

Vermont Department of Taxes
TECHNICAL BULLETIN

TAX: Sales and Use Tax

TB-2

SUBJECT: 501(c)(3) Non Profit Organizations Exemption ISSUED: 8/18/95
To define exemption criteria of Section 9743(3),
as amended by 1995 Legislature.

Effective Date: The changes to 32 VSA Section 9743(c) become effective July 1, 1995.

Exemption Available: Exemption from Vermont sales and use tax is granted to organizations which qualify for exempt status under the provisions of section 501(c)(3) of the United States Internal Revenue Code. An organization may qualify for 501(c)(3) status, but not receive Internal Revenue Service designation, and still be eligible for the sales and use exemption.

Definition of organization: Designated organizations are those that made application to, and received 501(c)(3) status from the Internal Revenue Service.

Qualified organizations are those whose purposes conform to the description contained in section 501(c)(3) of the United States Internal Revenue Code, or organizations excused from making application for 501(c)(3) status under the provisions of section 508(c) of the United States Internal Revenue Code. Text of IRC Sections 501(c)(3) and 508(c) are on page 4 of this bulletin.

Proof of 501(c)(3) qualification: A designated organization must submit a copy of the Internal Revenue Service ruling letter designating the organization as an exempt entity.

A qualified organization must submit its articles of association, evidence of the exempt purpose, and any other documents that may support the organization's claim as a qualified organization eligible for exemption from the sales and use tax. The Department will use Internal Revenue Code sections and guidelines to evaluate the organization's supporting documentation. If the evaluation shows the organization would have a reasonable likelihood of receiving 501(c)(3) status if a federal application were made, the Department will qualify the organization and grant sales and use tax exemption.

Receiving Vermont Sales and Use Tax Exemption: The organization must first be certified eligible by the Commissioner of Taxes. This is done by completing and submitting to Vermont Department of Taxes a Form S-1, Application for Vermont Business Tax Account Number, along with documents as proof of 501(c)(3) qualification. The Department will notify the organization whether it has qualified for or been denied the exemption. Appropriate certificates of exemption will be issued to eligible organizations as evidence of exemption from sales and use tax as provided by 32 V.S.A. Section 9743(3).

Purchases Made By 501(c)(3) Organizations: Purchases made by the 501(c)(3) organization are exempt from Vermont sales and use tax. The 501(c)(3) organization must present its certification of exemption to the vendor to make the purchase free of sales tax.

Sales Made by 501(c)(3) Organizations:

Tangible Personal Property: The 501(c)(3) organization does not collect sales tax on items it sells when the gross sales of tangible personal property and services, which would otherwise be subject to sales tax if not sold by an exempt entity, did not exceed \$5,000 in the prior year. The term *gross sales of tangible personal property and services* means sales of items or services

taxed by the sales tax law; sales taxed under other tax laws, such as meals and rooms, are not included. The term *prior year* means the exempt organization's financial reporting year which may be a fiscal year or calendar year.

The Department will ask for annual certification of the prior year's sales to determine whether the sales tax account should be activated.

Examples include, but not limited to: A school operates a book store. Sales from the book store in 1994 exceeded \$5,000. Any tangible personal property sold in 1995 is subject to sales tax. An organization operates a thrift store and held four fund raising suppers during the year. The thrift store had \$4,000 gross sales in 1994 and the suppers had gross sales of \$5,700. Sales in 1995 are not subject to tax as only sales that would be subject to sales tax are used to determine if the if organization has exceeded the \$5,000 threshold. If 1995 sales in the thrift store exceed \$5,000, the thrift store must collect and remit the sales tax on all 1996 sales.

Amusements: Charges for amusement events made by a 501(c)(3) organization may be exempt. An amusement charge is the price a customer pays for the right to attend an event or use recreation and amusement facilities. Examples of amusements include, but are not limited to: performances such as concerts, theatrical productions, dance recitals, festivals, circuses, carnivals, balls or dances; displays or exhibitions; sporting events such as derbies, races, rodeos, donkey ball; use of recreational facilities such as golf, swimming, skiing; viewing motion pictures.

The amusement charge for entry to a facility owned by a 501(c)(3) organization is exempt. For example, an organization may own a ski area, golf course, or swimming pool that allows public use for a fee. The fee is an amusement charge and exempt. **Note:** There are special rules governing exemption for amusement charges to performances.

The amusement charge for performances is exempt from sales tax only if the following criteria are met:

the 501(c)(3) organization bears the entire risk of loss of the production

no other person shares in the profits from the production

no other person is party to the contracts with performers of the production

the 501(c)(3) organization is solely responsible for collection of all receipts for the production

the 501(c)(3) organization is solely responsible for payment of all expenses associated with the production and accounts for receipts and expenses in its books and records.

In other words, the 501(c)(3) organization must sustain the full financial impact itself on the loss or gain of the performance production.

The 501(c)(3) organization's exemption does not extend to persons jointly producing or presenting the events. A 501(c)(3) may provide the site, do advertising for the event, provide organization volunteers to work at the event, use its name as a co-sponsor with the production company, or receive a flat payment or payment based on receipts of the production. The 501(c)(3) organization has facilitated the production but does not retain full control or bear financial impact of the production. The amusement charges in this instance would be taxable.

Other Issues: Contact the Vermont Department of Taxes for information on:

Income Tax Withholding for employees of 501(c)(3) organizations
Meals and Rooms Tax for purchases by and sales by 501(c)(3) organizations.

Contact Vermont Department of Motor Vehicles for information on:
Purchase and Use Tax on motor vehicles purchased for, rented by, or sold by 501(c)(3) organizations.

Contact Vermont Attorney General's Office for information on:
Operating games of chance
Purchase and sales of break-open tickets.

Non Profit Organizations Other Than 501(e)(3): See technical bulletins for Vermont government entities, United States government; and non profit organizations other than 501(c)(3). Sales and use tax exemptions and criteria in this technical bulletin also apply to 501(c)(4) organizations that contribute their net income to a 501(c)(3) organization.

Use of Technical Bulletins: A technical bulletin supplies general information to the public and does not replace the need for competent legal advice. This technical bulletin supersedes all prior department pronouncements on this subject.

For more information: Call Taxpayer Services at (802)828-2551; fax to (802)828-2720; or write to Business Taxes Division, P.O. Box 547, Montpelier, VT 05601-0547.

Gloria Hobson
Director, Business Taxes

Approved: _____

Betsy Anderson
Commissioner of Taxes

The Internal Revenue Code sections referenced in this technical bulletin are quoted below. These sections are provided for your convenience and any questions concerning the sections should be directed to the Internal Revenue Service. The text is from the Internal Revenue Code (Including all 1994 amendments), published by CCH, Inc., December, 1994.

Internal Revenue Code 1986 Code Subtitle A, Ch. 1F, Part 1
Section 501. Exemption From Tax On Corporations, Certain Trusts, Etc.

501(c)(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if not part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earning of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Internal Revenue Code 1986 Code Subtitle A, Ch. 1F, Part II
Section 508. Special Rules With Respect To Section 501(c)(3) Organizations.

508(c) Exceptions. -

- (1) Mandatory Exceptions. - Subsections (a) and (b) shall not apply to-
 - (A) churches, their integrated auxiliaries, and conventions or associations of churches, or
 - (B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than \$5,000.
- (2) Exceptions By Regulation. - The Secretary may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both -
 - (A) educational organizations described in section 170(b)(1)(A)(ii), and
 - (B) any other class of organizations with respect to which the Secretary determines that full compliance with the provisions of subsections (a) and (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

August 18, 1995

TO: 501(c)(3) Non Profit Organizations

RE: Sales and Use Tax

FOR MORE INFORMATION: Call 802 828 2551

Fax 802 828 2720

Write Vermont Department of Taxes
P.O. Box 547
Montpelier, VT 05601-0547

The amendment of the law governing sales and use tax exemption for 501(c)(3) non profit organizations by the 1995 Legislature may affect your organization. The enclosed technical bulletin describes the new criteria for exemption.

Under the new law, you may now be required to collect tax on your sales. If your sales are taxable, you will need to register with the Department for a sales tax account number. A registration form for 501(c)(3) organizations accompanies this mailing for your convenience.

Please contact the Business Taxes Division if you need further information.

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