

Frequently Asked Questions

Florida Sales Tax Exemption on Purchases – Reimbursement Issue

Florida Department of Revenue Tax Information Publication 00A01-25 states:

Sales Tax Exemption Applies To Direct Purchases Only The sales tax exemption is available only for direct purchases by the holder of a valid Consumer's Certificate of Exemption (Form DR-14). Purchases made with personal funds on behalf of the organization are **taxable**, even if the purchaser presents the dealer with the organization's exemption certificate and states that he or she will be reimbursed by the organization. Only those purchases made with the non-profit organization's exemption certificate and the nonprofit organization's own funds will qualify as "direct" purchases entitled to the sales tax exemption.

A further quote from this document:

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

Florida Sales Tax Exemption on Sales

Under what circumstances must sales tax be collected on Internet sales?

The same rules regarding frequency of sales apply to Florida Internet sales as to Florida non-Internet sales. This means that no more than 2 sales of short duration may be conducted during any 12 month period without collecting sales tax. If Florida Internet sales exceed this level of activity, it may require collection of sales tax. Depending on the level of Internet sales you may wish to consult an attorney regarding specific details relating to your organization.

Internet sales to residents outside Florida will not require collection of sales tax at this time.

Book Sales

If an organization holds a third sale within a 12 month period, they must collect sales tax for that sale.

They are not required to retroactively collect and pay sales tax for the 2 earlier book sales.

The Florida sales tax exemption is established for "occasional sales." The Florida Administrative Code defines these sales at 12A-1.037 titled "Occasional or Isolated Sales or Transactions Involving Tangible Personal Property or Services." The following elements are evaluated to determine occasional sales:

- Intent of the parties
- Frequency and duration of sales or series of sales
- Type of tangible personal property or services offered for sale
- Location where sales take place
- Status of the parties relating to the tangible personal property or taxable services being sold

These are complicated rules that require interpretation. For any actions outside the basic 2 sales per year it is suggested that the organization consult an attorney.

What are the sales tax implications if an organization holds a continuous book sale?

The Florida Administrative Code 12A-1.037 sets a 30 day limit on occasional sales. Sales running longer than 30 days require collection of Florida sales tax. Consult an attorney to determine if an organization running books sales for longer than 30 days qualifies to run 2 shorter tax exempt book sales in the same 12 month period. The answer will require an evaluation of the factors listed above.

Tote Bags and Other Incentive Items

Tote bags and similar items can be offered for donations and a recommended donation amount can be stated, but you cannot require a donation in a specific amount. If you require a donation of a certain amount you are making a sale, and you may be subject to Florida sales tax. You might use this wording to avoid the “sales” problem:

*Please support our library by donating \$5.00 or whatever you can give for one of our tote bags.
You may fill the tote bag with as many used books as it will hold.*

Quid Pro Quo Donations and Issues

A useful source for additional quid pro quo donations is the IRS website:

<http://www.irs.gov/charities/charitable/article/0,,id=123201,00.html>

Useful FMV (fair market value) information can be found at the IRS website:

<http://www.irs.gov/publications/p561/index.html>

Nonprofit Income

There is no federal requirement that a 501(c)(3) corporation distribute all of its income each year. However the IRS expects that a 501(c)(3) organization will regularly spend a significant amount of its net income and activities to support its charitable mission. Questions regarding use of income and activities are determined on a case by case basis.

Florida Department of Revenue decisions hold that Florida tax exempt status requires at least 50% of annual net income to be used for the corporation’s charitable purposes. Annual reports filed with the Florida Department of Agriculture and Consumer Services ask for this information.

Nonprofit Activities

Does the affiliation of a library friends 501(c)(3) group with a for-profit library affect the activities of the friends organization?

The library friends group is an independent organization with its own specific mission. As long as the friends group follows its mission it should retain its 501(c)(3) status even if it is making donations to a for-profit library. There may be other issues involved in this question making it appropriate to consult an attorney.

Nonprofit Corporation Record Retention

The National Council of Nonprofits provides an excellent website with information on this topic:

<http://www.councilofnonprofits.org/document-retention-policies>

Nonprofit Sample Documents

The Citizen Media Law website at <http://www.citmedialaw.org/legal-guide/forming-nonprofit-corporation> includes information on nonprofit articles of incorporation and other useful start-up tools.

The Florida Department of State Division of Library and Information Services at <http://info.florida.gov/bld/foundations/sheet4.cfm> provides useful information and sample documents.

Board Member Deductions

The same deductions available to volunteers are available to board members and directors of a nonprofit organization. The same rules apply to board members as to volunteers, specifically non-reimbursed expenses, etc. Remember whether or not you can use these deductions will depend on your individual situation. Always consult an attorney for advice specific to your individual tax issues.

Nonprofit Charitable 501(c)(4) Status

501(c)(4) status is available to civic leagues, social welfare organizations and local associations of employees. The general nature of 501(c)(4) organizations is to promote community welfare; charitable, educational or recreational. The application form is 1024. Generally, tax exempt contributions are not allowed for a 501(c)(4) organization. However, if the organization establishes a charitable fund that meets both the requirements of a 501(c)(3) organization and the notice requirements of section 508(a) contributions to that specific fund can be tax deductible.

Lobbying Advocacy & Political Campaign Issues for 501(c)(3) Nonprofit Organizations

Lobbying

Lobbying for IRS purposes is any attempt to persuade members of a legislative body to propose, support, oppose, amend or repeal legislation.

Legislation means anything a legislative body must vote to adopt or reject, whether a law, resolution, proposal, nomination, treaty, zoning rule, etc.

Lobbying also includes referendums, initiatives and constitutional amendments that must be placed on the ballot and voted on by the general public.

here are 2 lobbying categories:

direct lobbying - contacting specific individuals, for example the mayor or individual city council members; and

grassroots lobbying – contacting the public in general , for example through a newspaper advertisement or a mass mailing.

How much lobbying can a 501(c)(3) do?

Substantial Part Test – Lobbying is OK as long as it is NOT a substantial part of your organizations' activities. The IRS looks at "all the pertinent facts and circumstances in each case." What does that mean? The IRS considers

- Time of paid staff and volunteer devoted to lobbying

- Amount of money spent on lobbying
- Amount of publicity assigned to lobbying
- Continuous or intermittent activity
- Impact of lobbying efforts

A general rule with LOTS of exceptions is that 5% or less time and money spent on lobbying will be OK, and anything over 16% to 20% will be considered substantial and may result in revocation of the 501(c)(3) status for year in which the substantial lobbying occurs.

Expenditure Test – This test is only available to 501(c)(3) organizations and the organization must specifically elect to use this test by filing IRS Form 5768. If not elected, lobbying activities will be determined using the Substantial Part test. Under the expenditure test, your organization must separate and track expenditures for both direct lobbying and grassroots lobbying. The amount of money that can be spent under this test varies, and is based on the nonprofit’s total operating budget. Remember the ceiling on grassroots lobbying is included in the ceiling for ALL lobbying activities. For example if your annual operating budget is \$250,000, you can spend \$50,000 (20% of the annual budget) on lobbying activities, and of this \$50,000, \$12,500 (5% of the annual budget) can be spent on grassroots lobbying

Total Annual Operating Budget	Annual Ceiling for ALL Lobbying Activities	Annual Ceiling for Grassroots Lobbying
Up to \$500,000	20% of total budget	5% of total budget
\$500,000 to \$1,000,000	\$100,000 + 15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1,000,000 to \$1,500,000	\$175,000 + 10% of excess over \$1,000,000	\$43,750 + 2.5% of excess over \$1,000,000
\$1,500,000 to \$17,000,000	\$225,000 + 5% of excess over \$1,500,000	\$56,250 + 1.25% of excess over \$1,500,000
Over \$17,000,000	\$1,000,000	\$250,000

Advocacy

Advocacy by 501(c)(3) organizations is not restricted. Remember the definition of lobbying – it only applies to something a legislative body can vote on. It doesn’t include activities by administrative bodies such as school boards, housing authorities, zoning boards and other federal, state or local special purpose bodies either elected or appointed.

Advocacy or Lobbying?

Activity	Lobbying	Advocacy
Invited to testify before a legislative committee		X
Uninvited testimony before a legislative committee	X	
Asking the city council to provide more money for libraries (this would be done by voting to approve the expenditure)	X	

Activity	Lobbying	Advocacy
Asking the governor to release funds for libraries already approved by the legislature		X
Asking the governor to support a bill giving more money to libraries	X	
Present a forum explaining the services and benefits provided by the local public library.		X
Present a forum explaining the services and benefits provided by the local public library urging that pending library funding legislation be passed	X	
Full and fair analysis of the issue of library funding		X
Full and fair analysis of the issue of library funding urging individuals to contact their legislators to support more library funding	X	

The question of lobbying versus advocacy can be confusing. If in doubt be safe. Don't jeopardize your 501(c)(3) status. Consult a lawyer or assume the activity is lobbying and make sure it meets the Substantial Part test.

Individual Activity and Organizational Activity

Anyone may argue or support any position as an individual. If at any time a person appears to be speaking for an organization the lobbying vs. advocacy rules apply. If there is the possibility of confusion as to whether a person is speaking individually or on behalf of an organization, indicate the comment or idea is personal opinion and not the position of the organization.

Political Campaign Activities

Nonprofit 501(c)(3) organizations **may not**

- Endorse a candidate for public office
- Contribute money to political campaigns including federal, state & local elections & elections in foreign countries
- Make verbal or written public statements supporting or criticizing candidates
- Distribute statements prepared by others that favor or oppose any candidate
- Allow a candidate to use an organization's assets or facilities unless other candidates are given the same opportunity
- Criticize or support candidates on nonprofit websites or through links to other websites
- Place signs on nonprofit property supporting or opposing candidates

Nonprofit 501(c)(3) organizations **may**

- In a nonpartisan manner engage in voter registration
- In a nonpartisan manner engage in get-out-the-vote drives

- Offer rides to the polls
- Hand out voter information
- Call voters about the election, but not supporting any candidate or issue
- Prepare and/or distribute voter guides that are neutral in form and content and include a broad range of issues

For further information and questions always consult an attorney