



**Revenue Ruling  
No. 13-002  
February 25, 2013  
Sales Tax  
Taxability of Sales Made in Connection with Events Held  
By Nonprofit Organizations**

La. R.S. 47:305.14 provides, among other things, an exemption from the collection of sales taxes on admissions to, parking fees associated with, and sales of tangible personal property at events held for fundraising purposes and sponsored by domestic, civic, educational, historical, charitable, fraternal, or religious organizations, which are nonprofit. A sponsoring organization will generally be considered nonprofit if it is publicly recognized and established through formal chartering or incorporation and is approved for nonprofit status under the applicable provisions of the United States Internal Revenue Code.

In addition to the above requirements, the entire proceeds of a qualifying event—with the exception of necessary expenses, such as fees for guest speakers, chair and table rentals, and food and beverage utility connected therewith—must be used for or in furtherance of the educational, charitable, religious, or historical restoration purpose of the organization. An event which is intended to yield a profit to a promoter will not meet this requirement. An individual, group or organization will generally be held to be a promoter—and thus ineligible for the exemption—where there exists an agreement between the individual, group or organization and the nonprofit to share in the net proceeds of the event or where the individual, group or organization bears a risk of loss or gain that is dependent on the success or lack of success of the event.

Unless it will be selling otherwise exempt items, a nonprofit must apply for an exemption certificate for each fundraising event. If the Department approves the application, it will issue an exemption certificate for the specific event. The certificate will evidence the Department's approval that tax need not be collected on otherwise taxable sales occurring during the eligible event.

The requirements for nonprofit organizations to make tax-free sales at fundraising events are detailed in LAC 61:I.4418. It is not the purpose of this policy statement to address all the requirements. However, examples of some common types of events—especially by school groups and youth organizations – are discussed below.

**EXAMPLE 1: ORGANIZATION SELLS FOOD**

**Facts**

Sales of food items are popular fundraising events for school and youth organizations. Such sales include cookies, popcorn, candy and other prepared food items. Other organizations run concession stands at festivals or school fairs where the sale of hamburgers, hot dogs, nachos, and other food items is common. Still, others offer the sale of prepared meals, such as jambalaya or barbeque dinners.

### **Analysis/Discussion**

La. R.S. 47:301(10)(h) excludes from taxation sales of food items by “youth serving organizations chartered by congress.” Congressionally chartered youth serving organizations include Girl Scouts of the USA, Boy Scouts of America, and 4-H Clubs. As such, the sales of Girl Scout cookies, Boy Scout popcorn, and other food items held for sale by such organizations are exempt from the requirement to collect state sales tax without the necessity of applying for the exemption found in La. R.S. 47:305.14.

Absent qualification for the exemption found in La. R.S. 47:305.14, the sales of prepared food items by all other groups are subject to the collection of sales tax. This includes the sale of packaged food items, such as cookies, popcorn, and candy, as well as prepared food items, such as hamburgers, nachos, jambalaya and barbeque dinners.

### **EXAMPLE 2: ORGANIZATION TAKES ORDERS FOR THE PROMOTER**

#### **Facts**

Often, schools and religious institutions raise money by taking orders and collecting money on the sale of various items, such as candles, Christmas cards, and wrapping paper. Typically, the items sold are that of a single, third-party vendor. Afterwards, the sales are compiled and an order is submitted to the third-party vendor, along with the funds collected, less the nonprofit’s share of the funds collected. The third-party vendor ships the goods that were ordered to the nonprofit and the students deliver them to the purchasers.

#### **Analysis/Discussion**

La. R.S. 47:305.14(A)(2) provides that the exemption does not apply to any event “intended to yield a profit to the promoter ...” An individual, group or organization will be considered a “promoter” if the individual, group or organization shares in the net proceeds of the event with the nonprofit or if the individual, group or organization bears a risk of financial loss or gain that is dependent on the success or lack of success of the event. While this provision does not preclude the Department’s approval of the tax collection exemption for an otherwise eligible event solely because the nonprofit acquires the items it is selling from a third-party vendor, the presence of a single vendor that provides order forms, sets the terms of sale, and provides promotional materials and sales incentives (such as prizes and awards for top sellers), will render the vendor a promoter. Such a finding is attributed to the risk of financial gain or loss that is borne by the third-party vendor and is dependent on the success or lack of success of the event. Accordingly, events which can be classified under this scenario will not qualify for the exemption and sales tax should be collected on any and all items held for sale by the nonprofit during the event.

### **EXAMPLE 3: ORGANIZATION TAKES ORDERS; NO PROMOTER IS INVOLVED**

#### **Facts**

A nonprofit may have a fundraiser similar to the one described above without using a promoter. In such a scenario, the nonprofit solicits orders and then purchases goods to fill the orders from a third-party vendor, such as Sam’s Club. The third-party vendor plays no role in promotion of the event.

### **Analysis/Discussion**

Here, the third-party vendor does not appear to bear a financial risk of loss or gain that is dependent on the financial success or lack of success of the event. As such, assuming the absence of a profit-sharing agreement between the non-profit and the third-party vendor and compliance with any and all other requirements provided in La. R.S. 47:305.14 and LAC 61:I.1944, the event would be eligible to receive the exemption.

### **EXAMPLE 4: ORGANIZATION PURCHASES AND RESELLS MERCHANDISE**

#### **Facts**

In lieu of taking orders, schools and other nonprofits often have their students or members sell various items, such as calendars or caps. The money collected is turned in to the nonprofit directly. The sale of the items is filled with pre-existing inventory which has been purchased by the nonprofit beforehand from a third-party vendor as a sale for resale. As such, the nonprofit alone bears the risk of loss associated with having unsold inventory.

#### **Analysis/Discussion**

Although the third-party vendor may recognize a profit, none of it is contingent on the success of the fundraiser. Further, the third-party vendor plays no role in promotion of the fundraiser and no profit-sharing agreement exists between the third-party vendor and the nonprofit. As such, the third-party vendor is not a “promoter” and the exemption would apply assuming compliance with any and all other requirements provided in La. R.S. 47:305.14 and LAC 61:I.1944.

### **EXAMPLE 5: ORGANIZATION SPONSORS MERCHANDISE FAIR**

#### **Facts**

The most common type of merchandise “fair” is the school book fair. Typically, the bookseller delivers books and other merchandise to the school, along with planning materials, promotional tools, and merchandising displays. Often, the bookseller’s employees come to the school to help organize the fair and arrange displays. Teachers and parent volunteers work the fair. Students and others make purchases at the bookseller’s list prices. After the fair, unsold merchandise is shipped back to the bookseller. All payments are transmitted to the bookseller. An accounting is done, and the school is given an agreed upon percentage of the books sold with the bookseller keeping the remaining portion of the profits.

#### **Analysis/Discussion**

In the above scenario, there exists a profit-sharing agreement between the bookseller and the nonprofit. Such an agreement is clearly not in compliance with the requirements of La. R.S. 47:305.14(A)(2), which provides that the exemption does not apply to any event “intended to yield a profit to the promoter ...” Further, the bookseller bears a risk of gain or loss, as the size of its profits depend upon the success or lack of success of the event. Accordingly, the event will not qualify for the exemption and sales taxes should be collected on any and all sales during the event.

## **EXAMPLE 6: ORGANIZATION HOST THIRD-PARTY VENDOR**

### **Facts**

Often, schools and various nonprofits host or facilitate the sale of merchandise from third-party vendors. This scenario is most commonly seen in the sale of class rings, class photos and yearbooks. Typically, the third-party vendor of the rings or the third-party photographer comes to the school to market and sell its product to the students. Employees alone from the third-party vendor often frequent the school to distribute marketing materials and/or to take orders and hold photo sessions. After the third-party vendor collects the monies due and delivers the orders, it may give the school or other nonprofit a share of its profit derived from its sales.

### **Analysis/Discussion**

The third-party vendor in the above scenario will be classified as a “promoter” as it bears the entire risk of gain or loss that is dependent upon the success or lack of success of the event. Further, the event is clearly intended to yield a profit to the promoter of the event—the third-party vendor. Finally, the above scenario often involves a profit-sharing agreement between the third-party vendor and the school or other nonprofit, further disqualifying the event. For all of these reasons, the event described in the above scenario will not qualify for the exemption and sales tax should be collected on the entirety of all sales made during the event.

## **CONCLUSION**

The above examples are intended to provide guidance and constitute an illustrative list of how the provisions of La. R.S. 47:305.14 and LAC 61:I.4418 may be applied to common scenarios. Nonetheless, the qualification of each event for the exemption contained in La. R.S. 47:305.14 will be governed by the particular facts and circumstances of each case and may vary from those demonstrated above.

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<p>A Revenue Ruling is issued under the authority of LAC 61:III.101 C. A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the Department's position and is binding on the Department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.</p>
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