

# **Tax-Exempt May Not Mean Exempt From Sales Tax: Sales And Use Tax Obligations of 501(c)(3) Organizations**

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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

## Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
  - ✓ Be a 501(c)(3) nonprofit.
  - ✓ Be located in or serve the greater Atlanta area.
  - ✓ Serve low-income or disadvantaged individuals.
  - ✓ Be unable to afford legal services.
- *Visit us on the web at [www.pbpatl.org](http://www.pbpatl.org)*
- We host free monthly webinars on legal topics for nonprofits
  - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website
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# What is the Sales Tax?

- Retail Sale – TPP or Services
- Tangible Personal Property
- Tax must be Added to Sales Price
- “Sales Price”



# What is the Use Tax?

- Complements Sales Tax
- Focus on Out-of-State/Remote Sellers
  - ✓ Internet seller
  - ✓ No nexus with Ga.
- Form ST3-USE
- H.B. 61 (2017 Sess.)

The logo for amazon.com, featuring the word "amazon" in a bold, black, sans-serif font, followed by ".com" in a smaller, regular weight. A curved orange arrow is positioned below the "a" and "z", pointing from the "a" to the "z".



## Services Subject to Tax

- Only Those Services Listed
- Services with min. TPP = Exempt
- Separately-Stated
  - ✓ Installation charges
  - ✓ Labor
- Fabrication Labor
- Mixed Transactions – “True Object Test”



# Sales Tax Exemptions General Rules

- Found in Statutes - Not Regulations
- Types
  - ✓ Entities
  - ✓ Uses
  - ✓ Products
- Construed Narrowly





- Retail Sale Presumed
- Properly Completed ST-5
- Good-faith
- No Certificate? Collect Tax!

[illegible]

# Sales Tax Exemptions – Purchases

- Nonprofit can't buy items tax-exempt
  - ✓ Churches
  - ✓ Charitable orgs.
  - ✓ Civic orgs.
- Must pay sales tax on purchases for own use
- DOR Info. Bull. 2013-03-28
- Some exemptions allow specific entities to buy tax-exempt

# Sales Tax Exemptions – Purchases

- Specific Entities
  - ✓ American Red Cross
  - ✓ Ga. State Society of Daughters of Am. Rev.
  - ✓ Girl Scouts Food Purchases - used for fundraising
  - ✓ Boy Scouts Food Purchases – used for fundraising
- 501(c)(3) w/DOR Comm'r Letter
  - ✓ In-patient nursing homes
  - ✓ In-patient hospice
  - ✓ In-patient mental hospital
  - ✓ Food banks (through 6/2021)

## **Sales Tax Exemptions – Purchases by Educational, Cultural and Schools**

- Univ. System of Ga. and Educ. Units
- Private colleges/universities whose credits accepted by Univ. System of Ga.
- Private elementary/secondary schools
- Educ. or cultural institute sponsored by foreign gov't
- Food for Consumption by Pupils and Eee'ss of Private Schools

# Sales Tax Exemptions Sales By Nonprofits

- PTA
- Private/Public School Events
- Girl Scout Sales of Food/Food Ingr.  
(cookies)
- Boy Scout Sales of Food/Food Ingr.
- Religious Institution Fundraising





# Tax Rates in Georgia

- State Rate – 4%
- Local Rates Vary by County
  - ✓ MARTA
  - ✓ Local Opt.
  - ✓ Sp. Purpose
  - ✓ Educational
  - ✓ Homestead
  - ✓ City of Atlanta
  - ✓ TSPLOST
- Delivery Address for Rate
- Max. Rate – 8% or 8.9% (Atl)



# Collecting the Tax

- Ga. = Transaction Tax State
- Seller Adds Tax to Invoice
- Seller Collects Tax as Agent
- Seller Files Monthly Report (ST-3)
- DOR Can Also Collect from Purchaser
  - ✓ Consumer Use
  - ✓ DOR Audit
- Remote Sellers and Virtual Nexus



# Sales and Use Tax Obligations of Nonprofits

- As Seller
  - ✓ Register (Form CRF-002)
  - ✓ Form ST-3 (monthly may ↓ to quarterly)
  - ✓ E-file/E-pay
- As Purchaser
  - ✓ Register (Form CRF-002)
  - ✓ Pay sales tax or exemption cert.
  - ✓ Pay use tax



# Sales and Use Taxes

## Key Points to Remember

- NO Exemption for –
  - ✓ Churches/religious orgs.
  - ✓ Charitable orgs.
  - ✓ Civic orgs.
- Church/synagogue gift shops!
- Fraternities/Sororities
- Casual Sale Reg. May Apply



## Letter Rulings – Driving Range

- Driving Range
  - Batting cages
  - Practice range balls
  - Practice green
  - Golf lessons
- Charges for Participation in Games and Amusement Activities
- Ruling
  - Range balls - taxable
  - Batting cage - taxable
  - Golf lessons - not taxable



## Dep't of Rev. Bulletin SUT-2017-08

- Sales Tax Imposed on:
  - Charges made for particip. in games and amusement activities
  - Sales of tickets, fees or charges --
    - For admission to places of amusement, sport, enter.
    - Any other place at which exhibition, display, amusement, entertainment is offered to public
    - Any other place where an admission fee is charged
- If spectators charged a taxable admission fee, then no tax due on entry fee

# Fundraising Models

- Items to Donors as Token of Appreciation
- Festivals, Block Parties, “Taste of” Events, Carnivals or Fairs
- Galas and Silent Auctions
- Educational Events
- Half-Marathons, Marathons, Fun Runs, Fun Walks or Similar Events
- Charity Golf Tournaments

## Items to Donors as Token of Appreciation

- Donor makes contribution
- Org. gives a token of appreciation in return
- Org. must pay sales tax on purchase of token
- Keep good records!
- Coffee Mug Example
- Magazine Example



# Festivals, Block Parties, “Taste of” Events, Carnivals or Fairs

- Charges for Admission are taxable
- Various Components to Consider:
  - ✓ Booth Rental
  - ✓ Entry fee/tickets
  - ✓ Food/Beverage tickets
  - ✓ Carnival/game tickets



## Galas and Silent Auctions

- Fundraiser with Two Taxable Events
  - ✓ Gala - Food/beverage served
  - ✓ Silent auction – items are purchased
- Cost per person
  - ✓ partial donation
  - ✓ partial payment for food/beverage
- Sales tax owed on food/beverage portion





## Silent Auction

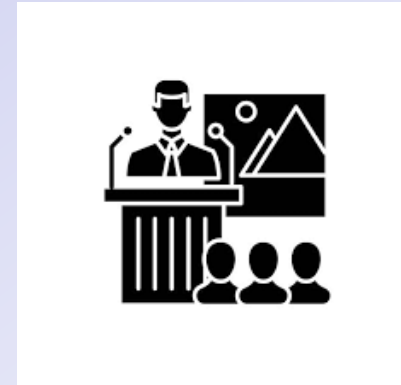
- Items donated to 501(c)(3) for Auction
  - ✓ Donor must pay sales tax on purchase
  - ✓ Business that donates item must accrue on withdrawal from inventory
- Selling Auction Items
  - ✓ Put FMV on bid sheet
  - ✓ Winning bid exceeds FMV
  - ✓ Winning bid is equal to or less than FMV
  - ✓ Bundled transactions/products
  - ✓ Vacation Homes
  - ✓ Keep Good Records!



## Educational Events

➤ Educational presentation

- ✓ By author
- ✓ By educator
- ✓ By expert



➤ No sales tax on admission charge –

- ✓ Not a place of amusement, sports, exhibition, or display
- ✓ Not entertainment

## Half-Marathons, Marathons Fun Runs, Fun Walks

- Participant fee = charge for participation in games or amusement activities
- Sales tax due on fee
- Organization pays sales tax on t-shirts



## Charity Golf Tournaments

- Organization (registered) buys rounds tax-free
- Golfer Fee – Org. collects tax or includes in fee
- Mulligan Package – donation
- Gift Bag
- Sponsorship Package





## **For More Information:**

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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