



*This article presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **Georgia Sales Tax Obligations For Gala Ticket Charges and Silent Auctions Sales**

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Nonprofit organizations that hold fundraisers or sell merchandise must be cognizant of sales tax collection obligations. Many nonprofit organizations think that they are not obligated to collect sales tax. Perhaps they believe that they are not required to collect tax because they do not routinely sell products or tickets. Some organizations think that their exemption from federal income tax extends to sales tax. But nonprofit organizations, with a few exceptions, are required to collect sales tax (and required to pay sales tax on purchases).

Executive staff, board members, directors and outside advisors should take note of the organization's sales tax collection obligations. The anecdote below should give nonprofit boards, their directors and their advisors reason for pause.

Anecdote. An organization or business that sells tickets or charges a fee for admission to a place of amusement, sports, entertainment or exhibition or display must collect tax on the ticket sales or charges for admission. Thus, and with some exceptions, a nonprofit organization that sells tickets and/or charges entry fees to tournaments, galas, street festivals or other fundraisers must collect sales tax on the charges. Last spring, a metro Atlanta nonprofit held a festival for which it sold tickets. A few days before the event, the Georgia Department of Revenue's local regional office contacted the nonprofit to remind the nonprofit to collect sales tax on the ticket sales. But the nonprofit had already sold most of the tickets and had not collected sales tax on the ticket sales. Unhappy, the nonprofit was preparing to pay the uncollected sales taxes from its own funds. Fortunately, the nonprofit overcame the problem, because, by statute, the organization was exempt from collection obligations. This exemption was unique to the nonprofit and does not apply to most nonprofit organizations.

Gala with Silent Auction Fundraiser. Nonprofit organizations use different methods to raise money. A common fundraiser includes a gala with a silent auction, at which attendees bid on items donated by businesses and individuals. With few

exceptions, the nonprofit organization must collect sales tax on the ticket sales (or admissions charges). The organization must also collect sales tax on the winning bids. This article provides some best practices to ensure that sales tax is collected properly on the tickets/admissions charges and the winning bids.

What Items are Subject to Sales and Use Tax. In Georgia, “retail sales” are subject to sales and use tax. Retail sales are sales of tangible personal property and some enumerated services to the end user. Tangible personal property includes items that can be seen, weighed, measured, felt or touched. Taxable tangible personal property includes canned software sold on a tangible medium (such as a disk). Products sold electronically, including software, are not taxable. Retail sales include sales of tickets and charges for admission to places of entertainment and amusement and charges for participation in games and amusement activities. Retail sales also include lodging charges (where the stay does not exceed 90 days). Personal and professional services are not subject to Georgia sales and use tax. In Georgia, the seller must collect the tax from the end user.

Tickets/Admissions Charges. The tickets/admissions charges are subject to sales tax. So, if the charge to attend is \$100, then the organization must collect tax on the \$100 charge. The amount of sales tax that must be added to the ticket charge depends upon the location of the event. The sales tax is composed of a 4% statewide rate and then a county/city rate that is between 2% and 4.9%, depending upon the location. The Georgia Department of Revenue publishes a [Tax Rate Chart](#) each month that is available at the Georgia Department of Revenue Web site. If the event is in the City of Atlanta, then the organization must add \$8.90<sup>1</sup> to the ticket charge. The organization can include the tax as part of the \$100 charge, but the organization must note such on its Web site (at which the ticket is sold) and on the face of the ticket *e.g.*: ticket charge is \$91.83 and sales tax is \$8.17. If applicable, the organization can bifurcate the ticket charge into (1) a charge for the fair market value of the gala and (2) excess over the fair market value *i.e.*, the donation or contribution amount. In such a case, the organization should collect tax on the fair market value. For example, the admission charge, which may include entertainment and food/drinks, may be \$100. The organization should determine the portion of the \$100 that is the fair market value of the entertainment/food/drink. If, in this example, the fair market value is \$40, then the organization should collect sales tax on the \$40 charge. The organization can also “include” the sales tax in the \$40 charge. In our example, if the event is held in the City of Atlanta, then the fair market value of the entry/admission plus the tax is as follows: \$36.73 + \$3.37 of tax (the City of Atlanta 8.9% tax). The excess, \$60.00, is a

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<sup>1</sup> Sales tax rate in October 2018. Check the [Georgia Tax Rate Charts](#) as the rates change.

contribution to the organization and not subject to sales tax. But the organization should note this information (1) at the organization's Web site where the tickets are sold and (2) on the face of ticket. This example likely prompts the thought of having to engage in burdensome algebraic computations to identify the fair market value, the tax and the excess over the fair market value and tax. But not engaging in this exercise, as noted above, can result in serious consequences for the nonprofit organization.

Silent Auction Donor's Gift to the Nonprofit Organization. If an individual purchases and donates an item for the auction, then the individual must pay sales tax on the purchase of the item. If a business donates an item from inventory purchased for resale, then the business must accrue and pay sales tax when the business removes the item from resale inventory. Regardless of who donates the item, the nonprofit organization, unless exempt, must collect sales tax from the winning bidder.

Mark Each Item with its Fair Market Value. Before the auction, the nonprofit organization should establish the fair market value of each item offered for bidding and keep a record of such value. On the bid sheet, the organization should note the fair market value.

Winning Bid Exceeds Fair Market Value of the Item. If the winning bid exceeds the "fair market value" of the item, then the winning bidder pays sales tax on a portion of the winning bid – the "fair market value" of the item. The nonprofit can record the excess as a "contribution." For example, if the auctioned item is an autographed football that has a "fair market value" of \$200, and if the winning bidder pays \$500 for the football, then the winning bidder must pay sales tax on \$200 (fair market value). The excess over the fair market value (\$300) is "contribution income," a donation to the nonprofit entity. The nonprofit organization should identify this part of the proceeds as a contribution from the winning bidder. The nonprofit organization must keep a record of these amounts.

Winning Bid is Fair Market Value or Less. The winning bid may be the fair market value or even an amount less than the fair market value. In either case, the nonprofit organization must collect sales tax on the winning bid. In the above example, if the autographed football has a "fair market value" of \$200, and if the winning bidder pays \$150 for the football, then the winning bidder must pay sales tax on \$150.

Bundled Transactions/Products (some taxable and some nontaxable). Many auctioned items include a bundled combination of nontaxable services and taxable personal property. For example, the nonprofit may offer a gift basket provided by a massage spa. The basket could include taxable products bundled together with nontaxable services, such as five one-hour massages and \$100 worth of skin-care

products from the massage spa. If the fair market value of the five massages is \$400, then the auctioned basket has a \$500 fair market value that includes nontaxable items of \$400 (the massages) and taxable items of \$100 (the skin care products). If the winning bid is \$1,500, then (1) the nonprofit must collect sales tax from the winning bidder, (2) the winning bidder must pay sales tax on \$100, which is the fair market value of the taxable portion of the basket and (3) the organization must provide the winning bidder with a statement/notice that \$1,000 of the \$1,500 donation is tax-deductible. Finally, the nonprofit must also keep a record that \$400 of the remaining \$500 is for nontaxable massages (personal services that are not subject to sales tax) and that \$100 is for tangible personal property (the skin care products).

Vacation Homes Offered for Bid. Often, a donor may donate his/her vacation home in another state as an auction item. If the vacation home is located outside Georgia, then the organization does not have to collect sales tax from the winning bidder. This is because the winning bidder is buying use of a vacation home in another state. If the vacation home is located in Georgia, then Georgia sales tax applies (rate is based on the location of the home).

Keep Records. The above requirements are complicated. Having to recreate the transactions is more complicated. Thus, the nonprofit organization should keep accurate records of (1) the fair market value of each auctioned item, (2) the winning bid, (3) the excess each winning bid over the item's fair market value and (4) any portion of the fair market value that is not taxable (such as services).

Conclusion. Nonprofit organizations must ensure that they collect sales tax properly. Failing to collect tax could subject all responsible persons (jointly and severally) to personal liability for the uncollected sales taxes. For information about the specifics of collecting and remitting sales tax in Georgia, see our article [Paying Sales and Use Tax in Georgia](#).

**As a recognized Super Lawyer and U.S. News Best Lawyer, Richard Litwin devotes his practice to multistate tax, state and local tax, and tax controversies. He has chaired the State Bar of Georgia's Section of Taxation is active on Georgia Department of Revenue committees and works with several nonprofit organizations in providing state tax counsel.**