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Community Arts Q&A Series

**Income-Generating Activities, Part One:
Sales of Tickets and Admission Fees to Performances / Events**

As part of its Community Arts program area, Lawyers Alliance is providing a series of Q&As to help community arts organizations better understand how the law applies to them.

In challenging times, managers and directors of arts nonprofits may be thinking of ways to increase revenue and preserve programming. Alternatively, they may want to confirm that revenue generating activities are conducted in compliance with law. We are providing this Legal Alert on income-generating activities (part one of two alerts) so that if you are looking to generate funds through sales of goods or services (or if you are already generating income through sales), you understand how to comply with law and protect your organization.

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As part of their income-generating activities, community arts organizations often stage performances, art exhibits, or other fundraising galas and special events. What are the legal issues that arise when community arts organizations charge admission fees for events as part of their regular programming? Do these issues differ when the event is a special, one-time fundraiser such as an annual gala, benefit, or fundraising dinner?

Note that the specific facts and circumstances of any income-generating activity conducted by a nonprofit organization should be reviewed carefully by legal counsel. In addition, the tax deductibility of certain nonprofit contributions depends on each individual's tax status. Nevertheless, we hope that this Legal Alert, which is not intended as legal advice, will provide helpful general information.

This Legal Alert addresses the following common questions relating to ticket sales and admission fees:

- Is the cost of a ticket to an event staged by an arts nonprofit as part of its regular programming considered tax deductible to the ticket holder?
- Is the cost of a ticket to an event staged by an arts nonprofit as part of its regular programming considered tax deductible to the ticket holder if it goes unused?
- Is the cost of a ticket to a special fundraising event considered tax deductible to the ticket holder?
- Does an arts nonprofit need to document the tax deductibility of a ticket for a ticket holder?

- How does an arts nonprofit determine the cost of an event for purposes of advising ticket holders on tax deductibility?
- Is my arts nonprofit subject to the Unrelated Business Income Tax (UBIT)?
- Is income that is raised through the sale of tickets to my arts nonprofit's regular performances subject to UBIT?
- Is income that is raised through the sale of tickets to my arts nonprofit's special fundraising event subject to UBIT?
- Is income generated from the sale of tickets to my arts nonprofit's regular or special performances subject to New York State sales tax?

Issue #1: Tax Deductibility to Ticket Holders

Question: Is the cost of a ticket to an event staged by an arts nonprofit as part of its regular programming considered tax deductible to the ticket holder?

Answer: An arts nonprofit's "regular" programming might include concerts, theater productions, art exhibits, dance performances, film screenings, or other creative events. These are events that are regularly scheduled to further the organization's mission and are not one-time special fundraisers for the nonprofit organization. The cost of tickets to these events is *not* considered a charitable gift to the nonprofit organization, but instead represents a payment for value received by the ticket holder. Thus, so long as the nonprofit is charging its standard admission price, no portion of the ticket price or admission fee will be deductible to the ticket holder.

Example: A nonprofit organization whose mission is to introduce NYC children to opera stages three children's opera performances each year in unique locations. In May, the group is staging a series of performances of *Little Red Riding Hood* in a large playground in Washington Heights. The group charges \$10 for adult tickets and \$5 for children's tickets to its performances. Ticket holders likely cannot deduct the cost of these tickets because the performance is part of the nonprofit organization's regular programming and the ticket charge represents payment for the value received by the ticket holder (i.e., the ticket holder paid a reasonable price to experience the show, in line with the cost of other children's opera performances throughout the City).

Question: Is the cost of a ticket to an event staged by an arts nonprofit as part of its regular programming considered tax deductible to the ticket holder if it goes unused?

Answer: No, unused tickets to a nonprofit organization's regular performances are not tax deductible to the ticket holder. The IRS has clearly stated that the test of deductibility is not whether the ticket holder uses the ticket, but whether the ticket holder accepted the right to attend the performance. However, if the ticket holder donates the unused ticket back to the nonprofit for resale, the ticket will be considered tax deductible to that ticket holder.

Example: A nonprofit theater company is staging a performance of the musical *Funny Girl*, which is slated to run for three months. A couple from Minnesota buys two tickets online well in advance of their chosen performance date in January. The couple then decides to go to Bermuda for vacation

instead. The nonprofit theater company has a policy on its website that permits ticket holders to donate their tickets as tax-deductible contributions at least two days prior to the performance date. Thus, the donated tickets, although unused, will be considered tax deductible to the Minnesota couple.

Question: Is the cost of a ticket to a special fundraising event considered tax deductible to the ticket holder?

Answer: Special fundraising events include annual dinners, galas, unique performances, or other events not part of an arts nonprofit's regular programming. The cost of a ticket to these types of events is tax deductible only to the extent the ticket price exceeds the fair market value of the entertainment, food, and anything else of value received by the ticket holder at the event.

Example: A nonprofit children's ballet company whose mission it is to introduce ballet to NYC public school children presents a one-time gala performance of *The Nutcracker* at the Metropolitan Opera, in which the school children are the dancers. The ballet company invites law firm partners, corporate CEOs, and other high-profile business people. Tickets cost \$1,000, and a three-course meal is served during the intermissions in the Met's upper-level restaurant. The dinner is valued at \$150 and the ballet performance is valued at \$20 (a reasonable estimate based on similar children's performances in the City). Thus, \$830 of the \$1,000 ticket price will likely be tax-deductible to the gala ticket holders.

Question: Does an arts nonprofit need to document the tax deductibility of a ticket for a ticket holder?

Answer: Yes, in certain circumstances. If a ticket holder pays more than \$75 for an event and that payment is partly a donation and partly in exchange for goods or services of value, the nonprofit organization must provide the ticket-holder with a written statement addressing tax deductibility. The statement must (1) state that the ticket holder can only deduct the amount of the payment that exceeds the fair market value of the goods or services to be received and (2) provide a good-faith estimate of the fair market value of those goods or services. The nonprofit organization can deliver this written statement to the ticket holder either when it solicits payment or when it receives that payment. Beyond this written statement, the nonprofit should not attempt to advise donors as to the tax deductibility of their contributions.

Example: In the ballet company example above, the nonprofit organization must give each gala ticket holder a written statement indicating (1) the ticket holder can only deduct the amount of the payment that exceeds the fair market value of the goods or services received and (2) the estimated fair market value of the goods or services received is \$170 (*i.e.*, \$150 for the dinner and \$20 for the performance).

Question: How does an arts nonprofit determine the value of an event for purposes of advising ticket holders on tax deductibility?

Answer: The actual cost to the arts nonprofit for staging the event or providing services to ticket holders is not relevant when determining fair market value. If goods or services provided have an established value on the market, that value must be used, even when the actual cost to the nonprofit organization was substantially lower or higher (say, if the nonprofit acquired goods at a discount available to tax-exempt organizations only). When there is no available market value for the goods or services provided, the nonprofit organization should make a good faith effort to estimate value using the market value of comparable goods or services.

Example: In the ballet company example above, the Metropolitan Opera restaurant has agreed to donate 50% of all food and beverage costs for the event. However, the ballet company must state the actual value of eating a three-course meal at the Metropolitan Opera restaurant when reporting fair market value to ticket holders, notwithstanding the Met’s generous donation. Thus, even though the cost of the dinner to the nonprofit organization is substantially lower than what it would normally be, the fair market value of dinner at the Met comes out to \$150 (based on set menu prices with wine and tip). To value the performance, the ballet company looked at similar dance shows being performed by informally-trained children in the NYC area and estimated the fair market value to be \$20.

Issue #2: Unrelated Business Income Tax (UBIT)

Question: Is my arts nonprofit subject to UBIT?

Answer: Even though an arts nonprofit is recognized by the IRS as exempt from federal tax, it may still need to pay UBIT on certain income. An organization’s UBIT liability depends on the circumstances of each revenue-generating activity. For most organizations, an activity is considered an “unrelated business” and therefore subject to UBIT if the activity (1) is a trade or business,¹ (2) regularly carried on,² and (3) not substantially related to furthering the exempt purpose of the organization.³ Note that the Internal Revenue Code excludes any trade or business in which substantially all the work is performed for the organization without compensation (e.g., a volunteer-operated bake sale).

Note that the question of whether a nonprofit organization’s generated revenue is subject to UBIT is complex; always consult tax or legal professionals for specific questions or concerns. More information on UBIT can be found in this Lawyers Alliance [legal alert](#).

Question: Is income that is raised through the sale of tickets to my arts nonprofit’s regular performances subject to UBIT?

Answer: An arts nonprofit will likely not be taxed on income generated from activities that are substantially related to its charitable, educational, or other exempt purpose that serves as the basis for its tax exemption.

¹ A trade or business generally includes any activity carried on for the production of income from performing services or selling goods.

² Activities of an exempt organization ordinarily are considered regularly carried on if they show a frequency and continuity, and are pursued in a manner similar to, comparable commercial activities of nonexempt organizations.

³ A trade or business is related to an organization’s exempt purposes only when the conduct of the business activities has a causal relationship to achieving the organization’s exempt purposes. In other words, the activity must not only produce income for the organization, it must also substantially contribute to the achievement of the organization’s charitable mission. To be substantially related, the activities that generate the income must contribute importantly to accomplishing the organization’s exempt purposes.

Example: A community theater group that is formed for the purpose of bringing Shakespeare to New York City neighborhoods will likely not be taxed on proceeds from the sale of tickets to its monthly “Shakespeare in the Boroughs” performances.

Question: *Is income that is raised through the sale of tickets to my arts nonprofit’s special fundraising event subject to UBIT?*

Answer: Even if fundraising activities satisfy all three prongs of the UBIT test described above, the IRS generally does not subject income generated from fundraising activities to UBIT. In addition, in the case of income generated from, for example, a one-time gala performance, an arts nonprofit will not be subject to UBIT because the activity is not “regularly carried on.”

Example: A NYC nonprofit community choir sells tickets to its annual gala performance, targeting law firms and corporations. Even though the gala is not substantially related to the group’s mission of bringing music to nursing homes, the income generated will likely not be subject to UBIT.

Issue #3: New York State Sales Tax on Admission Ticket Sales

Question: *How does the New York State sales tax apply to an arts nonprofit’s ticket sales for regular or special performances?*

Answer: New York State sales tax is imposed on the purchaser of a taxable good or service (including admission to places of amusement located in New York State), but is collected by the seller and then remitted to New York State. However, the New York State Department of Taxation and Finance has stated that admission charges to live dramatic, choreographic, or musical arts performances as well as admission to motion picture theaters are nontaxable (i.e., the nonprofit organization does not need to collect sales tax on the ticket sale). In addition, an admission charge by a nonprofit organization is generally exempt from sales tax if all of the proceeds exclusively benefit the organization.⁴

Note that the question of whether a nonprofit organization’s sales are exempt from sales tax is complex; always consult tax or legal professionals for specific questions or concerns.

Example: A New York nonprofit visual arts group sells tickets to its annual fundraising art show and reception, targeting law firms and corporations. If all of the proceeds from the ticket sales are used exclusively for the benefit of the arts group, the ticket sales will likely be exempt from New York State sales tax.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Elizabeth Wytock at ewytock@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

⁴ See New York State Department of Taxation Tax Bulletin TB-ST-8.

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