

## PRIVATE TAXPAYER RULING LR02-009

May 20, 2002

This private taxpayer ruling is in response to your letter that was received on April 12, 2002 which requested a determination regarding the application of transaction privilege tax on the income derived by the above organizations operation of a gift shop.

Statement of Facts:

The following is a partial statement of the facts presented in your letter.

The gift shop will stock merchandise designed for the convenience of visitors, staff and patients at the Hospital. These items will include apparel with the Hospital's distinctive logo; gifts that are age-appropriate to hospitalized children; food and snack items; and cards, newspapers, magazines and flowers. The Hospital also anticipates that the gift shop will be utilized for the purchase of small items by employees while they are at work.

Operations of the gift shop will be conducted by paid staff of the Hospital, and all proceeds will be received by the ... (the "...").

Your Position:

The Hospital as a nonprofit organization organized and operated exclusively for charitable purposes and recognized by the Internal Revenue Service as a tax-exempt organization under Internal Revenue Code § 501(c)(3), is not subject to the Arizona transaction privilege tax on the gross receipts from sales of merchandise at the Hospital's gift shop.

Applicable Statutory Provisions:

A.R.S. § 42-5008(A). There is levied and there shall be collected by the department, for the purpose of raising public money, privilege taxes measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application of rates against values, gross proceeds of sales or gross income, as the case may be, as prescribed by this article and article 2 of this chapter.

A.R.S. § 42-5061(A) The retail classification is comprised of the business of selling tangible personal property at retail.

A.R.S. § 42-5001(13) "Sale" means any transfer of title or possession, or both, exchange,

barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration.

A.R.S. § 42-5061(A)(4) provides a deduction under the retail classification for sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code.

### Discussion:

Arizona's *transaction privilege tax* is a tax on the privilege of conducting business in the State of Arizona. It is a tax on the seller, not on the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax. The Arizona transaction privilege tax is imposed under 17 separate business classifications, including *retail* sales of tangible personal property. Additionally, county excise taxes "piggyback" the imposition of the state's transaction privilege tax. All sales that are subject to the transaction privilege tax are also subject to applicable county excise taxes.

Arizona tax law provides that certain specifically delineated organizations are exempt from transaction privilege tax under some business classifications for transactions engaged in by certain non-profit organizations.

A.R.S. § 42-5061(A)(4) provides a deduction under the retail classification for sales of tangible personal property by a nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code. This deduction applies to nonprofit hospitals making sales of tangible personal property in a gift shop operated by the nonprofit hospital.

Please note that the above exemption is available for sales **by** the tax-exempt organization, not for sales **to** the tax-exempt organization. However, the tangible personal property sold to the hospital gift shop may be purchased exempt from tax as a purchase for resale.

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### Conclusion and Ruling:

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

The department rules that the gross income derived by ... and ... from retail gift shop sales is not included in the tax base under the retail classification.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the request for a private taxpayer ruling dated April 12, 2002.

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.