



Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

AUGUST 13, 2009

Fireworks Sales: Distributors and Retail Sales by Nonprofit Organizations Tax Registration and Reporting Requirements Information Notice

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Sales of fireworks by fireworks distributors to nonprofit organizations

In some cases, a nonprofit organization acts as an independent retailer — purchasing inventory from a fireworks distributor and selling that inventory to the public. In this situation, the fireworks distributor pays business and occupation (B&O) tax on the gross amount of its sales to the nonprofit organization. The nonprofit organization will generally qualify for the fundraising B&O and retail sales tax exemptions under RCW 82.04.3654 and RCW 82.08.02573 on its sales to the public.

Sales of fireworks by distributors using nonprofit organizations as sales agents

A nonprofit organization may instead act as a sales agent of a distributor — receiving and selling a distributor's inventory to the public. The nonprofit organization typically receives a commission as payment. **Because the fireworks distributor is the actual retailer in this situation, not the nonprofit organization, no B&O tax or retail sales tax exemption is available.** The fireworks distributor must pay B&O tax on the entire amount of gross sales by the nonprofit organization, without deduction for the commission payment. The nonprofit organization must collect retail sales tax on all fireworks sales and remit the sales tax collected to the distributor or to the Department of Revenue. However, the commission income received by the nonprofit organization will generally qualify for the fundraising B&O exemption.

When is a nonprofit organization acting as a retailer, rather than as a sales agent?

The Department will presume that a nonprofit organization is acting as a retailer and not as a sales agent of a fireworks distributor if:

- the nonprofit organization provides the distributor with a valid resale certificate (through 12/31/2009) or a reseller permit (effective 01/01/2010) (see below);
- the nonprofit organization and the distributor enter into a purchase and sale agreement under which title to the goods is transferred to the nonprofit at or before delivery;
- the nonprofit organization is obligated to pay for goods based on type and quantity of goods received (however, the distributor may agree to repurchase unsold goods);
- all sales are conducted by persons over whom the nonprofit organization, rather than the distributor, has authority and control; **and**
- the nonprofit organization is solely entitled to and has control over all sales proceeds.

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When is a nonprofit an agent of a fireworks distributor?

If the arrangement between the nonprofit organization and the distributor does not meet all of the requirements stated above, then the Department will look at all relevant facts and circumstances to determine if the nonprofit organization is acting as a sales agent of a fireworks distributor.

What steps may a distributor take to ensure it receives payment from a nonprofit organization?

If specifically authorized by the nonprofit organization, and if the arrangement between the fireworks distributor and the nonprofit organization meets all the requirements for a retailer stated above, a fireworks distributor may:

- exercise nonexclusive dominion and control of the goods after title has passed to the nonprofit organization;
- obtain or hold, directly or indirectly, possession of sales proceeds for security purposes;
- retain sales proceeds as payment of the nonprofit organization's inventory purchase obligations;
- retain sales proceeds in excess of the nonprofit organization's inventory purchase obligations for reasonable period of time.

If the arrangement between the fireworks distributor and the nonprofit organization does not meet all the requirements for a retailer stated above, then these steps may indicate the nonprofit organization is an agent rather than a retailer.

Providing resale certificates (valid through 12/31/2009) or reseller permits (effective 01/10/2010)

Nonprofit organizations purchasing fireworks for resale must provide the fireworks distributor a completed resale certificate (through 12/31/2009) or a resellers permit (effective 01/01/2010). Nonprofit organizations not required to register with the Department of Revenue should indicate on the resale certificate that they are a qualified nonprofit organization and that the items will be resold at a qualified fundraising event. See WAC 458-20-102 for more information on resale certificates.

Effective January 1, 2010, the resale certificate will be replaced with a reseller permit issued by the Department of Revenue. The permit allows qualified businesses (and nonprofit organizations) to purchase items in Washington for resale. Nonprofit organizations will have to apply to the Department to obtain a permit. Applications will be available on our web site at dor.wa.gov.

How can I get more information?

If you would like additional information or a binding letter ruling on your organization's tax obligations, please contact the Telephone Information Center at 360-705-6705 or write to the Department of Revenue, Taxpayer Information and Education, P.O. Box 47478, Olympia WA 98504-7478, fax (360) 705-6625. You can also visit our web site at dor.wa.gov.