

SALES AND USE TAX

Unlike the exemption from income taxes that is available for most nonprofit organizations, there is no general exemption for nonprofits from California sales and use tax. Sales made by nonprofit organizations are generally subject to tax even though the proceeds from fund-raising sales may be used for philanthropic purposes. Likewise, purchases made by nonprofit organizations are generally subject to tax even though the purchaser may be engaged in charitable activities.

The State of California has not granted the Diocese of San Diego an exemption from sales and use tax. Consequently, purchases made by parishes, schools and parish/school related organizations in the diocese are subject to sales tax. In addition, parishes, schools and parish/school related organizations in the diocese are generally required to collect sales tax on items that are sold and remit those taxes to the Board of Equalization. Publication 18 entitled “Tax Tips for Nonprofit Organizations” is a general guide to Sales and Use Tax Law and Regulations as they apply to non-profit organizations. The entire publication can be found on the California Board of Equalization’s website at <http://www.boe.ca.gov/pdf/pub18.pdf>.

The state does exempt certain sales from tax provided certain qualifications are met. Some exemptions that are relevant to the Diocese of San Diego are:

- 1) Sales of meals and food products by a religious organization at a social or other gathering it conducts are not taxable, provided the meals or food are furnished to raise funds for the organization’s functions and activities **and** the proceeds are used to carry on those functions and activities.
- 2) Sales of meals or individual food products to *school students* when the sales are made by private schools. However, sales of edible non-food products—such as carbonated beverages – are taxable unless the products are sold as part of a meal. To qualify for the exemption, meals must be served to students at a time regularly set aside for meals, not at a recess or breaks.
- 3) Sales by a non-profit parent teacher organizations authorized to operate in a school by the school’s governing authority are exempt from sales tax if the profits from their sales are used exclusively to further the group’s purpose.

Please note, however, that that the above exemptions relate to the exemption of an organization’s **sales** and that their **purchases** are generally still taxable.

Locations that have ongoing sales should obtain their own seller’s permit and file their own sales tax and tax return directly with the Board of Equalization. However, locations with single or infrequent sales

may send the collected taxes and information about the sale (gross sales, date of sale, and type of sale) to the accounting office at the diocese. The diocese then prepares a consolidated return and remits the taxes to the Board of Equalization. Since funds are required to be remitted to the state within a 30-day period, the tax and related information should be sent to the diocese as soon as possible after a sale takes place. Contact the accounting office if you need additional information or are planning a sale.

Sales tax can either be collected as an additional charge at the time of a sale or an item can be sold at a price that includes sales tax. In the latter case, you would take the gross proceeds, divide them by 1.0775, and subtract that number from the gross proceeds to arrive at the tax collected. *Example: An item is sold for \$5, including tax. The tax would be .36 [$\$5.00 - (\$5.00 / 1.0775)$].*

SALES TAX AND AUCTIONS

The State of California requires that sales tax be collected on items auctioned at parish and school events even though all the proceeds are used to benefit/carry on the purpose of the organization (see Pub 18 and the exemptions above). It makes no difference if the auctioned items are donated. Sales tax should be charged on the final sales price, not on the fair market value of the item sold.

Tax only applies to “tangible personal property”. The auctioning of a parking space would not be taxable because a parking space is not tangible personal property. It is a license to use real property for a fixed period of time, and under defined circumstances. Gift certificates are also not regarded as sales of tangible personal property. They are considered an intangible right to purchase. Likewise, charges for spa visits are not regarded as sales of tangible personal property. Such charges are for a right to use real property for a fixed period of time and under defined circumstances.

For baskets of items that are auctioned, sales tax is due on the retail price associated with the items of tangible personal property sold. An estimate of the retail price associated with the taxable items would be required and tax remitted on that amount. For example, if a basket containing wine, a blanket, cheese and salami were auctioned off, only the wine and blanket would be subject to tax. The cheese and salami are considered exempt food items and would therefore be excluded from sales tax.

**EXCERPTS FROM
TAX TIPS FOR NONPROFIT ORGANIZATIONS**
(Entire publication can be found at <http://www.boe.ca.gov/pdf/pub18.pdf>)

TAXABLE ACTIVITIES

Taxable Activities commonly engaged in by nonprofit and volunteer organizations include:

- Sales of food, meals, beverages, and so forth, under certain circumstances (see Pub. 18 for details and exemptions).
- Sales of items at rummage sales, bazaars, carnival booths, auctions, community events, and other fund-raisers. Tax applies to the sale of homemade items, commercially produced goods, and donated merchandise.
- Ticket charges for game booths where prizes are guaranteed to each ticket purchaser, even though the prizes may have little value.
- Auctions (covered above)

NON-TAXABLE ACTIVITIES

Certain activities commonly conducted by nonprofit organizations are not taxable, including:

- Sales of meals and food products by a religious organization at a social or other gathering if the conditions are met:
 1. The meals or food are furnished to raise funds for the organization's functions; and
 2. The proceeds are used to carry on those functions and activities.
- Sales of certain food and drinks – when not sold as part of a meal or in combination with hot food – at an event with *no on-site eating facilities and where admission is not charged*, such as an outdoor bake sale.
- Ticket charges for concerts, movies, plays, shows, and similar events provided that food and meals are not served at the event, or if food and meals *are* served, there is a separate, taxable charge for them.
- Ticket charges for game booths and raffles where prizes are not guaranteed to every ticket purchaser. Note that the nonprofit purchases of such prizes are generally subject to tax.