

8130.6200 CHARITABLE, RELIGIOUS, AND EDUCATIONAL ORGANIZATIONS.

Subpart 1. **Applicable law.** Minnesota Statutes, section 297A.70, subdivision 4, exempts from sales and use tax the gross receipts from the sale of tangible personal property to, and storage, use, or other consumption of such property by, any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes if the property purchased is to be used in the performance of charitable, religious, or educational functions.

No part of the net earnings may inure to the benefit of any private shareholders.

Sales of telecommunications services under Minnesota Statutes, section 297A.61, subdivision 3, paragraph (i); electricity, gas, water, or steam pursuant to Minnesota Statutes, section 297A.61, subdivision 3, paragraph (e); and admission to places of amusement, recreational areas, or athletic events and the use of amusement devices and athletic or other facilities as provided for in Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (1), are included in this exemption.

This exemption does not apply to the following sales or purchases:

A. Building, construction, or reconstruction materials purchased by a contractor or a subcontractor as a part of a lump-sum contract or similar type of contract with a guaranteed maximum price covering both labor and materials for use in the construction, alteration, or repair of a building or facility.

B. Construction materials purchased by exempt organizations or their contractors to be used in constructing buildings or facilities which will not be used principally by the exempt organizations.

C. Lease or purchase of a motor vehicle, as defined in Minnesota Statutes, section 297B.01, subdivision 11, unless the lease or purchase meets the requirements for exemption under Minnesota Statutes, section 297A.70, subdivision 4, paragraph (c), or 297B.03, clause (11).

For purposes of this part, charitable, religious, or educational purposes are referred to as "exempt purposes," and a nonprofit organization, society, association, foundation, or institution organized and operated exclusively for exempt purposes are referred to as an "exempt organization."

Subp. 1a. Construction materials purchased by an exempt organization.

A. For purposes of this part, "buildings or facilities which will not be used principally by an exempt organization" means buildings or facilities that will be used by the exempt organization for commercial purposes and not to carry out their exempt functions. For example, construction materials purchased by an exempt organization to be used in constructing a building which the exempt organization will lease to another is not used principally by an exempt organization even though the lease payments may be used for an exempt purpose.

B. Materials that are purchased by an exempt organization for use in the performance of its exempt function are included in the exemption under Minnesota Statutes, section 297A.70, subdivision 4. For example, construction materials purchased by an exempt organization for use

in its program to weatherize homes for low-income persons may be purchased exempt by an exempt organization.

C. Unless the sale is specifically exempt under Minnesota Statutes, section 297A.71, the exemption from tax under Minnesota Statutes, section 297A.70, subdivision 4, does not extend to building, construction, or reconstruction materials purchased by a contractor under an agreement to erect a building or to alter, repair, or improve real estate for an exempt organization, even if the work contracted for is for use in the performance of the exempt organization's exempt function. See part 8130.1200.

Subp. 2. **Charitable organizations.** "Charitable" is used in its generally accepted legal sense to mean a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons. Charitable includes relief of the poor, underprivileged, and distressed, the care of the sick, the infirm, or the aged; the erection or maintaining of public buildings and monuments; lessening of the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; providing of qualified low-income housing to qualified persons; and combating of community deterioration and juvenile delinquency. To determine whether an organization qualifies for the charitable exemption, the factors in items A to F will be considered. Each case must be decided on its own particular facts, and it is not essential that every factor mentioned in items A to F be present for an organization to qualify as a charitable organization.

A. whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;

B. whether the entity involved is supported by donations and gifts in whole or in part;

C. whether the recipients of the "charity" are required to pay for the assistance received in whole or in part;

D. whether the income received from gifts and donations and charges to users produces a profit to the charitable institutions;

E. whether the beneficiaries of the "charity" are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is available is one having a reasonable relationship to the charitable objectives;

F. whether the dividends, in form or substance, or assets upon dissolution are available to private interests.

Subp. 3. **Religious organization.** "Religious" refers to an institution that conducts worship services at regular intervals at an established place of worship that is owned, leased, or borrowed for that purpose, and organizations affiliated with or related to that institution, which exist exclusively for the furtherance of the religious purposes of the institution. The specific merits of a particular religion will not be compared or considered by the department when determining whether an organization is an exempt religious organization for purposes of the Minnesota sales and use tax. An organization claiming exempt status as a religious organization must be able to affirmatively establish its right to the exemption. Only if an organization clearly demonstrates that it is an

organization created exclusively for religious purposes will it meet the requirements for tax-exempt status under Minnesota sales and use tax statutes. The criteria the department will use to determine whether an organization is a religious organization includes the criteria in items A to N. Each case must be decided on its own particular facts and it is not essential that every factor mentioned in items A to N be present for an organization to qualify as a religious organization.

- A. a distinct legal existence;
- B. a recognized creed and form of worship;
- C. a definite and distinct ecclesiastical government;
- D. a formal code of doctrine and discipline;
- E. a distinct religious history;
- F. a membership not associated with any other church or denomination;
- G. a complete organization of ordained ministers ministering to their congregations;
- H. ordained ministers selected after completing prescribed courses of study;
- I. a literature of its own;
- J. established places of worship;
- K. regular congregations;
- L. regular religious services;
- M. Sunday schools for the religious instruction of the young;
- N. schools for the preparation of its ministers.

Subp. 4. **Educational organization.** "Educational" means the instruction or training of individuals to improve or develop their capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community. Examples of educational institutions are primary and secondary schools, colleges and universities, and nonprofit professional and trade schools having a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on. Educational organizations include PTA, Boy Scouts, Girl Scouts, Camp Fire Girls, YMCA, YWCA, 4-H Clubs, and youth athletic and recreational programs such as Little League. Other educational institutions include museums, zoos, planetariums, symphony orchestras, historical societies, and other similar organizations.

An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion.

Subp. 5. **Organization and operational tests.** An organization is not exempt as a charitable, religious, or educational organization for sales and use tax purposes unless it is exempt from federal

income tax under section 501(c)(3) of the Internal Revenue Code as defined in Minnesota Statutes, section 297A.61, subdivision 22. However, the determination of the Internal Revenue Service that an organization is a nonprofit and tax-exempt organization under the Internal Revenue Code, section 501(c)(3), for purposes of income taxation is not controlling on the issue of whether the organization is an exempt organization for sales and use tax purposes. Likewise, determinations by the Minnesota Department of Revenue that an organization is an exempt organization for income tax purposes does not, by itself, entitle the organization to an exemption from payment of sales and use tax. In order to be an exempt organization, an organization must be organized and operated exclusively for exempt purposes. The following tests will be used in determining whether or not an organization qualifies as an exempt organization:

A. An exempt organization may not be organized or operated for the purpose of making a profit which inures to the benefit of any private shareholder or individual. The organization must be able to demonstrate by its articles of incorporation or if unincorporated, a certified copy of its constitution and bylaws, and its financial statements that:

(1) no part of the net earnings of its activities inures to the benefit of any private shareholder, or individual member, and no part of its assets will directly or indirectly be transferred, in the event of dissolution of a corporation or termination of an unincorporated association, to its members, founders, or shareholders;

(2) it is supported and maintained at least in part by gifts, grants, and contributions, that is, one of its sources of support is donations, income from donations, and contributions and dues of members for which they receive no direct benefit, or it is supported by fees charged by an exempt organization for program services if the fees are based on ability to pay and the exempt organization provides services to individuals who would otherwise turn to government for such aid. "Program services" means those activities that the exempt organization was created to conduct and which, along with any activities commenced subsequently, form the basis of the organization's current exemption from tax.

The fact that an organization may receive voluntary contributions from those who benefit from its activities will not necessarily prevent its being an exempt organization. But if it is determined that the services rendered by the organization are conditioned upon the receipt of a contribution the services rendered may be regarded as a commercial activity. If this commercial activity is not subordinate to or incidental to the organization's charitable, religious, or educational activities, the organization does not qualify as an exempt organization since it is not organized or operated exclusively for exempt purposes.

The fact that an organization is nonprofit does not necessarily make it an exempt organization. The following are examples of nonprofit organizations that may not qualify for exemption: organizations attempting to influence legislation or participating in political campaigns; fraternal or beneficial societies; clubs organized and operated for pleasure, recreation, social, or other similar purposes; business associations; cemetery associations that are not owned by religious organizations; civic and business clubs; homeowner's associations; lake improvement associations; professional and trade associations; retail and credit trade associations; trade unions; volunteer employee benefit associations; and veterans organizations. Thus, such organizations as Masons, Knights of Columbus,

B'nai B'rith, League of Women Voters, Chambers of Commerce, American Legion, alumni clubs, computer clubs, fraternities and sororities, Jaycees, Lions Clubs, Odd Fellows, Orders of Eastern Star, ski clubs, unions, and VFW Posts are not exempt organizations.

B. If an organization, by the terms of its articles, has purposes that are broader than the exempt purposes specified in Minnesota Statutes, section 297A.70, subdivision 4, the fact that its actual operations have been exclusively in furtherance of exempt purposes is not sufficient to make it an exempt organization. Similarly, an organization that is organized exclusively for exempt purposes is not an exempt organization if a significant part of its operations are not in furtherance of its exempt purposes.

C. An organization is not an exempt organization if its attempts to influence legislation or intervene or participate in a political campaign (including the publishing or distributing of statements) cause it to lose its exemption from income tax under section 501(c)(3) of the Internal Revenue Code as defined in Minnesota Statutes, section 297A.61, subdivision 22.

D. An exempt organization must serve a public rather than a private interest. Thus, to gain exemption an organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the founder or organizer or their family, shareholders of the organization, or persons controlled directly or indirectly by such private interests. An organization which is organized or operated primarily for the benefit of its individual nonexempt members rather than for the benefit of the general welfare does not qualify for exemption.

E. The assets of an exempt organization must be dedicated to an exempt purpose. An organization is not an exempt organization if its net earnings are used in whole or in part to the benefit of shareholders or individuals who have a personal or private interest in the activities of the organization.

Subp. 6. **Derivative organizations.** An organization may qualify derivatively for exemption if its members are exempt organizations and the organization is organized and operated exclusively to assist its member organizations in carrying out their exempt purposes.

Subp. 7. **Exemption certificates.** Items A to C apply to the application for and the furnishing of exemption certificates.

A. A religious or educational organization must complete and furnish a certificate of exemption when making exempt purchases of tangible personal property. Charitable and youth athletic organizations must apply for and receive an exempt status number and furnish that number when making exempt purchases of tangible personal property. Religious and educational organizations may also apply for and receive an exempt status number.

(1) Organizations that may furnish a certificate without an exempt status number include churches, schools, and educational organizations such as scouts, 4-H Clubs, YMCAs, YWCAs, and PTAs.

(2) Organizations that must furnish a certificate that includes an exempt status number include charitable organizations such as hospitals, nursing homes, day activity centers, United Way agencies, senior citizen groups, and youth athletic programs such as Little League and hockey.

B. An application for certificate of exempt status must be fully executed and submitted with the necessary supporting documents. No charitable organization making purchases shall be entitled to make those purchases exempt from the sales and use tax unless a certificate of exempt status has been issued by the commissioner of revenue.

C. If the department is provided information sufficient to establish that an organization is organized and operated exclusively for an exempt purpose, exemption will be granted to the organization regardless of the purpose indicated in its application for certificate of exempt status. For example, if an organization claims exemption on the grounds that it is educational, exemption will not be denied if it is, in fact, charitable.

Subp. 8. **Taxable sales to exempt organizations.** Certain sales and rentals to exempt organizations remain taxable. Exempt organizations still owe the sales tax when purchasing motor vehicles or when renting motor vehicles. See subpart 1. Sales to exempt organizations are taxable if the items purchased are not used in the performance of the charitable, religious, or educational functions of the exempt organization. The benefits of tax-exempt status are confined strictly to the legal entity that has qualified for such status. Thus, sales to individuals who are affiliated with an exempt organization are taxable even if the sales would be exempt if made directly to the exempt organization.

Items A to D are examples of taxable sales.

A. Sales of all lawful gambling equipment and supplies to any organization conducting gambling activities in accordance with Minnesota Statutes, chapter 349, since this property is not used in the performance of exempt functions.

B. Furniture purchased by a church for use in its parsonage is exempt since it is purchased for use by persons that administer religious activities to the congregation. These items are not purchased for the personal use of any one specific person but rather for the operation of a religious organization.

C. Handbooks, leaders' workbooks, and camping equipment purchased by a Girl Scout troop in its own name and with troop funds are exempt. However, these items are taxable if sold directly to an individual scout.

D. An exempt organization buys a set of golf clubs for a retirement gift for a staff member. The golf clubs are taxable as the gift is not furthering the exempt purpose of the organization.

Subp. 9. **Sales by exempt organizations.** No organization is exempt from collecting the tax on taxable retail sales. If an exempt organization makes taxable retail sales, it must collect and remit tax on these sales unless the sales are exempt fundraising sales that meet the requirements of Minnesota Statutes, section 297A.70, subdivision 13 or 14, or the sales are otherwise exempt under Minnesota Statutes, chapters 297A and 297E.

A. Examples of taxable sales:

(1) craft or workshop items, including those sold by hospital auxiliaries and senior citizen clubs;

- (2) religious books and cards;
- (3) used, obsolete, or surplus merchandise sold on a regular basis, such as surplus office equipment or used library books;
- (4) prepared food;
- (5) rental of personal property on a regular or recurring basis.

B. Examples of nontaxable sales:

- (1) land and buildings;
- (2) membership dues, retreat fees;
- (3) newspapers and magazines (published at least quarterly);
- (4) textbooks sold to enrolled students and prescribed for use in a course of study;
- (5) tuition, including day care and nursery school charges;
- (6) occasional sales (See Minnesota Statutes, section 297A.67, subdivision 23).

Subp. 10. **Volunteer fire departments.** Volunteer fire departments may qualify for exempt status if they qualify as a charitable organization and are a separate organization from the city. To be considered separate from the city, they must have either their own constitution or articles of incorporation. If a volunteer fire department has been approved for exempt status, its purchases are exempt in the manner provided in items A and B.

A. Exempt volunteer fire departments may purchase property exempt from sales tax and use tax if it is to be used exclusively to prevent fires in the community or to protect property in the community from fire. Subitems (1) to (6) are examples of items that an exempt volunteer fire department may purchase exempt:

- (1) fire trucks, ambulances, and accessories;
- (2) repair and replacement parts for fire trucks and ambulances;
- (3) fire protection clothing;
- (4) hand tools;
- (5) conversion equipment installed on an existing fire truck if the equipment purchased is used for the prevention of or protection from fire of property in the community;
- (6) water used to fill pumper fire trucks. The organization must be able to determine the amount of water that is used for general purposes if water from the station house is used. If the amount of water used for general purposes cannot be determined, the entire amount is taxable. If the amount of exempt water can be determined, the fire department could purchase all its water exempt from the sales tax and report use tax on the portion used for general purposes or it could file a statement with the seller claiming a partial exemption. This statement must certify:

(a) they are a volunteer fire department;

(b) the percentage of water that is used to fill pumper fire trucks; and

(c) a statement describing how this percentage was determined. The seller should exempt the portion claimed and charge sales tax on the remaining charge for water purchased.

B. Purchases made by an exempt volunteer fire department that are not used exclusively to prevent fires in the community or to protect property in the community from fire are taxable. For example, a washing machine used to wash fire protection clothing is taxable.

Subp. 11. Related information.

A. Many senior citizen groups are exempt from the sales and use tax. See Minnesota Statutes, section 297A.70, subdivision 4, paragraph (a), clause (2).

B. Sales of tangible personal property to veterans organizations or their auxiliaries are exempt provided the property is used for charitable, civic, educational, or nonprofit uses and the organization is exempt from federal taxation pursuant to section 501(c), clause 19, of the Internal Revenue Code. See Minnesota Statutes, section 297A.70, subdivision 5.

C. Sales of sacramental wine for sacramental purposes in religious ceremonies are exempt if the wine is purchased from a nonprofit religious organization or a person authorized to import sacramental wine without a license. See Minnesota Statutes, section 297A.70, subdivision 9.

D. Fees to camps or other recreation facilities are exempt if they are owned and operated by an exempt organization under section 501(c)(3) of the Internal Revenue Code as defined in Minnesota Statutes, section 297A.61, subdivision 22, and are used for (i) services primarily for children, adults accompanying children, or persons with disabilities, or (ii) educational or religious activities. See Minnesota Statutes, section 297A.70, subdivision 16. The sale of memberships to an association incorporated under Minnesota Statutes, section 315.44 (YMCAs and YWCAs), or an organization defined in section 315.51 (JCCs), are exempt. This includes onetime initiation fees and periodic membership dues. All separate charges for the privilege of having access to and the use of the association's sports and athletic facilities are taxable. See Minnesota Statutes, section 297A.70, subdivision 12.

E. While purchases of admissions provided for in Minnesota Statutes, section 297A.61, subdivision 3, paragraph (g), clause (1), are exempt when purchased by exempt organizations, sales of admissions by exempt organizations are generally taxable. The following sales of admissions in subitems (1) and (2) are exempt.

(1) Tickets or admission to artistic performances sponsored by qualified tax-exempt organizations are exempt. This exemption includes sales of tickets or admission by public schools, private schools, colleges, and universities for concerts, plays, and similar artistic events sponsored by the schools if the events are held at facilities owned by the schools and the performance and the organization meet the requirements of Minnesota Statutes, section 297A.70, subdivision 10. See also Minnesota Statutes, section 297A.96.

(2) Tickets or admission to regular season school games, events, and activities are exempt. Tickets or admissions to games, events, and activities sponsored by the Minnesota State High School League are exempt after June 30, 2006, and before July 1, 2011. See Minnesota Statutes, section 297A.70, subdivision 11.

F. Receipts from bingo, raffles, and other gambling activities are subject to the tax imposed on lawful gambling. See Minnesota Statutes, section 297E.02.

G. A nonprofit organization that is exempt from federal income taxation under subchapter F of the Internal Revenue Code is not considered to be a trade or business. Therefore, sales of items previously used in the operation of the exempt organization may still qualify for the isolated or occasional sale exemption. However, if an exempt organization operates a trade or business that has little or no relationship to its exempt purposes except to provide funds to carry out those purposes, these activities are considered to be a trade or business. In these instances, the sale of any equipment sold in connection with the trade or business operated by an exempt organization is taxable. See Minnesota Statutes, section 297A.68, subdivision 25.

Statutory Authority: *MS s 14.388; 270.06; 270C.06; 297A.29*

History: *17 SR 1279; 18 SR 391; L 1993 c 375 art 8 s 14; L 2005 c 151 art 1 s 114; 31 SR 449; 34 SR 723*

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