



Fundraising Events – Part III Festivals, Carnivals & “Taste of” Events

**Richard Litwin, Esq.
Robyn Miller, Senior Corporate/Tax Counsel**

January 7, 2021

Mission of Pro Bono Partnership of Atlanta:

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*
- We host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website
 - ✓ Join our mailing list by emailing rla@pbpatl.org

Legal Information:

- ✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
- ✓ © 2021. Pro Bono Partnership of Atlanta, Inc. All rights reserved. No further use, copying, dissemination, distribution or publication is permitted without express written permission of Pro Bono Partnership of Atlanta.

Agenda

- Many Legal Considerations
- Sales Tax Overview
- Common Aspects of Festivals, Carnivals & “Taste Of” Events
 - ✓ Selling food/drink/ride tickets, t-shirts, sweatshirts, etc.
 - ✓ Food Trucks
 - ✓ Rides
 - ✓ Permit
 - ✓ Alcohol
 - ✓ Insurance
 - ✓ Sponsorships

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
- Effective 1/1/20 remote seller must collect GA sales tax if sales thresholds are met



amazon.com[®]

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



Sales Tax Exemptions – Certificates

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

Sales Tax Exemptions – Purchases

- Nonprofit can't buy items tax-exempt
 - ✓ Churches
 - ✓ Charitable organizations
 - ✓ Civic organizations
- Must pay sales tax on purchases for own use
- Some exemptions allow specific entities to buy tax-exempt

Sales Tax Exemptions – Purchases

- Specific Entities
 - ✓ American Red Cross
 - ✓ Ga. State Society of Daughters of American Revolution
 - ✓ Girl Scouts Food Purchases - used for fundraising
 - ✓ Boy Scouts Food Purchases – used for fundraising
- 501(c)(3) w/DOR Commissioner 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 Educational Units
- Private colleges/universities whose credits accepted by Univ. System of GA
- Private elementary/secondary schools
- Educational or cultural institute sponsored by foreign government
- Food for Consumption by Pupils and Employees of Private Schools

Sales Tax Exemptions Sales By Nonprofits

- PTA
- Private/Public School Events
- Girl Scout Sales of Food/Food Ingredients (cookies)
- Boy Scout Sales of Food/Food Ingredients
- 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% (Atlanta)



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 Presence/Economic 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



Department of Revenue Bulletin SUT-2017-08

- Sales Tax Imposed on:
 - Charges made for participation 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 the public
 - Any other place where an admission fee is charged
- If spectators charged a taxable admission fee, then no tax due on entry fee

Department of Revenue Bulletin SUT-2020-02 (July 1, 2020)

- Addresses Fundraising Activities by § 501(c)(3) organizations
- Walks through 13 different fundraising activities and provides sales tax guidance related to conducting such activities
- Supersedes Informational Bulletin SUT 2013-03-28
- Puts § 501(c)(3) organizations “On Notice”

Commonalities of These Events

- Area designated event
 - ✓ May be public or private
 - ✓ Must be reserved and potentially cordoned off
- Entertainment
- Food/Drink
- Rides/Games/Booths
- Items for Sale

Admission & Ticket Charges

- Event in Restricted Area - Entry Fee
 - ✓ Sales tax is charged for admission for entertainment and amusement

- Tickets:
 - ✓ Food/Beverage tickets
 - ✓ Carnival/game tickets



Food & Beverage Tickets

- Charity selling tickets for food & drink
- Tangible personal property obtained with ticket
- Sales Tax must be collected on ticket
- Two common scenarios:
 - ✓ Restaurant donating food to charity?
 - ✓ Restaurant tracking tickets and is paid by charity per ticket collected?



Ride/Game Tickets



- Charity selling tickets for rides and games
- Tickets for participation in games and amusement = must charge sales tax
- What if games/rides operator provides them to charity for free?



Booth & Food Truck Space Charges

- Charity selling booth space for craft booths, food/drink booths, business booths, game booths or spaces for food trucks
- Rental of real property so NO sales tax charged on rental fee



Sale of Tangible Personal Property

- Charity selling t-shirts, sweatshirts, etc.
 - ✓ Must collect and remit sales tax
- Booths selling items
 - ✓ Up to each booth owner



Permits & Licenses

- Public space – permit to use streets, close off streets
- Permit for Private Space
 - ✓ Large Festival example
- Alcohol license
 - ✓ Webcast: Bottom's Up: Serving Alcohol at your Event
 - ✓ <https://www.pbpatl.org/resources/bottoms-up-serving-alcohol-at-your-nonprofits-event/>
- Business license
- Security may be required
- Noise levels – especially if event at night



Insurance

- Charity needs Insurance for the Event!
 - ✓ City/County/State Property – may have minimum limits
 - ✓ Permit process may have minimum limits
 - ✓ If serving alcohol – important for insurance
 - ✓ If providing games/rides – important for insurance
 - Even if game/ride vendor has insurance
 - Contract with game/ride vendor - indemnification

Corporate Sponsorships

Qualified Sponsorship v. Advertising

- Advertising = unrelated business income
- Corporate Sponsorship Rules
 - ✓ Acknowledgement of Sponsor: name & logo
 - No statements endorsing products
 - If website/email acknowledgement, no language endorsing or inducing site visitors to purchase or use sponsor's products
 - ✓ No other “substantial return benefit”
 - Substantial return benefit could = substantial private benefit = loss of exemption
 - Insubstantial value = all goods and services received from the charity by the sponsor must NOT exceed 2% of sponsorship payment for year
- Article: <https://www.pbpatl.org/wp-content/uploads/2015/09/DO%E2%80%99S-AND-DON%E2%80%99TS-OF-CORPORATE-SPONSORSHIP.pdf>
- Webcast: <https://www.pbpatl.org/resources/tax/corporate-sponsorships/>



Questions?

For More Information:

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

www.pbpatl.org
info@pbpatl.org
(404) 618-0900