

PRIVATE TAXPAYER RULING LR99-008

August 2, 1999

The following information concerning the re-validation of the private taxpayer ruling issued to you on May 11, 1994 is provided in response to your request dated June 26, 1999.

Statement of Facts:

You own and operate an ... as a licensed member of a network of ... on behalf of ... is a non-profit corporation organized exclusively for charitable and educational purposes and maintains IRS § 501(c)(3) tax exempt status.

The purpose of the ... is to provide low-cost dormitory accommodations to documented members of the ... organization. An overnight fee is charged to cover the direct cost of operating and maintaining the The ... is available only to ... members and is not accessible to the general public as a hotel or motel.

Your Position:

Since there has been no change in the circumstances originally submitted, ... is not subject to tax under the transient lodging classification.

Applicable Statutory Provisions: Arizona Revised Statutes (A.R.S.) § 42-5070 levies the transaction privilege tax on the business of operating a lodging facility for occupancy by transients.

A.R.S. § 42-5070.B.1 provides an exemption from the transient lodging classification for the operation of a structure exclusively by a nonprofit association, institution, governmental agency or corporation for religious, charitable or educational purposes.

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Discussion:

Arizona imposes a transaction privilege tax that differs from the sales tax imposed by most states. The Arizona transaction privilege tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax.

The operation of a lodging facility for the purpose of offering occupancy to transients is subject to tax under the transient lodging classification. "Transients" are defined as persons who either at their own expense or at the expense of another obtain lodging space or use of lodging space on a daily or weekly basis, or on any other basis of less than 30 consecutive days. Any person engaging in the business of offering lodging to transients is subject to tax unless a specific exemption exists in statute.

An exemption is provided under the transient lodging classification for the operation of a structure exclusively by a nonprofit association, institution, governmental agency or corporation for religious, charitable or educational purposes.

... is a nonprofit organization organized exclusively for charitable purposes. It is recognized by the United States Internal Revenue Service as a central organization holding a group exemption letter. Subordinate units licensed by the national organization are covered by the group exemption and are given the same exempt status by the Internal Revenue Service. Therefore, if the national organization qualifies for a specific statutory exemption under the transaction privilege tax on the basis of its IRS exempt status, the subordinate unit will also qualify for the specific exemption. However, if the subordinate unit engages in activities, which do not fall within an exemption, such activities may be subject to tax.

Transaction Privilege Tax Procedure TPP 93-4, Procedure for Taxation Under Title 42 of Transactions Engaged in by Tax-Exempt Organizations, gives an overview of exemptions from transaction privilege tax which are available to tax-exempt organizations engaged in business under specific enumerated classifications. The procedure also addresses the requirements of each of the classifications to qualify for exempt status. The transient lodging classification requires that the organization keep appropriate documentation in its records to demonstrate that it is a nonprofit entity with no part of its net earnings inuring to the benefit of any private shareholder or individual.

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Conclusion and Ruling:

The following ruling is given based on the facts presented in your original request.

The department rules that ..., as a licensee of ..., a nonprofit corporation operating exclusively for charitable and educational purposes, is not subject to tax under the transient lodging classification pursuant to A.R.S. § 42-5070.

This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department. This

determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.