



TAX BULLETIN 16-5

Virginia Department of Taxation

June 22, 2016

IMPORTANT INFORMATION REGARDING VETERANS SERVICE ORGANIZATIONS

Legislation enacted during the 2016 session of the Virginia General Assembly (House Bill 63, *Acts of Assembly*, Chapter 487) allows qualifying nonprofit Veterans Service Organizations ("VSOs) that are exempt from federal income taxation under § 501(c)(19) of the *Internal Revenue Code (I.R.C.)*, as well as certain entities organized for one of the purposes set forth in *I.R.C.* § 501(c)(19), to purchase eligible tangible personal property exempt of the Retail Sales and Use Tax. This Tax Bulletin is intended to provide guidance to nonprofit organizations and retailers regarding this law change.

RETAIL SALES AND USE TAX

Currently, nonprofit organizations that meet the statutory requirements for exemption, apply for, and are issued a nonprofit exemption certificate by the Virginia Department of Taxation (Department) enjoy a Retail Sales and Use Tax exemption on purchases of tangible personal property. The exemption is restricted to tangible personal property used or consumed by the exempt nonprofit organization.

Limitations on Current Exemption

Under current law, the nonprofit sales and use tax exemption is limited to three categories of nonprofit organizations: 1) entities that are exempt under *I.R.C.* § 501(c)(3); 2) entities that are exempt under *I.R.C.* § 501(c)(4) and organized for a charitable purpose; and 3) entities that have annual gross receipts of less than \$5,000 and are organized either for one of the purposes set forth in *I.R.C.* § 501(c)(3) or one of the charitable purposes in *I.R.C.* § 501(c)(4).

These nonprofit organizations must meet the following additional statutory requirements to be eligible for the sales and use tax exemption:

- Comply with state solicitation laws, if applicable;
- Have annual administrative costs that do not exceed 40% of annual gross revenue;
- Provide the Department with a full financial review performed by an independent certified public accountant if the organization's gross annual revenue was at least \$750,000 in the previous year. The Department has the discretion to require a full financial audit for organizations with gross annual revenue of at least \$1 million in the previous year.
- Provide the Department with a copy of the organization's Form 990 or successor forms, or a list of the organization's board of directors if no Form 990 or successor form was filed; and
- Provide the Department with an estimate of the organization's total taxable purchases made in the preceding year.

If a nonprofit organization demonstrates that it meets each of these requirements, the Department will issue the organization a sales and use tax exemption certificate. The certificate may be used to make tax-exempt purchases of tangible personal property for the organization's use or consumption, but may not be used to purchase taxable services, such as hotel accommodations. The exemption certificate is valid for a period of no less than five and no more than seven years, after which time, the organization must reapply for exempt status.

Expansion of Sales Tax Exemption to Include Veteran Service Organizations

Effective July 1, 2016, the sales and use tax exemption for nonprofit organizations is expanded to include most purchases made by: 1) organizations exempt from federal income taxation under *I.R.C.* § 501(c)(19); and 2) organizations with annual gross receipts below \$5,000 that are organized for one of the purposes set forth in *I.R.C.* § 501(c)(19). As with other nonprofit organizations, *I.R.C.* § 501(c)(19) organizations must apply for and meet the above statutory requirements, as well as the requirements for federal recognition as an *I.R.C.* § 501(c)(19) organization in order to be issued a nonprofit exemption certificate.

I.R.C. § 501(c)(19) Organization Requirements

I.R.C. § 501(c)(19) exempts from federal income taxation posts or organizations consisting of past or present members of the United States Armed Forces, or an auxiliary unit or society of, or a trust or foundation for such posts or organizations. In order to be recognized as exempt under *I.R.C.* § 501(c)(19), the organization must:

- Be organized in the United States or its possessions;

- Have at least 75% of its members be past or present members of the Armed Forces and substantially all (90%) of the remaining members be cadets, spouses, widows, widowers, ancestors or lineal descendants of past or present United States Armed Forces members or cadets; and
- Allow no part of its net earnings to inure to a private shareholder or individual's benefit.

In addition, the entity must be organized for one or more of the following purposes:

- Promoting the social welfare of the community;
- Assisting disabled or needy war veterans and U.S. Armed Forces members and their dependents, and the widows and orphans of deceased veterans;
- Entertaining, caring for and assisting hospitalized veterans or Armed Force members;
- Carrying on programs to perpetuate the memory of deceased veterans and Armed Forces members and to comfort their survivors;
- Conducting programs for religious, charitable, scientific, literary or educational purposes;
- Sponsoring or participating in patriotic activities;
- Providing insurance benefits to members or members' dependents; or
- Providing social and recreational activities for members.

Limitation on Sales and Use Tax Exemption for Qualifying Veterans' Organizations

As with other nonprofit organizations, the exemption for *I.R.C.* § 501(c)(19) organizations and entities organized for one of the *I.R.C.* § 501(c)(19) exempt purposes is limited to purchases of tangible personal property, and does not include taxable services, such as hotel accommodations.

Additionally, although these organizations are authorized to provide insurance benefits and carry on social and recreational activities for their members, the sales and use tax exemption does not apply to tangible personal property used primarily for social and recreational activities or to provide insurance benefits to members or their dependents.

Example 1: An organization recognized under *I.R.C.* § 501(c)(19) operates a bar and restaurant open to members and their guests and has been issued a nonprofit exemption certificate by the Department. The organization purchases food that will be prepared and resold to members and their guests. The organization may not use its nonprofit exemption certificate to purchase the food exempt of the tax because

the nonprofit exemption available to *I.R.C.* § 501(c)(19) organizations does not apply to tangible personal property used primarily for social and recreational activities. Because the food will be purchased for resale to members, however, the organization may use a resale exemption certificate, Form ST-10 to purchase the food exempt of the sales and use tax.

Example 2: The Department has issued a nonprofit exemption certificate to an *I.R.C.* § 501(c)(19) post organized to visit sick or hospitalized members, veterans, and their families. The post also provides insurance benefits to its members directly through insurance set-asides. The post plans to purchase a computer, fax machine, telephone and other office equipment, which will be used in the post's general operation. The post will also purchase software that will be used solely to track funds for the insurance set-asides. As the computer, fax machine, and telephone will be used in the post's general operation, the post may purchase these items exempt of the sales and use tax using its nonprofit exemption certificate. Because the software will be used solely to provide insurance benefits to post members, however, the software does not qualify for the nonprofit sales and use tax exemption.

Administration of the Exemptions

The Department of Taxation will administer the Retail Sales and Use Tax exemption for qualifying *I.R.C.* § 501(c)(19) organizations and qualifying entities organized for one of *I.R.C.* § 501(c)(19)'s exempt purposes in the same manner as other qualifying nonprofit organizations under current law. Organizations that are recognized as exempt from federal income taxation under *I.R.C.* § 501(c)(19), and qualifying entities organized for one of the exempt *I.R.C.* § 501(c)(19) purposes may now apply with the Department to obtain a nonprofit sales and use tax exemption certificate, provided they meet each additional statutory requirement for exemption. Exemption certificates will be issued with effective dates beginning on or after July 1, 2016.

The Department's Nonprofit Online (NPO) portal allows organizations to quickly and efficiently apply for and print their Virginia nonprofit sales and use tax exemption certificates, edit registration information, reprint lost certificates, and send secure-email messages to the Department. Organizations must create a user ID and password in order to apply for an exemption through the NPO. To access the NPO portal or for more information on this process, visit the NPO page at www.tax.virginia.gov/nonprofit.

Tax Bulletin 16-5, Veteran Service Organizations
June 22, 2016
Page 5

This Tax Bulletin is available on-line in the Laws, Rules, and Decisions section of the Department's website, located at www.tax.virginia.gov. If you have any questions regarding this Tax Bulletin, please contact the Department of Taxation, Office of Customer Services at (804) 367-8037. For specific questions related to nonprofit organizations, please contact the Nonprofit Exemption Unit at (804) 371-4023.