

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 94-11

(This ruling supersedes and rescinds Arizona Sales Tax Ruling No. 18-17-80)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

(Note: On 10/13/2020 the statutes, rulings and procedures references in the ruling were updated to their current numbers and footnotes were added. See the footnotes for details. No substantive changes were made.)

ISSUE:

Exemption for sales of food to Internal Revenue Code § 501(c)(3) organizations which provide food with a nominal charge or without a monetary charge.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5102(C)(4) ¹ provides that transaction privilege tax and use tax do not apply to the gross proceeds of sales or gross income from sales of food by a retailer to:

An organization which is tax exempt under § 501(c)(3) of the internal revenue code and which provides the articles to

¹ This ruling originally cited A.R.S. § 42-1382.C.4 which was renumbered to A.R.S. § 42-5102(C)(4).

persons with a nominal charge or without a monetary charge.

DISCUSSION:

Pursuant to A.R.S. § 42-5102(C)(4)², sales of food by a qualified retailer to an Internal Revenue Code (I.R.C.) § 501(c)(3) organization are exempt from transaction privilege and use tax if the food is provided with nominal charge or without monetary charge.

The food must be sold to an organization which has qualified under I.R.C. § 501(c)(3). The Internal Revenue Service (IRS) issues a "Letter of Determination" to an organization meeting the qualifications of I.R.C. § 501(c)(3)³.

An I.R.C. § 501(c)(3) organization may be a central organization which has subordinate organizations under its control. Instead of independently filing for I.R.C. § 501(c)(3) status, a subordinate organization of a larger central organization applies for I.R.C. § 501(c)(3) status through the central organization. The subordinate is subject to the general supervision or control of the central organization. If such a relationship exists between the organizations, the IRS grants a Letter of Determination on a group basis. The central organization acts as the agent of the IRS in ensuring that each subordinate qualifies as an exempt I.R.C. § 501(C)(3) organization. A group Letter of Determination relieves the subordinate I.R.C. § 501(c)(3) organization from filing its own application for recognition of tax exemption. Regardless of whether the subordinate applies for exempt I.R.C. § 501(c)(3) status independently or as a subordinate of a central organization, the subordinate organization is an I.R.C. § 501(c)(3) organization. By analogy to terminology used by for-profit corporations, these subordinate organizations are similar to separately incorporated subsidiaries of a parent corporation.

For purposes of this ruling, a "qualifying organization" means any organization which has been granted I.R.C. § 501(c)(3) status; either as a subordinate I.R.C. 501(c)(3) organization or as a central I.R.C. § 501(c)(3)

² See footnote number 1.

³ Churches are no longer required by the IRS to get a letter of determination to be considered a IRC 501(c)(3) organization.

organization. The Internal Revenue Service issues a "Letter of Determination" to organizations recognized as I.R.C. § 501(c)(3) organizations.

A nonprofit organization may have component entities that, while they may appear to the outside world to be separate organizations, are not separate, but instead are integral parts of the larger organization. For example, a nonprofit organization's component entities may include operating divisions or departments which perform different functions for the organization; such as a finance department, medical clinic, or food service department. By analogy to the terminology used by for-profit corporations, these component entities are similar to divisions within a corporation.

For purposes of this exemption, qualifying status is extended to all internal operating or administrative component entities of an I.R.C. § 501(c)(3) organization.

The food must be provided to persons for a nominal charge or without monetary charge. A nominal charge is an insignificant or inconsequential charge which does not reflect the actual cost of the food. The food can also be provided at no cost. Additionally, donations can be accepted from persons who receive the food if the donations are voluntary.

Each organization must keep appropriate documentation in its records to demonstrate that it is an I.R.C. § 501(c)(3) organization and that it provides food for a nominal charge or without monetary charge.

The exemption may be established by providing each vendor of food with an exemption certificate. A.R.S. § 42-5009⁴ outlines the requirements for an acceptable exemption certificate. *Arizona Transaction Privilege Tax Procedure TPP 17-1*⁵, *Procedure for Use of Exemption Certificates*, explains how to use an exemption certificate. The department's *ADOR Form 5000*, copies of which are acceptable, can be used to document exempt sales. If an organization has a tax license number, it should be noted on the certificate; however, if it does not have a license number, it

⁴ This ruling originally cited A.R.S. § 42-1316 which was renumbered to A.R.S. § 42-5009.

⁵ This ruling originally referred to TPP 92-1, the current procedure addressing this topic is TPP 17-1.

should notate "nonprofit 501(c)(3) organization."

If a vendor accepts the certificate as adopted by the department and it is completed pursuant to statutory requirements, the vendor will be relieved of liability for the tax and the department may require the purchaser to establish the accuracy of the claimed exemption.

However, the department may challenge the validity of an exemption certificate if it has reason to believe:

1. the vendor did not act in *good faith* in accepting the certificate; or
2. the certificate is not completed in its entirety.

See *Arizona Transaction Privilege Tax Ruling TPR 00-4*⁶ regarding the exemption for sales of tangible personal property to nonprofit charitable organizations which regularly serve meals to the needy and indigent on a continuing basis at no cost.

RULING:

Sales of food to an I.R.C. § 501(c)(3) organization which provides food to persons at no cost or with a nominal charge are exempt from transaction privilege and use tax.

Harold Scott, Director

Signed December 22, 1994

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which

⁶ This ruling originally referred to TPR 94-10, the current ruling addressing this topic is TPR 00-4.

provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.