising events *are not exempt* under G.L. c. 64H, § 6(e).

2. Sales by tax exempt organizations

G.L. c. 64H, § 6(e) provides an exemption for sales *to* 501(c)(3) organizations that meet the requirements set forth above. There is no corresponding exemption for sales *by* such organizations or other types of tax exempt organizations. Therefore, sales by all such organizations are generally taxable, unless specifically exempted by another provision of law. One such provision, G.L. c. 64H, § 6(c), grants an exemption for "[c]asual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail. . . ." See section 3, below, for an explanation of this provision.

3. Casual and isolated sales

"Casual and isolated sales" are defined by the Casual and Isolated Sales regulation, 830 CMR 64H.6.1, as "those of an infrequent, non-recurring nature made by a person not engaged in the business of selling tangible personal property." The regulation provides examples of various casual and isolated sales, including

> sales by nonprofit organizations at fairs, picnics or similar events to the extent of two such events of a day's duration held during any calendar year; provided, however, that where sales are made at such events by an organization holding a registration certificate as a vendor, or otherwise required to hold such registration certificate because its selling events are in excess of the number permitted, such sales constitute sales in the regular course of business and are not exempt as casual sales. An organization conducting an exempt casual sale . . . is deemed to be the consumer of that property which it purchases for resale and as such must pay the tax on purchases not otherwise exempt.

830 CMR 64H.6.1(1)(f).

Although the total number of fundraising events conducted in a given year is the most significant factor in determining whether an organization is making casual and isolated sales, eligibility for exemption also depends on the nature of the tangible personal property sold at such events. If the property sold is of the same or similar nature, sales of such property may be made at no more than two fundraising events per year in order to qualify as casual and isolated. If the property sold at such events is not of the same or similar nature, such non-recurring sales also will generally qualify as casual and isolated. Therefore, under these limited circumstances, a tax exempt organization may conduct more than two fundraising events in a calendar year while still qualifying for the exemption provided that it maintains appropriate records to substantiate the exemption.

4. Registration requirements

For Massachusetts sales tax purposes, a "vendor" is defined as a person selling tangible personal property or services of a kind that is subject to sales tax. G.L. c. 64H, § 1. No person may do business in Massachusetts as a vendor unless a Massachusetts vendor's registration has been issued to the vendor. G.L. c. 64H, § 7; G.L. c. 62C, § 67. Therefore, if a tax exempt corporation is making sales at retail during the regular course of its activities, it is treated no differently than any other vendor of tangible personal property with regard to those retail sales. The following rules apply:

1) When a 501(c)(3) organization purchases tangible personal property for its own use and not for resale at fundraising events, the organization is not required to register as a vendor and pay sales or use tax on such purchases. All other tax exempt organizations are required to pay sales or use tax on such purchases.

2) When a 501(c)(3) (or any other tax exempt) organization purchases tangible personal property for resale in the regular course of its business at fundraising events it is not exempt from tax under the provisions of G.L. c. 64H, § 6(e). Such an organization must register as a Massachusetts vendor and should present a resale certificate to its vendor when it purchases the property for resale. When the 501(c)(3) or other tax exempt organization resells the property, it must collect the tax from its purchasers. The only exception to the general rule requiring 501(c)(3) or other tax exempt organizations to register and collect sales or use tax is for those organizations making casual and isolated sales under G.L. c. 64H, § 6(c).

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3) If a tax exempt organization does not make sales at retail in the regular course of its business, and its sale of tangible personal property at fundraising events is therefore exempt from tax as a casual and isolated sale under G.L. c. 64H, § 6(c), it is not required to register as a vendor or collect tax. However, the organization must itself pay a sales tax to the vendor upon its purchases of the property. *See,* e.g. Letter Rulings 82-67; 80-65.

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Mitchell Adams
Commissioner of Revenue