

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-34

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:

The taxability of admission income of nonprofit charitable organizations and bona fide religious or educational institutions under the amusement classification.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1310.13.A provides:

The amusement classification is comprised of the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement, entertainment or instruction, other than activities or projects of bona fide religious or educational institutions. For purposes of this section, admission or user fees include, but are not limited to, any revenues derived from any form of contractual agreement for rights to or use of premium or special seating facilities or arrangements. The amusement classification does not include:

* * *

2) A musical, dramatic or dance group or a botanical garden, museum or zoo that is qualified as a nonprofit charitable organization under § 501(c)(3) of the United States internal revenue code and if no part of its net income inures to the benefit of any private shareholder of individual.

3) Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under § 501(c)(3), 501(c)(4), or 501(c)(6) of the internal revenue code if the organization is associated with major league baseball teams or, from and after December 31, 1985, a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

4) From and after July 1, 1984, operating or sponsoring rodeos featuring primarily farm and ranch animals in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

5) Sales of admissions to intercollegiate football contests if the contests are operated by a nonprofit organization that is exempt from taxation under § 501(c)(3) of the internal revenue code, as defined in § 43-104, and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

DISCUSSION:

Activities or projects of bona fide religious or educational institutions are excluded from the amusement classification under A.R.S. § 42-1310.13.A.

An "educational institution" is an entity organized and operated exclusively for educational purposes. "Educational" refers to the instruction or training of the individual for the purpose of improving or developing the individual's capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. The organizational documents of the educational institution or the religious institution must be drawn so that they limit the organization to educational or religious purposes. The documents also must not expressly empower the organization to engage in activities that are not in furtherance of educational or religious purposes, unless the empowerment of such other activities is to an insubstantial extent. See Treas. Reg. § 1.501(c)(3)-1.

A "religious institution" is an entity which is organized **and** operated exclusively for religious purposes. See *General Conference of the Free Church of America v. Commissioner of Internal Revenue*, 71 TC 920 (1979). An organization that merely fosters an individual's philosophy or opinions does not come within the definition of an organization operated for religious purposes. See *Puritan Church of America v. Commissioner of Internal Revenue*, 209 F.2d 306 (D.C. Cir., 1953), 53-2 U.S.T.C. ¶9601, 45 A.F.T.R. 119, *cert. denied*, 347 U.S. 955, *reh. denied*, 350 U.S. 810.

RULING:

Bona Fide Religious or Educational Institutions

Nonprofit charities or organizations are not unconditionally exempt from imposition of the transaction privilege tax under the amusement classification.

A bona fide educational or religious organization for purposes of the transaction privilege tax is an organization which is organized **and** operated exclusively for educational or religious purposes and as such would therefore be exempt from the Arizona transaction privilege tax under the amusement classification.

EXAMPLES:

1. A corporation is organized for the sole purpose of serving as a membership association for high schools with all of its activities being performed and conducted on behalf of the schools and the students. The organization develops, directs, organizes, and regulates activities and competition in athletics, music, speech, theater, and chess. The organization also adjudicates disputes between schools and establishes clinics for the recruiting and training of officials for interscholastic contests. The organization *is* considered to be a bona fide educational institution for purposes of the transaction privilege tax since it is organized and operated exclusively for educational purposes.

2. An organization provides instruction in the game of tennis. In order to improve the students' tennis playing abilities, a tennis professional provides individual or group instruction to the student(s) on all the fundamentals of the game. The organization is *not* considered a bona fide educational institution but, rather, a taxable business charging a fee for instruction.

Nonprofit Organizations

In order for a nonprofit organization other than a bona fide educational or religious organization to qualify as exempt from the Arizona transaction privilege tax under the amusement classification, the organization must be identified as an exempt organization under A.R.S § 42-1310.13.A and have no part of its net income inure to the benefit of any private shareholder or individual.

Harold Scott, Director
Signed May 10, 1993

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 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.