

REG-1-090, Nonprofit Organizations

090.01 The fact that an organization is nonprofit does not, by itself, entitle the organization to an exemption from payment of sales and use tax on its purchases. Some nonprofit organizations are exempt from payment of the Nebraska sales and use tax on purchases to the extent described in subsections 090.02A through 090.04B of this regulation. Purchases made by these organizations are exempt only after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). Religious organizations are discussed in Reg-1-091, Religious Organizations; and educational institutions are discussed in Reg-1-092, Educational Institutions. All other nonprofit organizations are not exempt and must pay sales or use tax. The following nonprofit organizations are exempt from paying sales and use taxes to the extent indicated.

090.02 A nonprofit organization operating any of the following facilities that are licensed under the Health Care Facility Licensure Act is only exempt on purchases for use at the facility, or portion of the facility, covered by the license and on purchases for use outside the facility that are necessary to fulfill the nonprofit organization's requirements to hold or maintain its license. Any purchases by the nonprofit organization for use at facilities not included in the license, or for any other activities are not exempt from the Nebraska sales and use tax.

090.02A A hospital.

090.02B A health clinic, when one or more hospitals, or the parent corporations of the hospitals, own or control the health clinic for the purpose of reducing the cost of health services, or when the health clinic receives federal funds through the United States Public Health Service.

090.02C A skilled nursing facility.

090.02D An intermediate care facility defined in Neb. Rev. Stat. § 71-420, and a intermediate care facility for the mentally retarded defined in Neb. Rev. Stat. § 71-421.

090.02E A nursing facility.

090.02F An assisted-living facility.

090.02G Beginning October 1, 2012, a mental health center.

090.03 A nonprofit organization operating any of the following activities or facilities that are licensed or certified by the Nebraska Department of Health and Human Services, is only exempt on purchases for use in the activity or at the facility, or portion of the facility, covered by the license or certification and on purchases for use outside the activity or facility that are necessary to fulfill the nonprofit organization's requirements to hold or maintain its license or certification. Any purchases by the nonprofit organization for use at the activities or facilities not included in the license or certification, or for any other activities, are not exempt from the Nebraska sales and use tax.

090.03A A licensed child placing or child placement agency.

090.03B A licensed child-caring agency, providing 24-hour daily care, supervision, custody, or control of children, in lieu of care or supervision normally exercised by parents in their own home, that is licensed under Neb. Rev. Stat. §§ 71-1901 to 71-1906.01.

090.03B(1) A licensed child-caring agency does not include an organization providing day care, early childhood programs, or periodic care as defined in Neb. Rev. Stat. § 71-1910.

090.03C An organization providing community-based services for the developmentally disabled that is certified under the Health Care Facility Licensure Act.

090.03D An organization operating a home health agency, hospice, or hospice or respite care service licensed under the Health Care Facility Licensure Act.

090.04 The following nonprofit organizations are exempt from sales and use tax on all purchases:

090.04A A nonprofit organization providing services exclusively to the blind; and

090.04B The State Fair Board.

090.05 The nonprofit organization seeking exemption from payment of sales and use tax must submit a Nebraska Exemption Application for Sales and Use Tax, Form 4, accompanied by the necessary supporting documentation. Exemptions are granted to nonprofit organizations listed under Reg-1-090.02 through Reg-1-090.04B, based on the factual documentation that is presented. In those instances where licensure or certification is a requirement, the Department will contact the state agency responsible for issuing the license to confirm that the license or certification was issued. Nonprofit organizations approved for exemption from payment of sales or use tax are issued a Nebraska Exempt Organization Certificate of Exemption. This certificate assigns the nonprofit organization an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

090.06 The nonprofit organization must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

090.07 Only the nonprofit organization that has been issued a Nebraska Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the nonprofit organization without payment of sales or use tax. Affiliated or subsidiary organizations cannot make tax exempt purchases using an exempt nonprofit organization's exemption certificate, even if they are operating in support of or under the guidance of the exempt organization. The affiliated or subsidiary organization must apply for its own exemption certificate. The affiliated or subsidiary organization may or may not qualify for its own exemption certificate.

090.07A The sales and use tax exemption does not extend to a person purchasing property or services to be given or donated to an exempt nonprofit organization. For these purchases to be tax exempt, the person must donate the funds to the nonprofit organization, and the nonprofit organization must make the purchase. Any person who removes property from inventory that was originally purchased sales tax exempt with a resale certificate, and donates the property to an exempt nonprofit organization, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

090.07B An exempt nonprofit organization engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. If the exempt nonprofit organization does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt nonprofit organization may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

090.07C When a nonprofit organization is engaging in a construction or repair project, it must be licensed or certified to be exempt from sales and use tax. But, if it was not licensed or certified at the time of the purchase, the nonprofit organization must pay sales tax or remit use tax, and cannot issue either a Purchasing Agent Appointment, Form 17, or a Resale or Exempt Sale Certificate, Form 13, to any contractor relating to purchases of building materials for construction or repair performed before licensing or certification. When the nonprofit organization becomes licensed or certified upon completion of the project, it may apply for a refund of the sales tax paid or collected, or the use tax remitted by any contractor on building materials necessary to open the facility and qualify for the license or certification.

090.07D A nonprofit organization required to be licensed or certified to be exempt from sales and use tax, but that is not licensed or certified at the time of the purchase, cannot make tax exempt purchases. When the nonprofit organization becomes licensed or certified upon completion of the project, it may apply for a refund of the sales or use tax paid on the equipment, furnishings, or supplies necessary to open the facility and qualify for the license or certification.

090.07E When a nonprofit organization is required to be licensed or certified to be exempt from sales and use tax, the organization may only make tax exempt purchases during the time that any required license or certification is valid.

090.08 A nonprofit organization is required to collect sales tax on sales of property made by the organization, unless the sale is otherwise exempt. Even an organization exempt from paying sales and use tax under this regulation, is required to collect sales tax on its taxable sales of property and services to the general public or to the members of the organization. Examples include: prepared food, (Reg-1-083, Food Service); copies of records, (Reg-1-080, Documents); and admissions, (Reg-1-044, Admissions).

090.08A Nonprofit organizations making sales of property or services subject to sales tax must apply for a Nebraska Sales Tax Permit using a Nebraska Tax Application, Form 20, and collect sales tax on the gross receipts from these sales.

090.08B Any nonprofit organization may purchase property for resale without paying sales tax if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. This certificate, or an approved substitute form, must be issued in accordance with Reg-1-013, Sale for Resale-Resale Certificate.

090.09 When a nonprofit organization charges for a fund-raising event that includes either prepared food or an admission for entertainment, recreation, or amusement, and the charge is combined with the solicitation of a contribution, the portion of the amount charged that represents the fair market value of the taxable prepared food or admission received is a retail sale and the nonprofit organization must collect and remit sales tax on that portion.

090.09A The nonprofit organization must determine the fair market value in advance and clearly indicate that amount on any ticket, receipt, or other evidence issued in connection with the payment and report and remit sales tax on that amount.

090.09B If there is no fair market value determined by the nonprofit organization, and there is more than one ticket price, and all purchasers receive substantially the same benefits, the lowest ticket price is presumed to be the fair market value of all tickets sold.

090.09C If there is no fair market value determined by the nonprofit organization, and fair market value cannot be determined under Reg-1-090.09B, the total charge is taxable.

090.10 Charges by committees registered with the Nebraska Accountability and Disclosure Commission, or committees for candidates for federal office, for admission to or for prepared food served at political fund-raising events are exempt from sales or use tax.

090.10A All other sales of property by committees, other than committees for candidates for federal office, are taxable.

090.10B Committees mean ballot question committees, candidate committees, independent committees, and political party committees.

090.11 Purchases by employees or members of the nonprofit organization using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the nonprofit organization, and even if the organization will be reimbursing the employees or members for expenses incurred, including purchases of prepared food and lodging.

(Neb. Rev. Stat. §§ 77-2701.33, 77-2704.10 and 77-2704.12. July 3, 2013.)