

STATE OF COLORADO

DEPARTMENT OF REVENUE
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John W. Hickenlooper
Governor

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GIL-13-013

April 18, 2013

XXXXXXXXXXXXXXXXXXXX
ATTN: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: 501(c)(3) Organization's \$25,000 Proceeds Limit

Dear XXXXXXXXXXXX,

You submitted on behalf of your client, a 501(c)(3) organization ("Organization"), a request for guidance regarding whether Organization needs to collect sales tax on the dinner provided at their annual auction.

The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

Does Organization need to collect sales tax on the price for dinner provided at Organization's annual auction if the proceeds, including the dinner, are more than \$25,000?

Background

Organization is hosting an annual auction and dinner event. The auction items are all donated for the auction sale and the proceeds from the auction sale are less than \$25,000. However, the total proceeds exceed \$25,000 if the proceeds of the dinner are included.

Discussion

Sales by charitable organizations are exempt from state sales tax if the sale qualifies as an occasional sale.¹ In order to qualify for the occasional sale exemption, the charitable organization cannot conduct more than twelve days of sales in any calendar year, the net proceeds cannot exceed \$25,000, and the proceeds must be used for a charitable purpose.

When a charitable organization sells tickets to attend a charitable fundraising event and the ticket entitles purchaser to a dinner or other taxable goods or services, then the ticket price is taxable, unless (1) the ticket qualifies as an occasional sale or, (2) a portion of the ticket price reflects a donation.

The price of the dinner is included in the gross proceeds calculation, but the cost of the dinner is an expense that is deducted from the gross proceeds to calculate the \$25,000 net proceed threshold. The Department will treat that portion of the ticket price that exceeds the fair market value of the taxable goods or services (e.g., dinner) as a non-taxable donation.² The portion of the ticket that reflects a donation is not included in the \$25,000 threshold because the donation was not paid in consideration for the purchase of a taxable item (In the example below, the \$25 was the consideration paid for the dinner and the auction price is the consideration paid for the auctioned item).

For example, a charitable organization sells tickets for a silent auction. The ticket price is \$100 and includes a dinner. The fair market value of the dinner is \$25. Three hundred tickets are sold. The ticket states that \$75 of the ticket price is a donation.³ The direct cost to the charitable organization for the dinner is \$10/dinner. The silent auction generates \$30,000 in gross proceeds and \$20,000 in net proceeds from the sale of auctioned items. The donation proceeds of \$22,500 (\$75 X 300) is not taxable

¹ See, §39-26-718, C.R.S. and FYI Sales 2 "Sales Tax Exempt Status for Charitable Organizations: Application Requirements." You can view this statute, FYI, and forms by visiting the Department's Web site at www.Colorado.gov/revenue/tax > Tax Library.

² We note that a donation is not subject to sales tax because gifts are not subject to sales tax. Regulation (39-) 26-102.10, "Sale." Thus, a donation is not subject to tax even if the donation is not used for charitable purposes. However, if the donations are not used for a charitable purpose, then the organization may lose its status as a charitable organization.

³ In order to establish a donation, the charity must establish by competent evidence that the purchaser had intent to donate.

because they are gifts. The \$22,500 is also not counted as part of the net proceeds because the donations are not paid in exchange for the sale of tangible personal property. The net proceeds from the sale of the dinner is \$4,500 (300 X (\$25-\$10)). The net proceeds from the auctioned items and dinner are \$24,500 (\$20,000 + \$4,500). Because the charity has not exceeded the \$25,000 threshold, then sales tax is not due on the net proceeds or on the donations.

It is important to understand that there at least two important consequences of exceeding either the \$25,000 or the twelve days of sale thresholds. If either threshold is exceeded, then tax is due on (1) the gross proceeds and (2) all sales, including the initial \$25,000. For example, if the silent auction in the example above generated \$23,000 in net proceeds, the total amount of net proceeds for the sale (\$23,000 + \$4,500 = \$27,500) exceeds the \$25,000 threshold and the occasional sale exemption does not apply. Sales tax applies to all sale proceeds, including to the initial \$25,000.⁴ Sales tax is calculated on the gross price (the price paid by the buyer),⁵ which is \$30,000 for the auctioned goods and \$7,500 (\$25 X 300) for the dinner. The donations (\$75 X 300) remain exempt of tax because donations are not taxable.

State-administered local tax jurisdictions have the option to levy sales tax on occasional sales by charitable entities. Thus, in the example above, local sales tax is due on the gross proceeds of the auction and dinner, but not on the donation.

Department publication DR 1002 lists all state-administered local tax jurisdictions and whether they have elected to tax occasional sales.⁶

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes.

This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/revenue/tax for more information about state and local sales taxes.

⁴ The exemption for occasional sales is conditional (sales by charitable organizations are exempt "if") and if the exemption threshold is exceeded then the condition is not met. A contrary conclusion would lead to the unwarranted result of exempting the first \$25,000 in net sales of charitable organization even if the organization regularly engaged the sale of taxable goods.

⁵ §39-26-104(1), C.R.S.

⁶ You can view this form by visiting the Department's Web site at www.colorado.gov/revune/tax > Forms > Forms by Number > DR 1002

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

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