

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 19, 2024

Opinion No. 24-012

Tax-Exempt Lodging Operator’s Responsibility to Collect Sales Tax and Occupancy Tax

Question 1

Is a 501(c)(3) organization that offers lodging, food, and beverages responsible for collecting and remitting sales tax and occupancy tax?

Opinion 1

Yes.

Question 2

If a 501(c)(3) organization that offers lodging, food, and beverages is a religious organization, is it still required to collect and remit sales tax and occupancy tax?

Opinion 2

Yes.

ANALYSIS

1. Federal law exempts certain organizations—including those operated exclusively for religious purposes—from federal income taxes pursuant to 26 U.S.C. § 501(c)(3). Generally, these “501(c)(3) organizations” are also exempt from paying Tennessee sales and use taxes on *purchases* they make. *See* Tenn. Code Ann. § 67-6-322(b). But, as this Office previously opined, “if an entity which qualifies for [§ 67-6-322’s] exemption engages regularly in the business of selling tangible personal property, such an entity would be liable for sales tax on its sales of tangible personal property or taxable services.” Tenn. Att’y Gen. Op. 84-036 (Jan. 31, 1984). That conclusion follows directly from the relevant statutory text.

The Retailers’ Sales Tax Act provides that “every person” who engages in the selling of tangible personal property at retail in this State, or who rents or furnishes any of the things or services taxable under the Act, is liable for sales and use taxes. Tenn. Code Ann. § 67-6-201. The Act, in turn, broadly defines “person” as “any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit.” Tenn. Code Ann. § 67-6-102(69). That broad language encompasses 501(c)(3)

organizations organized as a corporation, association, or other group. So although a 501(c)(3) organization may be exempt from the payment of sales and use taxes for purchases, it is not relieved of the responsibility to collect and remit sales taxes if it sells tangible personal property or furnishes services that are taxable under the Act. *See* Tenn. Att’y Gen. Op. 84-036 (Jan. 31, 1984).

The same analysis seemingly applies to occupancy taxes in Tennessee (also known as hotel-motel taxes, transient taxes, or tourist accommodation taxes). Through a patchwork of statutes, the State has authorized localities to impose these taxes on lodging. *See* Tenn. Code Ann. §§ 7-4-102 to -112 (authorizing counties with metropolitan forms of government to levy occupancy taxes); *id.* § 67-4-1402 (authorizing municipalities to levy occupancy taxes); 1991 Tenn. Priv. Acts, ch. 19 (authorizing an occupancy tax in Bradley County). And while this Office has not reviewed every public and private act related to occupancy taxes, we are aware of no law that exempts a nonprofit or religious organization from collecting and remitting those taxes.

Nor does state law itself exempt 501(c)(3) organizations from occupancy taxes. In counties and municipalities where such a tax has been levied, hotel operators are generally required to collect and remit the taxes to the local government. *See, e.g.*, Tenn. Code Ann. § 67-4-1404. A hotel “means any structure or space, or any portion thereof, that is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes, and includes privately, publicly, or government-owned hotels, inns, . . . motels, . . . or any place in which rooms, lodgings, or accommodations are furnished to transients for consideration.” Tenn. Code Ann. § 67-4-1401(2). Similar to the sales and use tax, the occupancy tax broadly applies to any hotel operator that provides lodging even if the hotel operator would otherwise be exempt from the payment of sales and use taxes on its own purchases. *See id.*

In short, a 501(c)(3) organization that offers lodging, food, and beverages is responsible for collecting and remitting sales tax and occupancy tax.

2. Religious 501(c)(3) organizations are treated no differently under state law. Again, the Retailers’ Sales Tax Act exempts religious organizations from paying sales tax on their *purchases* only. The Act provides no exemption from the obligation to collect and remit sales taxes if an organization sells tangible personal property or furnishes services that are taxable under the Act.

There is no wholesale bar to the imposition of tax obligations on religious entities. In fact, the Tennessee Supreme Court has held that religious organizations may be required to pay a hotel occupancy tax because it “is a tax on the secular activity of occupying a hotel or motel room.” *Covenant Cmty. Church v. Lowe*, 698 S.W.2d 339, 341 (Tenn. 1985). If a religious organization can be required to pay a hotel occupancy tax, it follows that the organization can be required to collect and remit such a tax when it provides lodging.

And even assuming that taxing an organization for offering lodging, food, and beverages somehow impinges on some religious belief or activity, that does not necessarily excuse the entity from its tax obligations. *See generally United States v. Lee*, 455 U.S. 252, 260-61 (1982). The question, at least under the U.S. Supreme Court’s current doctrine, is whether the tax law at issue is “neutral and generally applicable.” *Fulton v. Philadelphia*, 593 U.S. 522, 533 (2021); *but see id.* at 543 (Barrett, J., joined by Kavanaugh, J., concurring) (questioning validity of neutral-and-

generally-applicable test from *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990)); *id.* at 545 (Alito, J., joined by Thomas, J. and Gorsuch, J., concurring in the judgment) (calling for Court to overrule *Smith*). Here, Tennessee law generally requires any organization selling tangible personal property or providing taxable services to collect sales tax regardless of the organization’s religious, charitable, educational, governmental, or nonprofit status or affiliation. And to the extent a local occupancy tax applies, it applies to all organizations providing lodging. State law contains no “mechanism for individualized exemptions” and imposes no burden on religious entities “because of their religious nature.” *Id.* at 533.

Accordingly, a religious 501(c)(3) organization that offers lodging, food, and beverages is responsible for collecting and remitting sales tax and occupancy tax.

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