Nonprofit Fundraising Summary: Sales Tax, Raffles, Online Sales

The following is a brief summary of some common legal considerations for nonprofits raising funds through donations, sales, raffles, and multistate fundraising by Texas nonprofit organizations.

Charitable Contributions - Quid Pro Quo Disclosures
Quid Pro Quo. Disclosure to donor required for payment of over $75 made by donor to charity partly as a contribution and partly for goods or services. Ex. Donor gives charity $100 and receives a concert ticket valued at $40: the charitable contribution of $60 must be disclosed, even if deductible part is not more than $75. No disclosure required if:

- Goods or services given to a donor have “insubstantial value”, (e.g. coffee mug, lapel pin)
- No donative element involved e.g. visitor's purchase from a museum gift shop.
- Other exceptions, See IRS page Charitable Contributions – Quid Pro Quo Contributions

Fundraising Sales
Sales and use tax permit is required to sell goods or services in Texas. In general, nonprofits must collect and remit sales taxes on goods and services sold, although there are exceptions – see below. There is no fee for obtaining a sales tax permit. Use Texas Comptroller’s online application.

Purchase for resale. Taxable item purchased for resale (for example, prepackaged snacks or water purchased by nonprofit to sell at a fundraiser) are exempt from sales or use tax, if seller accepts completed Form 01-339, Texas Sales and Use Tax Resale Certificate. This resale certificate is seller’s evidence as to why it did not collect sales tax on the transaction.

Alcoholic Beverages
- Alcoholic beverages are taxable.
- One-day event requires temporary liquor license from Texas Alcoholic Beverage Commission (TABC).
- Organization may get up to 10 temporary liquor licenses annually.
- Must file reports with TABC after each event.

Fundraising Exceptions to Sales Tax
Sales Tax - Nonprofits are required to collect sales tax on sales of taxable items and services. Nonprofit purchases are exempt for religious, educational or charitable organization, or those exempt under IRC

1 See Texas Comptroller publication, Texas Sales Tax Frequently Asked Questions.
2 See www.tabc.state.tx.us

Important: This information may not reflect the most current legal developments. Different fact situations may result in different outcomes, conclusions, or answers. Consult an attorney regarding your organization’s specific legal circumstances.
Sections 501(c)(3), (4), (8), (10), or (19). Tex. Tax Code §§151.310(a)(1) and (a)(2). To apply for the exemption, complete Form 01-339, Texas Sales and Use Tax Resale Certificate. Sale of items, auctions, rummage sales & other sales – Once exempt, the organization and each of its chapters may hold two one-day, tax-free sales each calendar year. Tex. Tax Code §151.130(c).

Special rules for certain groups:

- Youth athletic organizations, chambers of commerce and governmental entities may NOT hold tax-free sales or auctions.
- College or university student organizations may hold one tax-free sale day each month. Tex. Tax. Code §151.321.
- Firefighter and EMS Volunteers may hold ten tax-free sales per year.³
- Senior citizen groups – Exempt from collecting sales tax on items they make and sell. Seniors can hold up to four sales each year for a total of not more than 20 days per calendar year (ex. 4 sales in a single year lasting no more than 5 days each).

Rules for all tax-free sale days.

- Each sale may last only one day. “Day” = 24 consecutive hours.
- Exemption does not apply to items sold for more than $5000 unless made by nonprofit, or donated to nonprofit and not sold back to donor.
- The items sold must be valued at $5,000 or less or other rules apply. Value can exceed $5000 only if item made by nonprofit or donated to nonprofit (and not sold back to donor).
- Sale as “donation” - Do not call a sale item (ex. T-shirt) a donation. If nonprofit receives money in exchange, it is a sale for tax purposes.⁴

Selling meals and food. Sales tax collection not required if:

- sold in a church or by a church organization,
- served by schools and PTAs,
- served to a permanent resident of a retirement community,
- served by a prison or hospital,
- sold by a volunteer or member of a nonprofit exclusively devoted to education, religious, or physical training, or
- sold by booster or support group for public or private K-12 school as fundraiser when all net proceeds go group for their exclusive use.

Banquets. One annual tax-free banquet is permitted if it is:

- not professionally catered, not held in a restaurant, hotel, or other similar place of business,
- not in competition with retailer required to collect tax, and the food prepared, served, and sold by nonprofit members.
- exception does not apply to the sale of alcoholic beverages.

Amusement services, tickets to events. Exempt from sales tax as long as the proceeds do not benefit an individual except of a purely public charity. Includes tickets to a school carnival, dance, athletic event, musical concert.

Other exempt items.

- Membership dues and fees.
- Publications.
- Coupon books and commissions

³ Tex. Tax Code 151.310(a)(4); 154.310(c-1).
⁴ See TRLA/Texas CBAR publication What Nonprofits Need to Know about Texas Sales Tax Collection.
Raffles

Legal requirements for raffles. Only qualified nonprofit organizations may hold raffles.

- Nonprofit must be tax-exempt 501(c)(3) in existence for at least 3 years;
- Nonprofit does not distribute income to its members, officers, or governing body;
- Nonprofit does not devote substantial part of its activities to influence legislation; and
- Nonprofit does not participate in any political campaign.

Legal restrictions on raffles.

- Nonprofit may hold only two raffles per year, which may not be held at the same time.
- Exception: Nonprofit wildlife conservation associations may conduct two raffles each year and each local chapter, affiliate, wildlife cooperative, or unit may hold two raffles each year.
- Nonprofit may not compensate ticket sellers or raffle organizers. “Compensation” includes gifts, prizes or raffle tickets.
- Raffle tickets must be printed with nonprofits name, address, price of ticket, general description of prize and date prizes will be awarded.
- Nonprofit must have raffle prize in its possession or post bond for full amount of prize value with county clerk in county where raffle is held.
- Nonprofit must award prize within 30 days of date printed on ticket; otherwise must offer to refund all tickets.

Value of raffle prizes.

- Prize cannot be “money”. Money includes checks and cashier’s checks. Does not include savings bonds, “stored value” credit cards, or lottery tickets – these are not “money”.
- Total value of prizes purchased for raffle cannot be over $50,000 (or $250,000 for a house).
- No limit on the value for donated items.

IRS reporting and filing requirements.

- Prize worth $600 - $5,000 - nonprofit must provide IRS Form W2-G to winner.
- If winner doesn’t provide taxpayer ID, nonprofit must withhold 28% of value of prize and file IRS Form 945 by January 31 of the year after the year in which the taxes were withheld.
- Prize worth over $5,000, Nonprofit must withhold 25% of value and file IRS Form W2-G.⁶

Penalties.

- Conducting an unauthorized raffle= Class A misdemeanor.
- Participating in unauthorized raffle=Class C misdemeanor.

Multistate Fundraising

State registration. Nonprofit soliciting funds or targeting donors in other states must comply with state registration requirements.⁷ Texas nonprofits bordering or soliciting funds in New Mexico, Oklahoma, Arkansas, and Louisiana should review fundraising for cross-state activities in those states, as each requires registration.

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⁶ See IRS Notice 1340 – Tax Exempt Organizations and Raffle Prizes; Forms and Instructions for Form 945 – Annual Return for Withheld Income Tax; Form 5754 - Statement by Person Receiving Gambling Winnings; IRS Form 1096 –Annual Summary and Transmittal of US Information Returns; IRS Publication 3079 – Tax Exempt Organizations and Gaming.
⁷ As of November 2017, Idaho, Montana and Arizona are the only remaining states that do not require registration.
Disclosure statements. Some states require "disclosure statements" to alert potential donors that nonprofit is registered; statement must be included in targeted solicitation materials (ex. annual appeal letters and letters confirming pledges).

Crowdfunding and giving days can trigger registration requirements in multiple states.

Exemptions exist in most states for educational institutions, churches/religious congregations, and membership organizations that only solicit members.\textsuperscript{8}

Unified Registration Statement. An alternative to filing the respective registration forms produced by each of cooperating state. In states that accept the URS, Nonprofit may use \textit{either} the state form \textit{or} the URS form. URS may be used by any nonprofit that is registering in a state accepting it.\textsuperscript{9}

Selling online. If you live in Texas, sell more than two taxable items in a 12-month period and ship or deliver those items to customers in Texas, then you must collect and remit sales tax. Sales tax must be assessed on delivery charges as well as taxable items delivered in Texas.

Out of state sales. Collection and remittance to delivery jurisdiction may be required, depending state or jurisdiction. You must keep accurate records and proof of delivery. For more information visit the Multistate Tax Commission’s website at \url{http://www.mtc.gov}.

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About Texas CBAR
Texas Community Building with Attorney Resources (Texas CBAR) is a special project of Texas RioGrande Legal Aid, the nation’s third largest provider of free civil legal services to low-income individuals and communities. Texas CBAR is a statewide legal referral program that provides free legal help to eligible nonprofit groups that cannot otherwise access legal services. We connect volunteer attorneys with nonprofits that need assistance with transactional matters such as state incorporation, federal application for tax-exempt status, bylaws, contracts, board compliance and other matters that do not involve litigation.

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\textsuperscript{8} Summary of exemptions for educational institutions; Summary of religious exemptions.
\textsuperscript{9} For more information, see the Multistate Filer Project; the National Council of Nonprofits Charitable Solicitations page; and the National Association of State Charities Officials, a section of the National Association of Attorneys General (NAAG).