**Private Letter Ruling**

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| **Ruling Number:** | **P-2006-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Non-profit organization providing a nonsectarian comprehensive multidiscipline youth development program.** |
| **Keywords:** |  |
| **Approval Date:** | **02/24/2006** |

**Body:**

Office of Policy & Research

February 24, 2006

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XXXX

Re: Request for private letter ruling

Dear XXXX:

You requested a private letter ruling on behalf of XXXX, concerning several sales tax issues arising from its fundraising activities. It should be noted that the Department recently issued a tax-exempt entity exemption certificate to XXXX as a non-profit organization providing a nonsectarian comprehensive multidiscipline youth development program. Under K.S.A. 2005 Supp. 79-3606(ii), such an organization is exempt from paying sales tax on purchases of tangible personal property for such a program, and sales of tangible personal property by such an organization are also exempt from sales tax. This exemption does not apply to tangible personal property used for human habitation purposes (such as items used in constructing, modifying, repairing, or furnishing living quarters).

The questions you presented, and our answers, are shown below:

1. Regarding fundraising events that include sponsorships, are the total amount received from the sponsors/donors subject to Kansas sales tax in situations where the donor receives a certain amount of taxable items (meals, participation in event, favor bags) in addition to nontaxable items (i.e., special recognition at the event; advertising opportunities, etc.)?

Example#1: sponsor/donor pays XXXX a gala sponsorship of $5,000. The donor receives a “table of ten” meal reservation at the gala banquet; name/logo on promotional materials; radio advertising promotions; full-page ad in gala program; opportunity to insert items into gala event favor bags; receipt of favor bags; table recognition; and six tickets to a private sponsor/author appreciation soiree.

Example#2: Sponsor/donor pays XXXX $200 to participate in a golf outing for the benefit of XXXX. Donor gets a round of golf, limited golf lessons on the day of the event, if they choose; gift bags filled with a variety of donated items; and usually a lunch/dinner.

2. If your response to question 1 is yes, that sponsorship receipts are taxable due to the fact that a certain amount of items the sponsor/donor receives in exchange for the sponsorship is taxable property or services, can XXXX separately state the fair market value of the taxable items for the overall sponsorship received, thus exempting the “true donation” from the Kansas sales tax?

Answer: Example 1. For a non-profit organization providing a nonsectarian comprehensive multidiscipline youth development program, such as XXXX, sales of banquet table sponsorships (including meals, party favors, etc.) would be exempt from sales tax, because such organizations are exempt from collecting sales tax on such sales of tangible personal property.
Example 2. Sales of a golf outing participation would be subject to sales tax, because this would not involve the sale of tangible personal property and is beyond the scope of XXXX’s sales tax exemption. Gross receipts from the sale of admissions to a place providing recreational services are taxable, pursuant to K.S.A. 2005 Supp. 79-3602(e). If tangible personal property (such as gift bags or meals) is sold separately to golf outing participants, those sales would be exempt from sales tax. Otherwise, combining the sales of tangible personal property and the golf outing participation for one price would be deemed taxable. What is received by XXXX for the golf outing participations (whether labeled a sale or donation) would be deemed gross receipts subject to sales tax.

3. Can favor bags which include donated items of nominal value be excluded from the taxable items received with a sponsorship?

Answer: Sales of tangible personal property, such as favor bags, by XXXX would be exempt from sales tax.

4. If donated meals are provided to all attendees to an event as a pass-through gift from XXXX, can the value of the meal be excluded from taxable items?

Answer: Should XXXX provide free meals to all attendees to an event, this would not be a subject to sales tax. Sales of meals by XXXX would also be exempt.

5. If XXXX receives donated gift certificates, gift cards, or meal tickets from third-party retailers, and these items are sold at either a XXXX sponsored silent or oral auction, are the gross receipts retained by XXXX subject to Kansas sales tax?

Answer: Sales of these items by XXXX (assuming these certificates, cards, tickets are redeemable for use in purchasing tangible personal property and not taxable services) would not be subject to sales tax.

6. Is there any difference in your response to question 5 regarding the taxability of the gross receipts from the sale of gift certificates if, instead of XXXX receiving the gift certificates as a donation from the retailer, XXXX actually purchases the gift certificates or gift cards from the retailer with the intent to sell the item at one of XXXX’s fundraising auctions?

Answer: Given that XXXX is exempt on its purchases of tangible personal property for its nonsectarian youth development program, XXXX’s purchases of these items would be exempt from sales tax (again, assuming these certificates are redeemable in purchasing tangible personal property, such as meals, etc.).

7. Similar to question 6 if XXXX purchases a gift certificates directly from a golf course, for example, and XXXX provides each tournament participant with one gift certificate, for use at the golf course (intended for the day of the tournament, but there are no restrictions on when the gift certificate can be redeemed), are the gross receipts received by XXXX from the participant subject to Kansas sales tax?

Answer: Purchase of a gift certificate for a golf participation would not be treated as a purchase of tangible personal property, but an admission to a place providing recreational services. Such a purchase falls outside the scope of XXXX’s sales tax exemption as a nonsectarian youth development program organization. If XXXX intended to resell the certificates, XXXX could purchase them tax-exempt for resale, but would need to charge sales tax when those certificates were resold to donors. If XXXX intended to give the certificates away, XXXX would need to pay sales tax on the amount it paid for the certificates when it purchased them from the golf course.

8. If XXXX promotes their fundraising events whereby they lump all potential taxable items as one “bundled group” for sale (i.e., meal tickets, drink tickets, admissions to event, golf fees, estimated value of gift bags, etc.), and promotes another “bundled group” for sales of all nontaxable items (i.e., recognition, advertising opportunities of any kind), would the gross proceeds from the promotion of the nontaxable items be subject to Kansas sales tax?

Answer: Because admissions to amusement events and to places of recreation services fall outside XXXX’s sales tax exemption, bundling meal tickets, drink tickets, admissions to an event, golf fees, and gift bags into one group for one price would cause the entire bundle to be subject to sales tax. Because XXXX is exempt on its purchases and sales of tangible personal property, XXXX could bundle items such as meal tickets, drink tickets and gift bags for one price, and the gross proceeds from sales of that bundle would be exempt from sales tax. Sales of golf and amusement admissions would be subject to sales tax. Sales of a separate bundle of nontaxable items such as recognition and advertising opportunities would not be subject to sales tax.

9. According to Reg. 92-19-16a, assume XXXX creates a “game of chance” whereas the sponsors who donate funds to an event (i.e., gala sponsorship) are required to play the game (i.e., spinner) to receive taxable property with their sponsorship. Would odds, with a likelihood of winning as high as 99%, suffice in creating an exemption from sales tax on the sponsorship proceeds (because in this case no taxable tangible property would be “sold” with the sponsorship)? If so, would XXXX be required to pay sales tax on any property it purchases to be given away as a prize under this scenario.

Answer: Odds as high as 99% would not be considered “a game of chance” within the meaning of K.A.R. 92-19-16a(c). XXXX would not be required to pay sales tax on tangible personal property it purchases to be given away. XXXX would be required to pay sales tax on taxable services (such as golf participation fees) that it purchases to be given away.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

If you have additional questions or I may be of further assistance, please let me know.

Very truly yours,

Richard L. Cram

**Date Composed: 03/01/2006 Date Modified: 03/01/2006**