

Vermont Department of Taxes
TECHNICAL BULLETIN

TAX: Sales and Use Tax

TB-61

SUBJECT: Entertainment Charges by Section 501(c)(3) organizations and political organizations as defined in 26 U.S.A. §527(e)

ISSUED: March 31, 2011

REVISED: May 31, 2011¹

STATUTORY REFERENCE: 32 V.S.A. §9743

INTRODUCTION

Beginning April 1, 2011 an organization that qualifies for exempt status under Section 501(c)(3) of the Internal Revenue Code must collect sales taxes when it charges for admission to a live performance if its gross sales of entertainment charges in the prior calendar year exceed \$50,000.00². On July 1, 2011, the threshold above which nonprofits must collect tax increases to \$100,000. Those organizations required to collect sales tax on tickets based on the \$50,000 threshold, should continue to collect sales tax until July 1. If they had between \$50,000 and \$100,000 in ticket sales during 2010 they should not collect tax on sales after July 1, 2011. If a nonprofit collected sales tax for tickets sold between April 1 and July 1 for a performance taking place after July 1, there is no requirement to refund the sales tax to the customer even if the nonprofit had 2010 sales less than \$100,000.

The threshold requirement (as enacted in 2010 and amended in 2011) 2011 replaces prior law that exempted amusement charges³ made by 501(c)(3) organizations except when the performance was jointly produced by the exempt organization and another person. Act 160 also repealed the joint production rules for the State of Vermont, its agencies, instrumentalities, public authorities, public corporations or political subdivisions but did not make these public entities subject to the threshold. Therefore, these entities do not have to collect the sales tax when

¹ This Technical Bulletin is revised to reflect changes in the law passed by the Legislature during the 2011 legislative session (Act 45, sec. 36). This revision also provides examples of live performances subject to the sales tax collection by nonprofits.

² 2010, No.160, §41.

³ The 2010 law also replaces the references to “amusement” charges with “entertainment” charges.

they charge admission to any entertainment. 32 V.S.A. § 9743(1). Organizations that are exempt pursuant to Sections 501(c)(4) through (13) and (19) of the Internal Revenue Code will continue to be exempt from collecting tax on entertainment charges in the case of not more than four special events held in any calendar year regardless of the value of ticket sales in 2010⁴.

INTERPRETATION OF “LIVE PERFORMANCE”

Theater presentations, music concerts and sporting events are live performances. Other entertainment that is considered a live performance includes:

- Horse racing and horse dressage events
- Car races, “monster truck” demonstrations and demolition derbies
- Comedy acts and historical re-enactments using actors
- Dances with live entertainment
- Fashion shows

The fact that a concert or show is presented as a benefit does not change its character as a live performance.⁵

Movies are entertainment that are subject to tax when presented by for-profit organizations but are not considered live performances. Therefore, the admission charge to a movie presented by a qualifying nonprofit is not subject to sales tax. Other entertainments that are not considered live performances include:

- Dances with disc jockeys providing the music
- Educational lectures
- Auctions, art shows or collector’s shows

HOW THE NEW LAW WILL BE APPLIED

The exempt organization is responsible for keeping a record of its sales and determining whether its gross sales in the prior year exceeded the threshold amount. If its gross sales exceeded \$50,000, then starting April 1, 2011, the organization must collect and remit sales tax on all of its

⁴ Although these organizations were brought under the threshold rule in Act 160, the 2011 Legislature repealed the threshold rule as to 501 (c)(4)-(13)and(19) organizations effective July 1, 2011 leaving them subject only to the former four event limitation.

⁵ The full admission charge to a benefit show is subject to sales tax if the nonprofit presenting the show exceeded the \$100,000 threshold in the previous year. Patrons are allowed to provide donations beyond the price of admission and those donations are not subject to the sales tax.

charges for entertainment in the current year. If the organization had gross sales between \$50,000 and \$100,000 in 2010, then they are required to collect the sales tax only for tickets sold between April 1 and July 1.

If an organization sells tickets to a performance through a ticket seller, including a ticket agent, ticket service or ticket outlet, the organization must include both tickets sold by the ticket seller and its own direct sales of tickets in determining whether the threshold has been met. All of the ticket sales are considered to be *by the exempt organization* and not the ticket seller. The ticket seller may sell tickets to the organization's performance without charging sales tax if, prior to selling, the ticket seller obtains a certification (which may be in the form of a letter) from the organization stating that its gross sales of entertainment charges in the prior year did not exceed the threshold amount. The certification must be retained by the ticket seller in its business records. If the organization does not provide certification, the ticket seller must collect and remit tax on the charges.

An exempt organization that owns or controls a performance venue is not required to include the gross sales from a performance at such venue in the calculation of its gross sales if it merely leases the venue to another organization or allows its use by another organization and provides the following services related to the use of the venue: stage crew, lighting, sound and ticketing. The lessee (user) organization is responsible for accounting for sales to the performance.

When two exempt organizations each contribute capital or effort or both to presenting a performance, and one of them is below the threshold amount (first organization) and one is above the threshold (second organization), the organizations can agree to collect tax (based on the second organization's taxable status) in which case the receipts must be included in the second organization's receipts. Alternatively, the organizations may choose not to collect tax on the ticket sales (based on the exempt status of the first organization) in which case the receipts must be included in the first organization's gross receipts.

The tax is imposed on the entire charge for the entertainment, including service, mailing and any other fees the customer is charged.

EXAMPLES

(1) An exempt organization produces a performance in 2011 by arranging for the appearance of a performer, compensating the performer, staging the performance and operating lighting and sound systems. The organization had gross sales of \$150,000 in 2010. The organization must collect and remit sales tax on the charges for the entertainment to consumers (i.e., on the tickets).

(2) An exempt organization controls a venue used for presenting entertainment (either through ownership or leasehold interest) and leases the venue to a for-profit entity that is presenting entertainment there. The for-profit entity arranges for and compensates the performers. Its

employees stage the event and operate the lighting and sound systems. The for-profit entity is responsible for collecting and remitting sales tax on the tickets or charges for the entertainment. The sales threshold is irrelevant because the entertainment is being presented by the for-profit and the exempt organization is merely a lessor with respect to this entertainment.

(3) An exempt organization controls a venue used for presenting entertainment (either through ownership or leasehold interest) and leases the venue to an exempt organization that is presenting a show there in 2011. The lessee arranges for the performers, costumes and advertising. The lessor provides lights, sound and stage crew. The lessee had gross sales of \$30,000 in 2010. The lessee organization does not have to collect sales tax on its ticket sales because it did not meet the \$100,000 threshold in the prior year. If it has received proper certification from the presenting organization of its status during 2010, the lessor organization does not have to collect sales tax because it is not presenting the entertainment but is merely the lessor of the venue (even if the lease includes lighting, sound and stage crew for the performance).

(4) A Section 501(c)(3) exempt organization contributes performers, stage sets and advertising to a performance. Its gross sales from entertainment charges in the prior year are \$20,000. A second exempt organization contributes the venue with lighting and sound systems as well as technical advice. Its gross sales from entertainment charges in the prior year are \$300,000. Sales tax does not have to be collected on the ticket sales to the performance because one of the contributing exempt organizations was below the gross sales threshold in the prior year and the two organizations have a written agreement that provides that the venue organization shall include the charges for the performance in its calculation of gross sales. If the organization contributing the performers, sets and advertising was a Section 501(c)(4)-(13) or (19) organization, the result is the same unless that organization had already held four events in the calendar year.

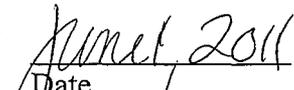
(5) In 2011, an exempt organization presents a performance as a fund-raising event in a venue controlled by a for-profit entity. The artist performs without compensation. The exempt organization had gross sales for its performances in 2010 of \$120,000. The exempt organization must collect and remit sales tax on the charges to the performance. Charges to the event, which is the only entertainment presented by the organization that year, total \$80,000. The organization does not collect tax on its ticket sales in 2012.

(6) In 2010, an exempt organization directly sold \$65,000 worth tickets to various entertainment it presented. It also sold \$50,000 of tickets to its entertainment through a ticket seller. Because the ticket seller sold on behalf of the organization, the organization's gross sales of entertainment charges were \$115,000 in 2010 and the organization must collect tax on its entertainment charges in 2011.

Drafted by:

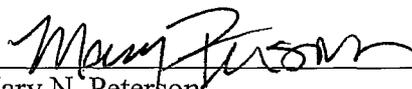


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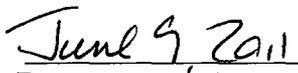


Date

Approved by:



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Date