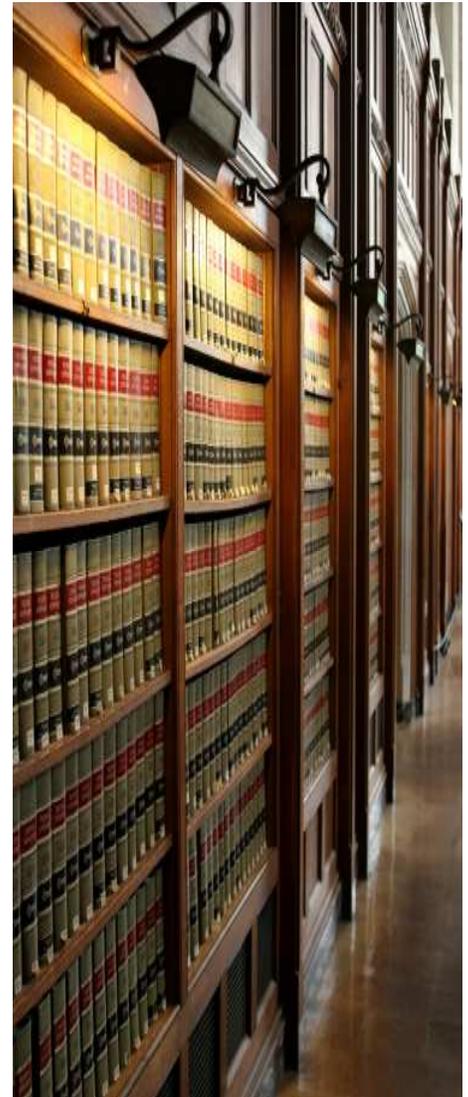


Sale of Used Library Materials Incurs Sales Tax Liability

As libraries update their collections and receive new books and other materials, many make room for these items by selling old, decommissioned library materials to the public, either directly or through nonprofit “Friends of the Library” groups. While these sales can benefit both the libraries and the general public, it is important to note that, in virtually all circumstances, these sales implicate state sales tax laws, requiring the seller to collect the Retailer’s Occupation Tax from purchasers and remit the tax proceeds to the state. Whether this tax is required to be collected and paid to the state depends on what party is conducting the sale, whether they are an exclusively charitable organization, and how the sale is conducted.

When a library sells decommissioned materials itself, the transaction is taxable. Illinois Department of Revenue regulations entitled “Sales by Government Bodies,” provide that when any local government (such as a local library or library district) sells tangible personal property to the public, it incurs liability under the Retailer’s Occupation Tax unless the sale is done in the “performance of a governmental function.” The reason for this rule is to ensure that governmental units do not have a competitive advantage over Illinois retailers when selling similar items. Because the selling of decommissioned library materials is not considered part of a public library’s governmental function, a library which sells decommissioned materials needs to collect the Retailer’s Occupation Tax at the time of sale and remit the taxes collected to the state.

Another option is for a “Friends of the Library” organization to sell the materials. Such sales are governed by Illinois Department of Revenue regulations governing charitable groups. Whether these transactions are taxable is very fact-specific and depends on whether the sale meets the specific criteria in the regulations. First of all, the organization must be organized *exclusively* for charitable, religious, or educational purposes. It is



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com

not enough to simply be non-profit or to have received 501(c)(3) status. To be sure that an organization meets the requirements of being exclusively charitable, religious, or educational, the organization may apply to the Illinois Department of Revenue for a letter ruling as to the organization's status, submitting copies of the organization's Charter or Constitution and By-laws and other relevant information for this purpose.

Even when the organization is considered exclusively charitable, religious, or educational by the Illinois Department of Revenue, it is still only exempt from the requirements of the Retailer's Occupation Tax when selling items at retail to the public under certain situations. The first situation is when such sales are considered noncompetitive with businesses. These transactions must be conducted by members of the organization themselves – not through a franchisee or licensee – and all the proceeds of the sale must go to charity. Furthermore, the sale cannot be held on a continual basis, but may only be held once a year or a “reasonably small number of times within a year.” The test of reasonableness is to be made by the Department of Revenue, though it has not yet released any guidance as to what is reasonable. However, it is likely that a “reasonably small number of times” will not exceed three or four times per year. Therefore, an ongoing used book sale does not qualify. In addition, the primary motive of the buyers of the materials must be the making of a charitable contribution with the transfer of the property being incidental or secondary to the contribution. Finally, the nature of the items sold, the character of the sale, and the practical effect on competition are also relevant considerations when the Department of Revenue determines whether an exemption from sales tax liability is appropriate for such sales.

The second type of situation where an exclusively charitable, religious, or educational organization may be able to sell decommissioned library materials without incurring sales tax liability is described by the Department of Revenue as “Occasional Dinners and Similar Activities.” Under the Department's regulation, this exemption extends to “rummage sales, bazaars, bake sales and the like,” which seems to indicate that a used materials sale would qualify when held by an exclusively charitable, religious, or educational organization. Under this exemption, the event must not be held more than twice a year. However, even under this exemption, the sale cannot place the selling organization in substantial competition with business establishments.

To ensure that a sale qualifies for one of the above exemptions, it may be helpful to avoid putting prices on the materials, instead asking purchasers to make a purely voluntary contribution or a “suggested” donation.

If you have any questions as to whether your proposed sale of decommissioned library materials will require you to collect Illinois sales tax, please contact us.

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Orland Park, IL 60462
T 708.349.3888 F 708.349.1506