Georgia State Tax Reporter, ¶60-580, Georgia, Nonprofit Organizations, Private Schools, and Churches

Churches, religious, charitable, civic, and other nonprofit organizations are generally not exempt from sales and use taxes on their purchases. When any such organizations engage in selling tangible personal property at retail, compliance with the law as to collection and remittance of sales tax is required. (Reg. Sec. 560-12-2-.22) Certain exemptions are provided by law and are discussed below.

For further discussion concerning exemptions for sales of construction materials for use in construction projects for tax-exempt entities, see ¶60-330 Construction.

• Nonprofit nursing homes; general or mental hospitals

Nursing homes, in-patient hospice, & mental hospitals.— Sales and use taxes are not imposed on sales of tangible personal property (including drugs, medicines, and medical supplies) and services to a nonprofit licensed nursing home, nonprofit licensed in-patient hospice, or a nonprofit general or mental hospital used exclusively in the performance of a general nursing home, in-patient hospice, hospital, or mental hospital treatment function in Georgia. (O.C.G.A. Sec. 48-8-3(7)) The home, hospice, hospital, or organization must be a tax-exempt organization under the Internal Revenue Code and have an exemption determination letter from the state revenue commissioner. Reg. Sec. 560-12-2-.92 defines the institutions covered by the exemption, prescribes the procedure for obtaining a certificate of exemption, and indicates the scope of the exemption. Applications for exemption are made on Form ST-NH-1 (Application for Certification of Exemption Licensed Nonprofit In-patient: Nursing Home, Hospice, General Hospital or Mental Hospital), and the certificate of exemption is Form ST-NH-2. (Reg. Sec. 560-12-2-.92; Reg. Sec. 560-12-3-.53; Reg. Sec. 560-12-3-.54; see also Reg. Sec. 560-12-2-.50(4))

Multi-function institutions are discussed separately under Reg. Sec. 560-12-2-.92, with the scope of the exemption being limited to property and services used exclusively in performing the exempt function.

Other nursing homes, sanitariums, and hospitals.— Hospitals, sanitariums, and nursing homes (other than those qualifying for the exemption described above) must pay tax on their purchases for use or consumption in their operations, unless the institution is owned and operated by the federal government, the state of Georgia, a county, or municipality, or created under the Georgia Health Code. Such entities must register as dealers and collect and remit tax on their sales of tangible personal property. (Reg. Sec. 560-12-2-.50(1)-(3))

Organizations serving the mentally retarded.— An exemption applies to sales of tangible personal property and services to a nonprofit organization that primarily serves mentally retarded individuals are also exempt when such an organization obtains an exemption determination letter from the state revenue commissioner. (O.C.G.A. Sec. 48-8-3(7.1))

Convalescent homes.— Purchases of tangible personal property by homes for the care of children, the aged, or other persons are taxable, but receipts for the care of these persons are exempt. (Reg. Sec. 560-12-2-.27)

• Public library fundraising groups

Sales to or by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries are exempt from sales and use tax if the organization is tax-exempt under Internal Revenue Code Sec. 501(c)(3). (O.C.G.A. Sec. 48-8-3(71))
• Religious institutions

Sales by religious institutions or denominations are exempt from sales and use taxes if the following apply:

— the sale results from a specific charitable fund-raising activity not exceeding 30 days in any calendar year;
— no part of the gross sales or net profits from the sales inures to the benefit of any private person; and
— the gross sales or net profit from the sales are used for the purely charitable purposes of relief to the aged, church-related youth activities, religious instruction or worship, or construction or repair of church buildings or facilities.

( O.C.G.A. Sec. 48-8-3(15)(B) )

CAUTION NOTE

Sales tax exemption for religious books, papers, and similar items unconstitutional.—The United States District Court for the Northern District of Georgia issued a permanent injunction declaring that the Georgia sales tax exemptions for sales of Bibles, Korans, testaments, religious papers, and similar items, codified at O.C.G.A. Sec. 48-8-3(15)(A), (16) (discussed below), are unconstitutional. (See Budlong v. Graham, U.S. District Court for the Northern District of Georgia, 488 F. Supp.2d 1252, May 16, 2007; Budlong v. Graham, U.S. District Court for the Northern District of Georgia, 414 F. Supp. 2d 1222, February 6, 2006; see also Important Notice for Dealers Selling Books, Georgia Department of Revenue, February 9, 2006; ¶61-020 Exemption Certificates)

Religious papers.— Sales and use taxes are not imposed on sales of any religious paper in Georgia when the paper is owned and operated by religious institutions or denominations whose net profits do not benefit any private person. ( O.C.G.A. Sec. 48-8-3(15)(A) ) However, as a result of the Budlong case discussed above, this exemption has been rescinded.

Bibles.— The sale or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture is exempt from tax. ( O.C.G.A. Sec. 48-8-3(16) ) However, as a result of the Budlong case discussed above, this exemption has been rescinded.

Pipe organs and steeple bells.— Sales of pipe organs and steeple bells to churches that qualify as an exempt religious organization under IRC Sec. 501(c)(3) are exempt from tax. ( O.C.G.A. Sec. 48-8-3(15.1) )

• Child service providers

Certain sales to or by certain nonprofit tax-exempt organizations engaged primarily in providing child services are exempt from sales and use tax. ( O.C.G.A. Sec. 48-8-3(41); Reg. Sec. 560-12-2-.100 )

Sales to child services provider.— Sales of tangible personal property and services to specified types of child services providers are exempt from sales and use tax only when the child services provider:

— obtains an exemption determination letter from the state revenue commissioner,
— is a nonprofit tax-exempt organization under Internal Revenue Code Sec. 501(c)(3), and
— engages primarily in providing child services.

( O.C.G.A. Sec. 48-8-3(41)(A); Reg. Sec. 560-12-2-.100(3) )

To obtain an exemption determination letter, a child services provider must submit a completed Form ST-CH-1 (Application for Certificate of Exemption for a Child-Caring Institution, Child-Placing Agency, or Maternity Home). ( Reg. Sec. 560-12-2-.100(3)(b) )

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A child services provider is engaged primarily in providing child services if: (1) it is currently licensed by the Georgia Department of Human Resources as a child services provider; and (2) more than 50% of its cost of operations for the previous fiscal year is directly related to providing the services and activities defined in O.C.G.A. Sec. 49-5-3. (Reg. Sec. 560-12-2-.100(3)(a))

Sales by child services providers.— A sale of tangible personal property or services by a qualifying child services provider is exempt from Georgia sales and use tax if the transaction satisfies the following conditions:

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- The sale is a fund-raising activity on behalf of the child services provider;
- The fund-raising activities do not exceed 30 days in any calendar year;
- No sale proceeds are used to benefit anyone other than the child services provider; and
- The sale proceeds are used solely for child services.

( O.C.G.A. Sec. 48-8-3(41)(B) ; Reg. Sec. 560-12-2-.100(6) )

Purchases by child services providers.— Purchases eligible for the exemption include office equipment and supplies; medical, educational, personal care and janitorial supplies; food, clothing, motor vehicles used exclusively to transport children; and other such items necessary to provide care for children or mothers when purchased directly by a qualifying child services provider. (Reg. Sec. 560-12-2-.100(5)(a))

Purchases that are not eligible for the exemption include, but are not limited to: motor vehicles for personal and business use; gifts to any person other than children or mothers under the care of a qualifying child services provider; building materials used by contractors; and purchases made by other persons performing services for a child services provider. (Reg. Sec. 560-12-2-.100(5)(b))

Records.— A child services provider is required to maintain records of all purchases and sales for three years. (Reg. Sec. 560-12-2-.100(7))

• Blood banks

Sales and use taxes do not apply to sales made to blood banks that have a nonprofit status under Internal Revenue Code Sec. 501(c)(3). (O.C.G.A. Sec. 48-8-3(46))

• Food banks

From July 1, 2014, through June 30, 2016, sales of eligible food and beverages to a qualified food bank are exempt from sales and use tax under O.C.G.A. Sec. 48-8-3(57.1). For purposes of the exemption, a "qualified food bank" means any food bank that is exempt from taxation under IRC Sec. 501(c)(3) and that operates primarily to provide hunger relief to low income persons residing in Georgia. Previously, the exemption was in effect under O.C.G.A. Sec. 48-8-3(57.1) from July 1, 2006, through June 30, 2010.

• Social and fraternal organizations

All retail sales of tangible personal property to social and fraternal organizations are taxable. An organization regularly engaged in the business of selling tangible personal property must register as a dealer and collect and remit sales and use taxes. (Reg. Sec. 560-12-2-.83)

• Private colleges and universities

Sales of tangible personal property and services to be used exclusively for educational purposes by private colleges and universities in the state whose academic credits are accepted as equivalents by the University System of Georgia and its educational units are exempt from sales and use taxes. (O.C.G.A. Sec. 48-8-3(9); Reg. Sec. 560-12-2-.23(2)) To claim the exemption, the college or university must furnish each supplier of
tangible personal property or services with a "Letter of Authorization" (Form ST-USC-1) issued by the Sales and Use Tax Unit. (Reg. Sec. 560-12-2-.23(2); see also Reg. Sec. 560-12-3-.55)

Examples of property and services that are exempt are books purchased for libraries and teachers; maintenance and instructional supplies; electricity and fuel; furniture and fixtures; office supplies and equipment; kitchen equipment, and laboratory equipment. (Reg. Sec. 560-12-2-.23(3))

- **Private elementary and secondary schools**

Exemptions available to private schools are discussed below. When an application for exemption is approved, a school will receive Form ST-USC-1 ("Letter of Authorization") from the Sales and Use Tax Unit, a copy of which must be furnished to each supplier of tangible personal property and services in order for the exemption to apply. (Reg. Sec. 560-12-2-.90(4); see also Reg. Sec. 560-12-3-.55) No exemption is available to sales made by classroom mothers, student groups, and other school groups. (Reg. Sec. 560-12-2-.90(5)) The taxability of sales involving parent-teacher organizations is discussed below under "Parent-teacher organizations." Public educational institutions are discussed at ¶60-420 Government Transactions.

**Food.**—Private elementary and secondary schools approved by the state revenue commissioner as organizations eligible to receive tax-deductible contributions are exempt from sales and use tax on sales of "prepared food" and "food and food ingredients" to their students and employees for consumption on the premises. (O.C.G.A. Sec. 48-8-3(13)) For definitions of these food-related terms, see the Streamlined Sales and Use Tax discussion at ¶60-390 Food and Grocery Items. Application for the exemption must be made to the Georgia Department of Revenue. (O.C.G.A. Sec. 48-8-3(13)) Under Georgia regulations, no exemption is available to sales on school property through vending machines, snack bars, or other outlets. (Reg. Sec. 560-12-2-.90(5))

**Tangible personal property and services.**—Sales and use taxes are not imposed on sales of tangible personal property and services to be used exclusively for educational purposes by bona fide private elementary and secondary schools approved by the state revenue commissioner as organizations eligible to receive tax deductible contributions, if application for exemption is made to the Department of Revenue and proof of the exemption is established. (O.C.G.A. Sec. 48-8-3(10)) Reg. Sec. 560-12-2-.90(1) defines bona fide private elementary and secondary schools.

Sales of tangible personal property made by private schools are exempt from tax. The exemption applies to any private school containing any combination of grades kindergarten through 12, and all proceeds must benefit the school or its students. (O.C.G.A. Sec. 48-8-3(39))

- **Parent-teacher organizations**

Sales by any parent-teacher organization (PTO) exempt from federal taxation under IRC Sec. 501(c)(3) are exempt from state sales and use taxation. (O.C.G.A. Sec. 48-8-3(56))

- **School events**

Sales made by concessionaires at, or tickets for admission to, a school event or function are exempt from tax. The exemption applies to any public or private school containing any combination of grades kindergarten through 12, and all proceeds must benefit the school or its students. (O.C.G.A. Sec. 48-8-3(39))

- **Vocational training schools**

Persons operating vocational schools must pay tax on their purchases used, consumed, or furnished to students for use in the students' studies. A school must register as a dealer and collect tax on sales of equipment, tools, and other tangible personal property to its students. (Reg. Sec. 560-12-2-.97(2))

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• **Foreign educational and cultural institutes**

An educational or cultural institute is exempt on its sales or purchases of tangible personal property and services if the institute:

- is tax exempt under IRC Sec. 501(c)(3);
- furnishes at least 50% of its programs through universities and other institutions of higher education in support of their educational programs;
- is paid for by government funds of a foreign country; and
- is an instrumentality, agency, department, or branch of a foreign government operating through a permanent location in Georgia.

( O.C.G.A. Sec. 48-8-3(11) )

• **Employee organizations**

Employee associations and organizations must collect and remit tax on sales of tangible personal property to members or others. In additions, employee associations and organizations are responsible for requesting a determination from the state revenue commissioner as to whether it is necessary to register with the Sales and Use Tax Unit. ( Reg. Sec. 560-12-2-.33 )

• **Girl Scouts and Boy Scouts**

An exemption from sales and use tax applies to fundraising sales of “food and food ingredients” to and by the Girl Scouts of the U.S.A. and Boy Scouts of America. ( O.C.G.A. Sec. 48-8-3(59) ) For the definition of “food and food ingredients,” see the Streamlined Sales and Use Tax discussion at ¶60-390 Food and Grocery Items.

• **Rock Eagle 4-H Center**

An exemption from sales and use taxes is provided for sales of tangible personal property and fees and charges for services by the Rock Eagle 4-H Center. ( O.C.G.A. Sec. 48-8-3(38) )

• **Daughters of the American Revolution**

Sales of tangible personal property or services to any chapter of the Georgia State Society of the Daughters of the American Revolution are exempt. The exemption applies if the chapter is exempt under Internal Revenue Code Sec. 501(c)(3) and provides an exemption determination letter from the state revenue commissioner. ( O.C.G.A. Sec. 48-8-3(7.2) )

• **Georgia Medical Center Authority**

Purchases of tangible personal property by the Georgia Medical Center Authority are exempt from sales and use tax. ( O.C.G.A. Sec. 20-15-6 )

Annotations