

Question of the Week from Leadership News from WA PTA:

Sales Tax

Washington State imposes retail sales tax on the sale of any item of tangible personal property and retail services to consumers. Your PTA is exempt from paying sales tax on items purchased for resale. This exemption applies whether the purchase is for resale at a periodic fundraising activity or an activity that is a “regular place of business” (see below for the significance of these terms). To take advantage of this exemption, PTAs may either obtain a reseller’s permit from the Washington State Department of Revenue, or pay the tax and then apply to the Department of Revenue for a refund. More information about applying for a reseller permit or applying for a refund of taxes is available in a Frequently Asked Questions (FAQ) document on the WSPTA website, www.wastatepta.org, under the PTA & the Law Resources tab in the Leadership Resources section, and on the Department of Revenue’s website, www.dor.wa.gov

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QUESTION: We’re having our annual spirit wear sale, and the vendor insisted that we had to pay sales tax when we purchased the items to resell. I later heard that we could have avoided paying sales tax because we’re a non-profit. Is that true, and if so is there any way to get back the sales tax that we weren’t legally obligated to pay in the first place?

ANSWER: First, it’s not true that non-profits do not pay sales tax when they purchase taxable items for their own use. Thus if you’re buying a notebook to keep a copy of your PTA’s legal documents, or tablecloths for a PTA dinner, you pay sales tax like anybody else. However, when you buy items to resell, such as the spirit wear you mentioned in your question, you can avoid paying the sales tax by obtaining a Reseller’s Permit from the Washington Department of Revenue. The permit is easy to obtain—just [click here](#) and follow the directions. And there’s more good news—you can also obtain a refund of the tax you paid from the Department of Revenue. To find out more, [click here](#). You can learn more about state tax laws and how they apply to PTAs by attending one of the many upcoming PTA & the Law workshops being held this month, and by checking out the Frequently Asked Questions available on the Leadership Resources section of the WSPTA website.

QUESTION: Two of our four officers have submitted their resignations unexpectedly, each for perfectly understandable personal reasons. How do we go about replacing them?

ANSWER: First, thanks for hanging in there during a difficult period. Now to answer your question, under Article 6, Section 5(e) of the Uniform Bylaws, vacancies in an office can be filled by appointment by the executive committee, and the person appointed can serve until the next general membership meeting, at which time nominations should be taken from the floor and an election held

QUESTION: I am well-known in my community as a leader in the PTA, and I’ve been asked to endorse a candidate who is running for the school board. I would like to support this candidate, but I know that

PTA is not supposed to get involved in partisan campaigns, but I'm not sure if that extends to nonpartisan offices such as school board. What are the rules?

ANSWER: You are correct that PTAs do not endorse candidates for public office, and that prohibition applies regardless of whether the race is partisan or nonpartisan. This prohibition is in the Uniform Bylaws (Article 2, Section 1(a)) and also a requirement to maintain tax exempt status under Section 501(c)(3) of the Internal Revenue Code. While individuals who are PTA leaders are not prohibited from exercising their personal rights to be involved in the election process, they should take pains to make sure that such participation does not imply support from the PTA rather than from just the individual. This would be particularly true in the situation you describe, i.e. the fact that you are well known to be a PTA leader may make it difficult for the average voter to distinguish you as an individual from you as a spokesperson for the PTA. One step you can take is to not include your PTA affiliation in any printed material that includes your endorsement, or if reference to your PTA affiliation is necessary for identification purposes ("Which Mary Smith is it who has endorsed Candidate Jones?"). If so the reference should include a statement that the PTA affiliation is for identification purposes, and does not imply endorsement by the PTA itself. One final consideration, assuming you are in a leadership position with the PTA, is the impact of an endorsement of a candidate on your ability to be effective as a PTA leader if your candidate doesn't win the election. Unlike the endorsement question, this one doesn't have a hard-and-fast rule, but you should definitely consider this aspect and perhaps talk to the others on your PTA's board to get their perspective before making a final decision.

QUESTION: When I filed our annual corporation renewal with the Washington Secretary of State's office in February, I noticed that there was a place to list the officers. I updated the information then, but of course now our officers are changing—should I file another renewal?

ANSWER. Yes. The law requires that any nonprofit corporation file an annual report during the month of the anniversary of its incorporation. That report is required regardless of whether anything has changed since the preceding year's report. In addition, however, you should also update the annual report any time during the year that there's a change in any of the required information, which includes a change in the officers. The annual report can be filed online or you can download the form and file it by mail—either way there's a \$10.00 fee. More information and a link to the applicable forms can be found on the Secretary of State's website here.

QUESTION: I understand that the Board of a local unit or council cannot make an obligation that extends beyond the current fiscal year, because next year's Board may want to do something different. But what if you have an opportunity to save a lot of money by engaging in a multi-year contract, such as contracting for website hosting or a multi-year contract for production of a yearbook.

ANSWER. You are correct that the Uniform Bylaws do place limits on a Board of Directors' authority to commit the PTA or Council beyond the current fiscal year, but that limitation does not apply to the membership.

Article 5, Section 2(b) of the Uniform Bylaws reads as follows:

A PTA/PTSA local unit shall not enter into any financial obligations extending beyond the fiscal year (July 1 – June 30) except as approved by the general membership. The organization shall operate in a fiscally responsible and appropriate manner. (emphasis added)

Given this language the answer is to take the “good deal” to the general membership for approval. If there’s a time limit that precludes a prior approval by vote of the general membership (e.g. the vendor says “to get this reduced rate you have to sign today”), I’d recommend the officers add “subject to approval of general membership” to their signature, and then take it to the general membership at the next opportunity. If it’s really a good deal, there is little risk that the general membership will not approve it, and if the vendor isn’t willing to accept this condition, then maybe it’s not such a good deal after all.

QUESTION: At the Convention, Article 6 Council, Section 7 Duties of Officers, (a) General was amended by adding the following subsection:

(3)WSPTA requires two (2) signatures on every check. Use of a PTA debit card, credit card, ATM card and online banking to disburse PTA funds is not permitted.

Does this preclude using an electronic payment process where action by two separate individuals is necessary to authorize a payment?

ANSWER: The two signature requirement has been in the Bylaws for a very long time and is intended to minimize the risk of one person unilaterally spending PTA funds. This is similar to the recommended practice for businesses that divides responsibilities among employees so that no one of them can divert funds without another person’s complicity. I believe the Bylaw amendment was intended to clarify that the two signature requirement applies in the era of electronic banking. Some banks offer electronic payment systems that require authorization from two different individuals before a payment is made, and there are also commercial firms that offer a similar system that can be used with any bank account. Because each payment requires action by two different people—in effect two electronic signatures—I believe use of such a system is consistent with the intent, if not the letter, of the Bylaw and the recent amendment. Of course, other precautions such as requiring the two signatures be from different households, etc. would still apply. One word of caution: such systems are primarily intended with for-profit businesses in mind, and often have a cost involved. Accordingly, any PTA contemplating use of such a system will have to make a business judgment as to whether the convenience of not having to obtain two written signatures justifies the additional costs involved.

QUESTION: Is there a rule that PTA Board meetings be open to members?

ANSWER: There is no legal requirement or anything in the WSPTA Uniform Bylaws requiring that PTA Board meetings be open to members. Anyone who has been a member for at least three months has the right under state law to review and obtain (at their expense) copies of minutes of board of directors’ meetings, and a local unit could include such a provision in its standing rules. (The section of the WSPTA

Uniform Bylaws governing the WSPTA Board of Directors was amended in 2009 to require that there be a minimum of ten seats available at WSPTA Board meetings for members to observe the meeting. But that only applies at the state level.) While opening the board meeting to members who want to observe is not required, you might do so anyway to avoid creating the perception that the Board has something to hide. Of course if someone is disruptive, they can be asked to leave and/or the meeting can be moved to a different location. Also, even if the meeting were to be open to members, that would not give them the right to participate in board discussions.

QUESTION: I saw the notice on the side about filing with the Charities Division of the Secretary of State's office—how do I know whether our PTA is required to register? Also, if we are already registered, how do I file the annual update?

ANSWER: Any nonprofit that receives more than \$25,000 in revenue from public contributions (including dues, receipts at fund-raisers, and donations) is required to register with the Charities Division of the Secretary of State's Office, and file an annual report that must be received by the Secretary of State's Office no later than May 31st following the end of the fiscal year. More information and the necessary forms are available online at the Secretary of State's website here. If you have any questions or need assistance from our office, please contact Pat Nelson either at 253-565-2153, 1-800-562-3804, or orpnelson@wastatepta.org.

QUESTION: Our PTA's Nominating Committee is divided, with two of us favoring one candidate and the third member favoring another. Does the Nominating Committee's decision have to be unanimous? Also, if there is more than one candidate—either nominated by the committee or because someone runs from the floor—should the candidates vote? What about the President who is presiding over the election.

ANSWER: The Nominating Committee's decision is made by a majority vote—it does not require complete agreement by all members. Having said that, keep in mind that the Nominating Committee is not limited to only one candidate for a position. While having a contested election can sometimes feel awkward in a group made up mostly of neighbors and friends, it's often healthy for the membership to have different perspectives and leadership styles from which to choose. When there's a contested election, it should be conducted by secret written ballot. The President or other person chairing the election meeting should appoint a Teller's Committee to count the ballots and report the results. All members present—including the candidates and the President—are entitled to cast a vote.

QUESTION: The students in our school have read about the earthquake, tsunami and nuclear reactor accident in Japan and want to raise funds to help children who have been displaced or lost their families

in this tragedy. Is this something our PTSA can support, and what pitfalls should we be concerned about?

ANSWER: First, a PTA can certainly inform its members of fundraising activities that other persons or organizations are conducting. Second, if the PTA wants to conduct a fund-raising activity on its own, or use the PTA account to transfer funds that others have collected, keep in mind that any such action must be (1) consistent with the PTA's mission, standing rules, and adopted budget; and (2) consistent with the 1023 or 1024 form it submitted to the Internal Revenue Service. Third, keep in mind that it's an unfortunate truth that there are those who may try to take advantage of people's desire to help for their own enrichment. After the earthquake in Haiti in January of 2010, National PTA published a list of recommended charities to which individuals can safely contribute. That list is still posted here and while some of the charities listed there are specific to Haiti, others also support relief efforts worldwide, including Japan. Also, you may want to read or listen to this report ("How to Make Your Donations Count) from National Public Radio, which cautions against making contributions for specific purposes, rather than to support relief organizations generally, allowing them to allocate the funds where the needs are greater. (Ask anyone who has attended PTA & the Law recently about the pitfalls of restricted and designated funds).

QUESTION: I know our PTA's annual report will be due over the summer, and I want to be sure it's not overlooked during the transition. Can I file it early?

ANSWER: Every nonprofit corporation must file its annual report to the Washington Secretary of State's office no later than the last day of the month during which the nonprofit was originally chartered. For example, if your PTA was chartered in July, your 2011 report will be due no later than July 31st. According to the Secretary of State's office, its online renewal system will accept annual report filings up to 60 days from the date of expiration. Therefore you can file as early as June 1st; however if you file earlier than that date, the system will treat your report as an update, and you will still need to file an annual report no later than July 31st.

QUESTION: I'm chairing the Nominating Committee for my local unit, and we have been unable to find a candidate willing to stand for election as Treasurer. What should we do?

ANSWER: Based on Article 5, Section 6 of the Uniform Bylaws the Nominating Committee should continue seeking a candidate or candidates until its report is due, and if there is no candidate found then the report should so indicate. At the general meeting at which the Nominating Committee's report is read, the President should open the floor for nominations for Treasurer in the same way as the other positions being elected. If no candidate comes forward at that meeting, the same opportunity should be presented at any further general membership meetings that occur before July 1st. If no one has been elected to be treasurer by July 1st, the current treasurer stays in the position until the new Executive Committee appoints someone to serve in that position. If the Executive Committee does appoint someone, the appointment is until the next general membership meeting, at which time there should be another opportunity for nominations from the floor.

QUESTION: According to Robert's Rules of Order, minutes of our PTA's board or committee meetings are "accessible to members of the boards or committees but no others." A member of our PTA has requested to see copies of our Board minutes—do we have to provide them?

ANSWER: Assuming that the member joined more than three months ago, the answer is yes. While you have correctly quoted Robert's Rules, Washington state law, specifically Revised Code of Washington § 24.03.135, requires that certain records must be "open at any reasonable time to inspection by any member of more than three months standing." The statute also states the member making the request must bear the costs of copying the records that he or she wants copied. State law prevails over Robert's Rules so yes, requests such as this must be granted.

QUESTION: Our budget was approved by the membership, and our standing rules include a provision that the Board can reallocate funds within the budget up to a maximum amount. Due to unforeseen circumstances, the anticipated expenses for one of our program will exceed the maximum that the Board can reallocate. Do we need to have membership approval of the revised budget, and if so can we do so by email rather than having a formal meeting?

ANSWER: Yes and no. Yes, any change to the budget beyond what the Board is authorized to make in the standing rules must be approved by the membership. But no, the vote cannot be conducted by email. While the WSPTA Uniform Bylaws do authorize limited electronic voting for purposes of elections, use of electronic voting for non-election issues such as a budget amendment is not authorized, so there must be a general membership meeting to approve the revised budget.

QUESTION: I read in Money Matters that PTA treasurer should retain copies of all checks that they deposit. These checks often have a lot of personal information on them name, address, license number and bank account numbers. Isn't there a risk that this information will fall into the wrong hand and be used inappropriately?

ANSWER: We realized after publishing Money Matters that our advice on this issue was incomplete. Keeping the checks for a while gives an accountability trail in case someone claims to have paid but there's no record of payment. It also is a way of reconciling receipts and deposits. Most of the personal information (names, addresses, etc.) are also in the membership records and for many people also in other public records such as the phone book. The exception of course is individual's check routing and account numbers that are printed on the lower part of the check. We recommend that either (1) the checks be copied in a way that obscures those numbers or (2) the numbers be marked out. Once the financial review for the year has been concluded the copies should be destroyed. We will include this advice in future editions of Money Matters. Finally, of course all PTA records containing personal information should be handled carefully so as not to be subject to inappropriate disclosure.

QUESTION: I understand that PTA is supposed to be for all children, so is it inappropriate for our PTA to raise funds to support and/or sponsor an activity that benefits less than the full school (e.g. an activity limited to a particular grade, or to those students who want to participate in the specific activity, such as a chess club)? What concerns are there if the activity is going to involve school staff and/or be a school activity? If the PTA does fundraising to help defray the costs, can we allocate the proceeds only to support those students who participated in the fundraising?

ANSWER: The answer to your first question is yes, subject to certain conditions. First, you are correct that PTA's purpose is to help all students, but that doesn't mean that PTAs are limited to those activities in which all children can or will participate. It only means that the scope of all PTA activities taken together should support the entire school community. Second, you should make sure that the particular activity is within your mission, as laid out in the PTA's Articles of Incorporation and in the 1023 form filed with the IRS in seeking tax exemption for the PTA. If not you will need to amend those documents. Third, the activity has to be provided for in the budget, at least in a general sense, such as student enrichment activities. Again, if not, the budget would need to be amended at a general membership meeting to include the activity.

To answer your second question, if the support is for a school activity, such as a field trip, the best practice is to make a grant of the moneys to the school district, restricted so the funds can only be used for that particular activity at that school. If it is to be a PTA activity, then the PTA should be involved in all aspects of the activity, including advertising, making logistics arrangements, handling the funds, and signing any applicable contracts. Remember that if transportation is involved, the PTA liability insurance policy from AIM does NOT cover transportation.

The answer to your third question is an absolute unqualified NO. Resources of a tax exempt nonprofit are to be used for the well-being of the public as a whole, and not to benefit any particular individual or individuals. You can provide scholarships based on need but not on the basis of whether the child's parents are PTA members or participated in the funding.

QUESTION: We're thinking about offering childcare at our meetings. What do we need to know? And can we pay these folks?

ANSWER: It's a great idea to offer childcare at your meetings - especially to help those parents who wouldn't be able to attend your meetings without it. However, if you use professional childcare, you should execute a contract with them, ensuring they have a business license and are covered by their own insurance. Using volunteers is an acceptable alternative, and often the Girl Scouts, Boy Scouts, and YMCA/YWCA provide programs for children and are just a couple of organizations that you can partner with. Whatever the case, you need to have at least one PTA member present to help oversee this activity. However, please note that if you pay your volunteers, you void your insurance coverage- so please avoid that.

QUESTION: Is there any prohibition against a PTA giving a discount to members for events such as a carnival or dinner or on the purchase price of items such as the student directory?

ANSWER: No, unless the price charged to the member is less than the cost incurred by the PTA in providing the event or item. For example, if you are selling tee shirts that cost the PTA \$5.00 each, you can sell them to your members at a lower price than the price for non-members. However if you charge your members less than the \$5.00 cost, the IRS would say that this is an inappropriate benefit for your members, and at least theoretically your tax exempt status might be at risk. Those of you who attended the Region 2 PTA & the Law workshop last Saturday will recognize that this is a different answer to this question than the one I gave on the spot. Not only have I had more time to think about it, I've also had time to talk it over with our IRS guru, Pat Nelson. I apologize for the confusion.

QUESTION: Our PTSA would like to "sponsor" an after school activity for the children in our school, using a school staff who would be paid for her time. Can we do that and what responsibilities do we incur?

ANSWER: If this is truly a PTA activity, then at least one and preferably more PTA volunteers should be present to supervise, collect any fees being charged by participants, etc. You would also need to review your PTA's 1023 or 1024 form to make sure that the activity is within the scope of the activities described there; if not, you will need to file an amended 1023 or 1024. The PTA could contract with the person conducting the activity using a personal service contract, but would want to be sure that the person truly is an independent contractor. If the IRS later determines that the staff member is actually an employee of the PTA, the PTA would be liable for withheld taxes, Social Security and other employer taxes, and likely would have to pay penalties as well. A better approach would be to grant the funds to the school district which could then have a supplemental contract with the staff person, who would clearly be the school district's employee and not the PTA's. Finally you would be wise to check with your insurance carrier to make sure the event is covered. In short, this question illustrates why it's important for your whole board to attend an upcoming PTA & the Law Workshop.

QUESTION: When our PTA sends representatives to state events such as Convention or Legislative Assembly, is it okay to reimburse them for their travel and/or food expenses? Also, what about reimbursement for local activities, such as the fuel costs incurred in running PTA errands?

ANSWER: Whether to reimburse for expenses such as meals or mileage while traveling to a state meeting or driving around the community on PTA business is a local decision that should be addressed in the local unit's standing rules. The only potential limitation would be if the reimbursement were unreasonably generous (dinner at El Gaucho, for example) then the IRS might consider it an "inurement" or benefit to an individual rather than a legitimate expense. We recommend that any reimbursement be supported by a receipt, or in the case of mileage a log or some independent evidence (such as a Google Maps or MapQuest printout) of how many miles were reasonably necessary. If the PTA decides

to reimburse these kinds of expenses, but some individuals don't want to be reimbursed, we recommend that you ask them to fill out a reimbursement request and then donate the reimbursement funds back to the PTA. That way the actual cost of doing business will be documented and future year's budgets can reflect those actual costs. Keep in mind that not everyone is in a position to forego reimbursement.

QUESTION: Our PTA has a student store. Do we have to collect sales tax on items we sell? What about our annual sale of tee shirts with the school name and mascot? Does it matter whether we paid sales tax on those items when we purchased the items from the store and the tee shirts?

ANSWER: Let's take the easy question first. PTAs (and other nonprofits) are not required to collect sales tax on "periodic fund raising activities." This means activities that occur infrequently and not on any regular schedule. Your tee shirt sale would qualify and therefore you do not have to collect sales tax. However, sales at a "regular place of business" are subject to the sales tax. Some typical PTA activities that fall into the "regular place of business" category include student stores, regularly scheduled popcorn sales, ongoing sales of logo wear (i.e. like your tee shirts but available for sale all year long). So yes, sales at student stores and other "regular places of business" are subject to the sales tax. To answer your last question, purchases for resale are exempt from the sales tax. To claim the exemption you will need either to obtain a Reseller's Permit from the state Department of Revenue or pay the tax and then file for a refund from the Department. This is a confusing area and more information is available in a Frequently Asked Questions document available on the WSPTA website.