

# Nonprofit Q&A on the 2019 Kentucky Tax Changes

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Effective March 26, 2019, Kentucky nonprofits are exempt from collecting and remitting sales tax on admissions and most items sold for fundraising purposes. Kentucky Nonprofit Network mobilized nonprofits across Kentucky to work with legislators to address laws effective July 1, 2018, and to provide clarity and relief for nonprofits regarding existing laws.

**DISCLAIMER:** The Department of Revenue has not had the opportunity to issue much guidance about how this new law will be applied. Thus, the questions and answers set forth should be viewed as guidelines. Neither Dean Dorton nor Kentucky Nonprofit Network can guarantee the Department of Revenue will agree with the answers provided. Also note, there was no change in the law in 2018 or 2019 for public and private elementary and secondary schools.

## THE LAW APPLIES TO "NONPROFIT ORGANIZATIONS." HOW IS "NONPROFIT ORGANIZATION" DEFINED?

"Nonprofit organization" is broadly defined to include:

- Educational, charitable, and religious organizations exempt from income tax pursuant to Section 501(c)(3) of the Internal Revenue Code;
- Nonprofit civic and other nonprofit organizations; and
- Governmental organizations.

## WE KNOW WHAT CONSTITUTES A 501(C)(3) AND A GOVERNMENTAL ORGANIZATION, BUT WHAT IS A "NONPROFIT CIVIC OR OTHER NONPROFIT ORGANIZATION?"

There is no definition of "nonprofit civic or other nonprofit organization" in the law (old or new). But, there are numerous "nonprofit" entities that are exempt from income tax under Section 501(c) of the Internal Revenue Code, but not under subsection (3). Examples of other 501(c) organizations include civic leagues — 501(c)(4); business leagues/chambers of commerce — 501(c)(6); social and recreational clubs (think country clubs) — 501(c)(7); and fraternities and sororities — 501(c)(8). These appear to be the types of entities contemplated by the legislature's use of "nonprofit civic or other nonprofit organization." Let's use "501(c)(others)" as shorthand for this group.

## WHAT IS EXEMPT FROM SALES TAX?

The new law exempts:

- Sales of "admissions," and
- "Fundraising event sales," but not
- "Sales related to the operation of a retail business...or any ongoing operations in competition with for-profit retailers."

## WHAT ARE "ADMISSIONS?"

"Admissions" means tickets sold or fees charged for entry to an event or activity. When the ticket sold or entry fee is sold by a nonprofit organization, the admission is EXEMPT from sales tax. The following are examples of EXEMPT admissions:

- Entry to theatres or museums;
- Membership fees that include access to a museum, sporting event, gym, golf course, swimming pool, etc.;
- Annual memberships to museums and theatres; and
- Memberships to "friends of" organizations.

## WHAT ARE "FUNDRAISING EVENT SALES?"

The new law doesn't provide a definition of "fundraising event sales." Instead, the law tells us what is **not** a fundraising event sale. The law states: "Fundraising event sales" does not include sales related to the operation of a retail business, including but not limited to thrift stores, bookstores, surplus property auctions, recycle and reuse stores, or any ongoing operations in competition with for-profit retailers."

## WHAT DOES "ANY ONGOING OPERATION IN COMPETITION WITH FOR-PROFIT RETAILERS" MEAN?

Let's come back to this after some questions and answers about fundraising, generally.

## ARE THE FOLLOWING TICKETS/CHARGES/FEEES FOR FUNDRAISING EVENTS TAXABLE?

- Admission to events? **NO!**
- Sponsorships with tickets or admissions? **NO!**
- Items sold at live or silent auctions? **NO!**
- Registration fees for a charitable run, walk or golf tournament? **NO!**
- Entry fees, sponsorships, hole sponsors, and mulligans for a golf tournament? **NO!**
- Bingo cards? **NO!**
- Pull tabs? **NO!**

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## DO I HAVE TO KEEP BILLING THE SPONSORSHIP AND THE TICKETS SEPARATELY?

**No!**

## SO, WHAT DOES "ANY ONGOING OPERATIONS IN COMPETITION WITH FOR-PROFIT RETAILERS" MEAN?

This can be a difficult determination, but the examples below, with answers provided by the Department of Revenue, offer some guidance.

- **Are sales by a nonprofit thrift store taxable? Yes.**
- **Are sales by a nonprofit café, the proceeds of which are used to support the café, taxable? Yes.**
- **Is the sale of used goods at a church rummage sale taxable? No,** unless the rummage sale is operated out of a thrift store retail location run by the church.
- **Are sales of T-shirts or other logo items purchased and used by volunteers of an organization taxable? No,** as long as the T-shirts or other logo items are not part of the inventory of a retail store operated by the nonprofit.
- **If a "friends of the library" nonprofit sells used books, are the book sales taxable? The book sales are taxable if** the "friends of" organization is continually offering books for sale, either through a bricks and mortar location or online, using a platform such as amazon.com. If the book sales are for fundraising, and the sales are offered on a periodic basis, for example, annually or semi-annually, the sales would be exempt.

## WHAT ABOUT TAXES ALREADY COLLECTED AND REMITTED?

There are **no refunds** for sales prior to March 26, 2019. The monies already collected and remitted stay with the state treasury.

## WHAT ABOUT TAXES ALREADY COLLECTED, BUT NOT YET REMITTED?

If you have funds you have already collected, but not remitted, **the monies must be sent in** with your next regularly scheduled sales tax return.

## WHAT ABOUT INVOICES THAT HAVE BEEN SENT BUT NOT PAID, OR INVOICES THAT HAVE NOT YET BEEN SENT, FOR AN EVENT THAT OCCURRED PRIOR TO MARCH 26, 2019?

Sales tax should be collected and remitted in both instances. The sales tax is based on the date of the event or activity and not the date of billing or payment.

## DO I HAVE TO CONTINUE TO FILE SALES TAX RETURNS?

The Department of Revenue has provided the following guidance about closing your sales tax account:

Sales of admissions by nonprofits prior to the effective date of HB 354 on March 26, 2019 are taxable, and the tax collected on these transactions should be remitted by the organization when they file their regularly scheduled sales tax return. In many cases, nonprofit sellers file returns on a quarterly basis. For example, their January through March 2019 return will be due by Monday, April 22.

Any of these organizations whose only sales activities are no longer taxable (admissions or fundraising event sales) should cancel their sales tax account numbers effective at the end of March. When filing the final return for the March ending period, the organizations should include a request for the Department to accept the return as the final report and to close out the account. Filers that submit returns by paper may include the cancellation request with their returns. Those filing electronically should submit a request in writing to the address below or by email to KRC.WEBResponseSalesTax@ky.gov. In fact, paper or electronic filers may submit their cancellation request by email if preferred.

Kentucky Department of Revenue  
Division of Sales and Use Tax  
Station 67  
PO Box 181  
Frankfort, KY 40602-0181

Organizations should make sure all sales tax on admissions or fundraising event sales held before March 26, 2019 has been collected and remitted to the Department of Revenue prior to requesting cancellation of their sales tax account.

## Are you investing in your organization and a unified voice for the nonprofit sector?

*"This sales tax issue is the perfect example of why membership in an association is so important," Senator David Givens (KNN Forum, 10/17/18)*

Visit [www.kynoprofits.org](http://www.kynoprofits.org) - become a KNN member today!