



*Our staff experts conduct  
“special investigations”  
into your questions.*

Here’s a perennial question and it’s time to share our investigation of the answer with all of you.

**Q:** Our organization is having a fundraising auction. Should we be collecting Maryland sales tax?

**A:** The Maryland General Assembly made some changes in the Sales and Use Tax Law, effective July 1, 2006. According to information from the Comptroller’s office<sup>i</sup> and our own analysis (Maryland Nonprofits initiated the 2006 legislation), here are the basics on auctions and other sales by organizations.

#### **SALES BY NONPROFIT ORGANIZATIONS**

1) While religious, charitable and other 501(c)3 exempt organization do not have to pay sales tax on purchases for their exempt purposes, they generally are **not** exempt from collecting sales tax when they sell items, even for fund-raising purposes.

2) The following limited group of sales made by nonprofit organizations are exempt from the Maryland sales and use tax:

- Sales by churches or religious organizations for their general purposes.
- Sales of food by schools other than post-secondary institutions.
- Sales of food by a nonprofit organization if there are no facilities for food consumption on the premises and the food is not sold within an enclosure for which a charge is made for admission.

- Sales of food served by a volunteer fire, ambulance or rescue company or an auxiliary if the proceeds are used to support the organization.
- Sales of magazine subscriptions in a fundraising activity by an elementary or secondary school in the state if the net proceeds are used solely for the educational benefit of the school or its students.
- Sales made in hospital thrift shops operated entirely by volunteers selling only donated articles for the benefit of the hospital.

3) Sales made by a religious or other organization using an auctioneer that are covered in #2 above remain exempt. Auction sales that are not otherwise exempt from sales tax are now exempted under the 2006 change, **but only for that portion of the price that can qualify as a deductible contribution under IRS guidelines.**<sup>ii</sup>

In summary, if you are a 501(c)3 organization (and not covered by any of the exceptions listed above), you need to collect sales tax on all items you sell except in the case of an auctioned item, and then you collect only on the portion of the price that does not qualify for a charitable deduction under IRS rules. For example, if the value of a painting sold at your auction is determined and announced prior to the auction sale to be \$100, and the high bidder comes in at \$150, sales tax should be calculated and collected on \$100, the amount of the fair market value of the item.

<sup>i</sup> <http://business.marylandtaxes.com/taxinfo/salesanduse/exemption/exemptions.asp>

<sup>ii</sup> <http://www.irs.gov/charities/charitable/article/0,,id=123204,00.html>