

ARIZONA TRANSACTION PRIVILEGE TAX RULING
TPR 99-8

(This ruling supersedes Arizona Transaction Privilege Tax Ruling TPR 93-38)

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.

ISSUE:

Exemption for residential care facilities operated in conjunction with a licensed nursing care institution.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5001(11)(b) defines "qualifying hospital" to include:

A licensed nursing care institution, a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center which provides medical services, nursing services or health related services and is not used or held for profit.

A.R.S. § 42-5159(A)(13)(c) provides an exemption from use tax for tangible personal property purchased by:

A licensed nursing care institution, a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center which provides medical services, nursing services or health related services and is not used or held for profit.

A.R.S. § 36-401(A)(31) defines "nursing care institution" as:

[A] health care institution providing inpatient beds or resident beds and nursing services to persons who need nursing services on a continuing basis but who do not require hospital care or direct daily care from a physician.

A.R.S. § 36-401(A)(37) defines "residential care institution" as:

[A] health care institution other than a hospital or a nursing care institution which provides resident beds or residential units, supervisory care services, personal care services, directed care services or health-related services for persons who do not need inpatient nursing care.

A.R.S. § 36-401(A)(22) defines "health-related services" as:

[S]ervices, other than medical, pertaining to general supervision, protective, preventive and personal care services, supervisory care services or directed care services.

A.R.S. § 36-401(A)(28) defines "medical services" as:

[T]he services pertaining to medical care that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.

A.R.S. § 36-401(A)(32) defines "nursing services" as:

[T]hose services pertaining to the curative, restorative and preventive aspects of nursing care that are performed at the direction of a physician by or under the supervision of a registered nurse licensed in this state.

A.R.S. § 20-1801(6) defines a "life care contract" as:

[A] contract to provide to a person for the duration of such person's life or for a term in excess of one year nursing services, medical services or health-related services, as defined in § 36-401, in addition to board and lodging for such person in a facility, conditioned upon the transfer of an entrance fee to the provider of such services in addition to or in lieu of the payment of regular periodic charges for the care and services involved.

DISCUSSION:

Sales of tangible personal property to a qualifying hospital are exempt from transaction privilege tax. A corresponding use tax exemption is provided for purchases of tangible personal property by a qualifying hospital. Additional transaction privilege tax exemptions are provided for sales to a qualifying hospital under the following classifications: utilities, publication, job printing, personal property rental and restaurant.

Laws 1993, Chapter 103 (HB2189), effective July 17, 1993 and retroactive to January 1, 1982,

expanded the definition of a "qualifying hospital" to include an unlicensed "residential care facility operated in conjunction with a licensed nursing care institution... which provides medical services, nursing services or health related services and is not used or held for profit." The question was raised as to the meaning of the phrase "residential care facility operated in conjunction with a licensed nursing care institution," as used in this definition.

Prior to the amendments enacted in 1993, the definition was limited to "a licensed nursing care institution or a licensed residential care institution." The 1993 legislation affects nonprofit organizations which usually operate *both* nursing care institutions and residential facilities on the same property or "campus." Although the residential units need not qualify for a license as residential care institutions, the nursing care institutions are required to hold a license.

Facilities providing such services operate under two general arrangements.

Under one arrangement, an organization enters a "life care contract" with residents. Life care contracts contemplate a progression from independent living to a time of complete dependence on nursing care. Residents are initially provided a minimal level of support, emphasizing self-sufficiency on the part of the resident. When a resident loses the ability to be self-sufficient, that person is transferred to the nursing care institution.

Organizations may also operate residential and nursing care facilities without entering life care contracts. In such situations, the residential units are rented on a periodic basis, with the nursing care institution available to residents if needed. Generally, persons renting residential units will have priority over non-residents in gaining admission to the nursing care facility. However, there often is no contractual agreement between the lessor and lessee guaranteeing nursing care. The facilities are generally sponsored by the same nonprofit organization and are usually located on the same grounds.

Whatever the arrangement, the residential facility involved must provide medical, nursing or health related services.

Health related services are those pertaining to general supervision, protective, preventive or personal care or supervisory care services. Examples of such services include general assistance with daily living, ambulatory assistance, wellness clinics, light housekeeping, emergency call buttons in each residential unit, daily telephone checks or reminder calls to residents.

RULING:

Exemption Requirements

Under A.R.S. § § 42-5001(11)(b) and 42-5159(A)(13)(c), the phrase "residential care facility

operated in conjunction with a licensed nursing care institution" refers to an arrangement under which a nonprofit organization operates both residential units and a licensed nursing care facility. The residential facility must be nonprofit itself, and provide medical, nursing or health related services.

In order to qualify for the exemption, an organization must apply to the Department of Revenue for an annual exemption letter. The request should be submitted at least (30) thirty days prior to the beginning of the calendar or fiscal year for which the organization is requesting exemption. *Please note:* Prior period exemption letters may be issued if appropriate documentation pertaining to that prior period is submitted.

The request must:

1. Be in writing.
2. Include a copy of the Department of Revenue exemption letter granting tax exempt status to the licensed nursing care institution if such an exemption has been granted for the year at issue.
3. Include a copy of the organization's current nursing care institution license.
4. If the organization has been recognized as a 501(c) organization by the Internal Revenue Service, include a copy of the organization's IRC 501(c) designation(s) unless the department already has a copy on file. The IRS issues a 501(c) determination letter as of a specific date. An entity does not qualify as a 501(c) organization prior to that date. Please note that both the residential and nursing care facilities must be nonprofit.

If the organization has not been recognized as a 501(c) organization by the Internal Revenue Service, the residential care facility operated in conjunction with a licensed nursing care institution must provide verification satisfactory to the department that the organization is not used or held for profit.

5. Include a description of the medical, nursing or health related services provided for residents of the residential units.
6. Include verification that the residential care facility is operated in conjunction with the licensed nursing care institution. For purposes of this exemption, "operated in conjunction with" is generally defined to mean that the residential care facility has common ownership and common management with the licensed nursing care institution.

However, if a residential care facility and a licensed nursing care institution do not have common ownership and common management the operation is subject to review by the department and qualification will depend on the facts and circumstances of each situation.

Examples of acceptable documentation may include one or more of the following:

- A permit issued by the Department of Insurance, pursuant to A.R.S. § § 20-1801 through 20-1812 authorizing the organization to provide services under a life care contract.
- A copy of the organization's Articles of Incorporation and/or By-Laws indicating the affiliation and/or relationship between the two facilities.
- Copies of the organization's financial statements indicating the affiliation and/or relationship between the two facilities.
- A letter from the administrator of a licensed nursing care institution which itself holds an exemption letter from the department. The administrator's letter must certify that the licensed nursing care institution is affiliated or otherwise related to the residential facility in question.

Mark W. Killian, Director

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 that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning 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 96-1 for more detailed information regarding documents issued by the Department of Revenue.