

REG-1-091, Religious Organizations

091.01 Nonprofit organizations created exclusively for religious purposes are exempt from payment of the Nebraska sales or use tax after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). This certificate assigns the organization an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

091.02 The nonprofit religious 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.

091.02A Only the nonprofit religious 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 religious organization without payment of sales or use tax. Affiliated or subsidiary organizations, for example, separately organized day care centers, youth groups, or vacation bible schools, cannot make tax exempt purchases using an exempt nonprofit religious 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.

091.02B 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 religious organization. For these purchases to be tax exempt, the person must donate the funds to the nonprofit religious organization, and the nonprofit religious 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 religious organization, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

091.02C An exempt nonprofit religious 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 religious 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 religious 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.

091.03 A nonprofit organization that meets the following criteria will be considered as created exclusively for religious purposes. The specific tenets of a particular religion will not be compared or considered by the Department when reviewing an application for tax exempt status.

091.03A The nonprofit organization must affirmatively establish its right to exemption by demonstrating that it is organized and is being operated exclusively for religious purposes. A mere restatement of the applicant's corporate charter or a statement of its proposed activities will not suffice.

091.03B The nonprofit organization's net earnings cannot be used for private gain or benefit unless the use fulfills a religious or charitable purpose. Upon dissolution, all assets and accumulated earnings must be distributed to an organization exempt under the Internal Revenue Code, § 501(c).

091.03C Exempt status will be granted by the Department only if the applicant's operation and activities are described in sufficient detail to require a conclusion that the nonprofit organization has met the requirements.

091.04 Each application will be examined by the Department to determine if the primary or dominant purpose for which the nonprofit organization has been created is religious, and if that purpose is being carried out in the operations of the organization.

091.05 In reviewing applications from nonprofit organizations seeking an exemption certificate as a religious organization, the Department may examine certain criteria, including, but not limited to, those listed in Reg-1-091.05A through 091.05N. No single criterion is controlling when making a determination of tax exempt status. These criteria include:

091.05A A distinct legal existence;

091.05B A recognized creed and form of worship;

091.05C A definite and distinct ecclesiastical government;

091.05D A formal code of doctrine and discipline;

091.05E A distinct religious history;

091.05F A membership not associated with any other religious organization or denomination;

091.05G A complete organization of ministers ministering to its congregations;

091.05H Ministers selected after completing prescribed courses of study;

091.05I A literature of its own;

091.05J Established places of worship;

091.05K Regular congregations;

091.05L Regular religious services;

091.05M Schools for the religious instruction of the young; and

091.05N Schools for the preparation of its ministers.

091.06 If the Department determines that the applicant is a nonprofit religious organization, it may have other purposes which are incidental when compared to its predominantly religious purposes or goals. In these instances, the applicant may not satisfy all of the criteria set out above.

091.07 A nonprofit religious organization is required to collect sales tax on sales of property by the nonprofit religious organization unless the sale is otherwise exempt. A nonprofit religious organization may make the following sales exempt from sales tax.

091.07A A nonprofit religious organization may sell prepared food at a function of the nonprofit religious organization without collecting sales tax. The activity is a function of the nonprofit religious organization if it is primarily for the members of the organization.

091.07B A nonprofit religious organization may have one annual sale event that is not taxed.

091.07B(1) The sale must be at an activity of the nonprofit religious organization, but it does not have to take place at a location owned by the nonprofit religious organization.

091.07B(2) The sale may last up to three consecutive days.

091.07B(3) The nonprofit religious organization may have the assistance of an auctioneer at this sale without having to collect sales tax on the property or services sold.

091.07B(4) The nonprofit religious organization may sell anything it owns at its sale, except a motor vehicle, trailer, or semi-trailer. The property or services sold may be made especially for the sale, purchased for the sale, or donated to the nonprofit religious organization for the sale.

091.08 Any nonprofit religious 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. (Reg-1-013, Sale for Resale-Resale Certificate). This certificate, or an approved substitute form, must be issued in accordance with Reg-1-014, Exempt Sale Certificate.

091.09 Purchases by employees or members of the nonprofit religious organization using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the nonprofit religious 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. §§ 77-2701.24, 77-2703, 77-2704.10, 77-2704.12, and 77-2706. July 3, 2013.)