

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1624
Ways and Means

(Delegate C. Davis)

Budget and Taxation

Sales and Use Tax - Exemption for Sales by Religious and Nonprofit
Organizations

This bill provides a State sales and use tax exemption for sales made by bona fide churches, religious, or nonprofit organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if the sales are made at an auction sale and the proceeds are used to carry on the exempt purposes of the church or organization. The bill limits the exemption to that portion of the sale price that qualifies for a deduction under the federal income tax as a charitable contribution.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: General fund revenues could decrease beginning in FY 2007 depending on the amount of taxable sales made by churches, religious, and nonprofit organizations at auction sales and the value of the sales. Expenditures would not be affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: The State sales and use tax rate is 5%. The State sales and use tax does not apply to sales made by a bona fide church or religious organization, if the sale is

made for the general purposes of the church or organization. In addition, sales made by the following organizations are also exempt from the State sales and use tax including:

- a gift shop at a mental hospital operated by the Department of Health and Mental Hygiene;
- a hospital thrift shop operated by volunteers;
- specified vending facilities operated under the Maryland Vending Program for the Blind; and
- an elementary or secondary school or a nonprofit parent-teacher organization for the sale of magazine subscriptions in a fund-raising campaign.

Sales made to certain organizations are exempt from the State sales and use tax as provided under Section 11-204 of the Tax – General Article, including sales made to:

- tax exempt cemetery companies;
- credit unions;
- nonprofit organizations;
- nonprofit senior citizens' organizations if the sale does not exceed \$500;
- a volunteer fire or ambulance company or rescue squad;
- a nonprofit parent-teacher association; and
- a nonprofit organization qualified as tax exempt under Section 501(c)(4) of the Internal Revenue Code for the purpose of mitigating spills of oil or other substances occurring in U.S. coastal and tidal waters.

To qualify as an organization to which a sale is exempt, the organization must file an application for an exemption certificate with the Comptroller. The Comptroller may treat the possession of an effective determination letter of status under Section 501(c)(3) or (13) of the Internal Revenue Code from the Internal Revenue Service as evidence that an organization qualifies.

Background: California, Vermont, and the District of Columbia provide for narrow sales tax exemptions for auction sales held by nonprofit organizations. California exempts sales from an auction by a nonprofit organization if the purpose of that auction is to obtain revenue for the funding of a shelter for homeless individuals and families and those revenues are actually expended for that purpose. The District of Columbia provides a sales tax exemption for casual and isolated sales including, for the first five events during a calendar year, sales at a charity auction or other fundraising activity by a

nonprofit teaching hospital. Vermont exempts the purchase of wine or beer sold at an auction by a nonprofit organization.

State Fiscal Effect: General fund revenues could decrease beginning in fiscal 2007. The amount of the decrease depends on the amount of taxable sales made by churches, religious, and nonprofit organizations at auction sales and the value of the sales.

Currently, sales held at auctions by churches or nonprofit organizations whereby the proceeds are used for the general purposes of the organizations are generally exempt from the sales and use tax, unless an outside auctioneer is present. In addition, it is estimated that many of the auction sales intended to benefit churches or nonprofit organizations are of nontaxable services.

The Comptroller indicates that in fiscal 2004 and 2005, sales taxes collected by auctioneers totaled \$3.0 million and sales taxes collected by nonprofit organizations totaled \$2.7 million. It is assumed that the vast majority of sales by auctioneers were for estate sales, bankruptcy sales, and other types of auctions and therefore sales by nonprofit organizations would compromise only a small percentage of auction sales.

If it is assumed, *for illustrative purposes only*, that 10% of sales made by auctioneers and nonprofit organizations in fiscal 2005 were taxable sales made by churches, religious, and nonprofit organizations at auction sales, general fund revenues would have decreased by \$576,300. To the extent that auction sales by churches, religious, and nonprofit organizations make up a greater, or lesser, share of total auction sales, the general fund revenue decrease would increase, or decrease, accordingly.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Secretary of State, Comptroller's Office, CCH Incorporated, Department of Legislative Services

Fiscal Note History: First Reader - March 21, 2006
ncs/hlb

Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510