

SALES TAX ISSUES FOR CHURCHES

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Many churches erroneously believe that an exemption from federal income taxes extends to all taxes. This article focuses on sales tax issues that churches frequently encounter.

EXEMPTION FROM PAYING

Sales taxes are collected in 44 states. Each state has a different sales tax statute and exempts certain types of purchasers from the payment of sales tax. As a result, you should check with each state revenue department for the applicability of sales tax to a specific type of sale.

Each state that exempts churches from sales tax payment requires the church to give an exemption certificate to the seller. Some states issue an exemption number, some do not. If the seller does not have the certificate on file, or if this certificate is not properly and completely filled out, then the seller must pay sales tax on the sales. Further, the sale must be paid with church funds. The church's employee may not use a personal credit card or personal check. Some sellers will not even accept cash. The church should pay by church check or a church credit card. In some states, churches may submit to the revenue department receipts showing sales taxes were collected, and receive a refund of the sales taxes paid.

Most states exempt churches from paying sales tax on purchases that are used within the church's exempt function. This means that the church may purchase office supplies and computers without paying state sales tax. It does not mean that the church may use its exemption to purchase items that will not be used by the church in its exempt function. For example, if a church purchases prizes to be given away in children's church, then some states will not consider those prizes as being used within the church's exempt function. As a result, the church should pay sales tax on prize purchases.

Another mistake regarding sales tax relates to the pastor's parsonage. In many states, the church may not use its sales-tax exemption to purchase items for the parsonage because the intended use is personal and not ministry related. We have handled cases where the pastor used the church's sales tax exemption to purchase materials to construct a parsonage. In most states, this is a criminal offense, and the pastor can go to jail.

COLLECTING SALES TAX

Many churches confuse the exemption from paying sales tax with an exemption from collecting sales tax. Most states do not exempt churches from collecting sales tax on taxable transactions. As a result, a church that conducts taxable transactions is required to have a sales tax permit.

Most states have a nuisance exception to the requirement of having a sales tax permit. For example, Texas allows churches to have two 24-hour periods every 12 months in which it may have taxable sales without the requirement of collecting sales tax. Since every state is different, you should check with your state revenue department. If you exceed the nuisance exemption, then sales taxes are usually due from all sales, not just the sales after the nuisance period.

Generally, sales tax is required to be collected upon the sale of tangible property. For example, if the church sells books in connection with adult classes, it must collect sales tax in most states. It also does not matter that the church paid sales tax when it purchased the books or that it is selling the book below cost. The collection of sales tax is also due on the sales of sermon tapes in many states.

Virtually any form of fund raiser that involves the sale of a product will also require the collection of sales tax. For example, if the church youth group sells roses for Mother's Day, the church is required to collect sales tax on the sales of roses, just like the florist.

Most states collect sales tax on the sales of prepared food, such as the purchase of a meal in a restaurant. Some states have a specific exemption that allows churches to sell Wednesday evening meals without the collection of sales tax.

A common area of misconception involves auctions. Most states require the collection of sales tax from all sales at auctions. Some states have specific exemptions for charitable auctions. Since each state's rules are slightly different, the church should check with the state revenue department to determine whether they can structure an auction to meet the charitable auction exception.

Many churches host visiting ministers and traveling singing groups. Some churches will host a craft fair or a fall festival where booths are rented to individuals and businesses. These entities and businesses frequently will sell handcrafted items, books, CDs, and tapes to church members. Most of these entities will not have a local sales tax permit. To prevent the avoidance of sales tax, many states have enacted the "flea market" rule. In its simplest terms, this rule makes the host church liable for the sales taxes due from the sales of those visiting ministers, traveling singing groups, and people who rent booths. To avoid this liability, churches should require that all visiting ministers, traveling singing groups, and booth renters have a current, valid sales tax permit for your state. The church should require a copy of the actual permit before allowing them to sell goods at the church. If the party cannot produce a current, valid sales tax permit, either the church should conduct the sales and collect the sales tax under its sales tax permit, or it should prohibit the sale by the visiting entities.