

The Nebraska Taxation of Nonprofit Organizations (for Sales and Use, Income, and Withholding Taxes)

Effective July 1, 2006

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This information guide provides an overview of how Nebraska sales and use, income, and withholding tax laws apply to nonprofit organizations. It is not designed to answer all questions which might arise, but is intended to enable a person to become familiar with how the tax programs affect nonprofit organizations.

OVERVIEW

The fact that a nonprofit organization qualifies for an exemption from income tax under section 501(c) of the Internal Revenue Code does not necessarily entitle the organization to an exemption from Nebraska sales and use tax. A 501(c) designation refers to the section of the Internal Revenue Code under which a nonprofit entity has been granted an exemption from federal and state **income** tax. Although sometimes used to define who qualifies for an exemption, a nonprofit 501(c) designation does not mean the organization is automatically exempt from **sales** tax. Only the entities listed below are exempt from paying Nebraska sales tax on their purchases when the exemption certificate is properly completed and provided to the seller.

Most nonprofit organizations must pay sales tax on items and taxable services they purchase for their own use, including items that will be given away to others.

Nonprofit organizations, with very limited exceptions, must collect sales tax on items they sell.

Nonprofit organizations must pay income tax on certain income.

Nonprofit organizations must withhold state income tax on wages that are subject to federal withholding.

PART I — SALES AND USE TAX

A. Nonprofit Organizations That Are Not Exempt From Payment of Sales and Use Tax.

Only those organizations that are specifically listed in the Nebraska Sales and Use Tax Regulations as exempt entities are exempt from Nebraska sales and use tax.

Organizations that are not exempt from Nebraska sales and use tax must pay the tax on items and taxable services purchased for their own use. This includes purchases of items to be given away.

Some examples of organizations that are **not** exempt from sales and use tax are: Boy Scouts, Girl Scouts, YMCA, YWCA, United Way, community service groups such as Kiwanis or Sertoma, and fraternal groups such as the Masons or Elks.

B. Nonprofit Organizations That Are Exempt From Payment of Sales and Use Tax.

Only the following nonprofit organizations can qualify for an exemption from paying Nebraska sales and use tax.

1. Organizations created **exclusively** for religious purposes (see Reg. 1-091).
2. Nonprofit organizations providing services **exclusively** to the blind (see Reg. 1-090).
3. Public or private Nebraska educational institutions established under Chapters 79-1601 to 79-1607 or 85-1101 to 85-1111 of the Nebraska Revised Statutes (see Reg. 1-092).

IMPORTANT: A nonprofit organization operating any of the following facilities is only exempt on purchases for use at the facility or portion of the facility **covered by the license**. Any purchases by the nonprofit organization for use at facilities

not included in the license or for any other activities of the nonprofit organization are **not exempt** from the Nebraska sales and use tax. For example, a nonprofit organization that operates a facility offering independent living, assisted living, and a licensed skilled nursing facility is only exempt on purchases made for the skilled nursing facility or portion of the entire facility that is licensed as a skilled nursing facility, e.g., a specific wing or number of beds within a designated area within the facility (see Reg. 1-090).

4. Nebraska licensed nonprofit hospitals.
5. Nebraska licensed nonprofit skilled nursing facilities.
6. Nebraska licensed nonprofit intermediate care facilities and Nebraska licensed nonprofit intermediate care facilities for the mentally retarded.
7. Nebraska licensed nonprofit nursing facilities.
8. Nebraska licensed nonprofit home health care agencies, hospices or hospice services, or respite care services.
9. Nebraska licensed nonprofit health clinics, when owned or controlled by two or more hospitals or the parent corporations of the hospitals or which receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically under-served.
10. Nebraska licensed child-care agencies. These agencies are ones which provide 24-hour daily care, supervision, custody, or control of children in lieu of care or supervision normally exercised by parents in their own home, and are licensed under sections 71-1901 to 71-1904 of the Nebraska Revised Statutes.

An organization providing day care, early childhood programs, and periodic care as defined in section 71-1910 is not exempt as a child-caring agency. NOTE: Foster care homes **cannot** qualify for an exemption.

11. Nebraska licensed child-placing agencies. These agencies are ones that are authorized to place children in foster family homes or to place children for permanent adoption.
12. Nonprofit organizations certified to provide community-based services to persons with developmental disabilities.

All qualified organizations will be exempt from sales and use tax only after the organization has applied for and received an exemption certificate.

A certificate of exemption is obtained by completing and submitting a Nebraska Exemption Application for Sales and Use Tax, Form 4, and any supporting documentation indicated on the Form 4, to the Department of Revenue for approval.

Subordinate Organizations. A qualified exempt organization may have within its charter or structure subordinate organizations or functional groups. The exempt status of the primary organization does not extend to subordinate organizations or other functional groups. These groups must pay tax on items purchased for use within the organization.

If the subordinate organization is a separate entity (holds its own federal identification number) AND it is one of the previously

enumerated exempt organizations, the subordinate organization may submit an application for exemption from sales and use tax.

Purchases

Purchases for use by the organization. Qualified nonprofit organizations that have received a Nebraska exemption certificate may make tax-free purchases of items and taxable services to be used by the organization.

Documenting tax-free purchases by qualified exempt organizations. All tax-free purchases **MUST** be supported by a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13. The exempt organization must complete Section B of Form 13 and give the completed form to the seller.

Purchases for resale. Nonprofit organizations, both taxable and exempt, purchasing items to be resold may purchase those items tax-free for resale purposes.

Example: A nonprofit youth club is selling books at a fund-raiser. The club may purchase the books tax-free from the supplier for resale at the fund-raiser. The club is a retailer like any other retail business and must obtain a Nebraska sales tax permit, and collect and remit sales tax on the books sold at the fund-raiser (see “Sales” section for permit information).

All tax-free purchases for resale must be supported by a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13. The organization will complete Section A of Form 13 and give the completed form to the supplier.

Sales

With very limited exceptions, both taxable and exempt nonprofit organizations making sales, including sales of donated items, **MUST** collect Nebraska and applicable local sales tax on all sales.

Example: A civic organization holds a rummage sale. The organization must obtain a sales tax permit and collect sales tax on the items sold at the sale.

All nonprofit organizations making sales are retailers and must obtain a Nebraska sales tax permit. The permit is obtained by completing and submitting a Nebraska Tax Application, Form 20, to the Department of Revenue.

Exceptions

Schools. Sales, including sales of meals and concession sales, by parent-booster clubs, parent-teacher associations, parent-teacher-student groups, and school operated stores are not taxable.

In order to qualify for exempt-sale status, the proceeds from the sale must be used to support school activities or the school itself, and the sale must be approved by the school. In addition, the sale of items such as art or shop supplies by schools to their students are exempt from sales tax (see section 1-092.07 of Nebraska Sales and Use Tax Regulation 1-092, Educational Institutions).

Religious organizations. In general, religious organizations must collect tax on sales to the general public or to their members. However, religious organizations may make the following sales without collecting sales tax:

- The sale of meals at a function of the religious organization. The activity is considered a function of the religious organization if it is primarily for the members of the organization.
- One annual sale that is an activity of the organization (see Reg. 1-091.07B for additional information).

Fund-Raisers

Donations to nonprofit organizations are not taxable PROVIDED the donation does not result in the granting of admission to an event or place; the transfer of property such as a meal, cap, book, etc.; or the provision of a taxable service such as pest control or building cleaning (see the List of Taxable Services guide for additional information regarding taxable services).

When the donation results in the granting of admission, transfer of property, or provision of a taxable service, the nonprofit organization must determine the fair market value of the admission, property, or taxable service. The amount received that represents the fair market value of the admission, property, or taxable service is a retail sale and the nonprofit organization MUST collect and remit the Nebraska and applicable local sales tax on that amount. If the charge for fair market value and the donation are not separately stated, the TOTAL charge is taxable.

The nonprofit organization must indicate on any ticket, receipt or other item issued in connection with the payment, the amount on which sales tax has been calculated.

Example 1: A nonprofit organization holds a pancake feed in Lincoln. The amount charged to contributors is \$15. The fair market value of the pancake meal is \$5. The organization indicates on the ticket:

Pancakes	\$5.00
Tax @ 7%	.35
Contribution	<u>9.65</u>
Total	\$15.00

The organization will remit 35¢ for each pancake meal.

Example 2: A nonprofit organization offers a big screen TV (provided by the local furniture store) or one year of house cleaning service (provided by a local house cleaning business) in exchange for a contribution. The amount of the contribution is \$3,000. The TV and the house cleaning service are each valued at \$1,000 (fair market value).

If the contributor's receipt indicates only the total contribution amount of \$3,000, then the organization must collect and remit the Nebraska and applicable local sales tax on the total amount contributed of \$3,000. If, however, the contributor's receipt indicates that the fair market value of the TV or the cleaning service is \$1,000, then tax is collected and remitted only on the \$1,000 fair market value amount indicated.

Car Washes

The gross receipts from providing motor vehicle washing services are taxable. If the nonprofit organization chooses not to impose a fee or charge for its car wash, then the organization must post a sign that states "free-will donations accepted." Free-will donations are not taxable.

Donated Items

Donors. Individuals or organizations purchasing and donating items both taxable and exempt to nonprofit organizations owe sales or use tax on their cost of the item.

Example: An individual buys a computer that will be donated to a nonprofit organization (such as a church or Sertoma Club). The individual must pay sales tax on the purchase price of the computer. The fact that the computer was donated to a nonprofit organization does not affect the taxability of the donor's purchase of the item.

Retailers donating inventory items to nonprofit organizations are required to pay use tax on their cost of the tax-free items withdrawn from inventory.

Sales of Donated Items. When a nonprofit organization sells donated items, the transaction is a retail sale. The organization must collect and remit the Nebraska and applicable local sales tax (see "Sales" section above).

Donated Items That Are Given Away. When a nonprofit organization gives away donated items, including items given away as prizes, the organization is not required to collect sales tax and it does not owe consumer's use tax. The recipient does not incur a sales or use tax liability.

Example: A nonprofit organization offers a set of cookware as a prize in a raffle. The cookware was donated by a department store. The winner of the prize does not owe sales or use tax since the item was won; the nonprofit organization does not owe sales or use tax since the cookware was given to the organization; the department store owes use tax since the item was withdrawn from tax-free inventory and the donation of the item is considered a taxable use by the donor.

Construction Projects for a Qualified Exempt Organization

A qualified organization's exemption from sales and use tax may be applied to building materials used in a construction project and to the contractor labor performed on such project. The organization may exercise its exemption in one of three ways:

- Issue a Purchasing Agent Appointment, Form 17, to the general contractor **before** the contractor purchases materials that will be incorporated into the project. The Form 17 applies to both building materials and contractor labor;
- Purchase the materials tax-free and enter into a labor-only contract with the contractor. The qualified exempt organization must still issue a Form 17 to the general contractor to purchase the contractor labor tax-free; or
- Pay the contractor and file for a refund of taxes paid by the contractor on building materials incorporated into the project and the sales tax paid to the contractor on the contractor labor.

The exemption does not apply to tools, equipment, or other items used in completion of the project that are not incorporated into real property.

PART II — NEBRASKA INCOME TAXATION

State income taxation of nonprofit organizations is based primarily on federal procedures and income amounts. Except for informational returns, when a federal return is filed, a state return must also be filed. Specifically, a federal return reporting unrelated

business income or estimated payments requires a comparable state tax filing. The chart below summarizes the comparative state and federal income tax filing requirements for nonprofit organizations.

State Income Tax Filing Requirements for Nonprofit Organizations*				
Purpose of Return	Federal Form	State Form	Due Date — State	Extension — State
Information Return	Form 990	None required	Does not apply	Does not apply
Income Tax on Unrelated Business Income**	Form 990-T (and other appropriate federal forms)	Form 1120N for organizations taxed at corporate rates <hr style="border-top: 1px dashed black;"/> Form 1041N for organizations that are trusts	15th day of 5th month after end of organization's tax year	Federal extension accepted when attached to state return

*The state filing requirement, with the exception of an information return, is contingent on whether a federal filing is required.

**Estimated payments may also apply.

Proceeds From Bingo Games

The proceeds from bingo games conducted by most exempt organizations are generally exempt from income tax, since such proceeds are not considered unrelated business income. This exception does not apply to sales of meals to the general public.

Income Tax Withholding

Nebraska income tax must be withheld from all employee wages that are subject to federal income tax withholding.

Summary of State Tax Exemptions and Liabilities for Nonprofit Organizations		
Tax Program/Question	General Rule	Exceptions
Must a nonprofit organization pay sales tax on purchases made as a consumer?	Yes	<ul style="list-style-type: none"> • Unless it is an enumerated organization that has applied for and been granted a Nebraska exempt organization certificate of exemption under Reg. 1-090.01 through 1-090.02, Reg. 1-091.01 through 1-091.02C, and Reg. 1-092.01 through 1-092.02.
Must a nonprofit organization pay sales tax on purchases made for resale?	No	<ul style="list-style-type: none"> • Unless Form 13, Section A, is not given to the seller at the time of purchases.
Must a nonprofit organization collect sales tax on sales made by the organization?	Yes	<ul style="list-style-type: none"> • Unless it is a parent-booster club; parent-teacher association; parent-teacher-student group; or school-operated store under Reg. 1-092.07E. • Unless it is a religious organization selling meals at a function under Reg. 1-091.07.
Must a nonprofit organization pay income tax?	No	<ul style="list-style-type: none"> • Unless the organization has unrelated business income and is filing a Federal Form 990-T (or other federal form reporting unrelated business income).
Must a nonprofit organization withhold income tax on wages paid to employees?	Yes	<ul style="list-style-type: none"> • Unless the wages are not subject to federal withholding.