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TAXATION: Sales Tax — Homes for aged persons.

Nonprofit organizations operating homes for the care and maintenance of aged persons do not pay sales tax upon purchases of food and other personal property used by such nonprofit organizations in providing care for such persons in operation of such homes, being within the exemption of Sec. 4a of Act 167, P.A. 1933.

No. 4413

April 12, 1965.

Hon. Robert VanderLaan
State Senator
The Capitol
Lansing, Michigan

You request opinion from the Attorney General on the following question:

“Must nonprofit organizations operating homes for the care and maintenance of aged persons pay sales tax upon purchases of food and other personal property furnished such aged persons where the income from such operation does not inure, in whole or in part, directly or indirectly, to the benefit of any individual, or shareholders, under Section 4a of Act 167, P.A. 1933?”

The Michigan Sales Tax Act, being Act 167, P.A. 1933, as amended, C.L. 1948 and C.L.S. 1961 §§ 205.51 et seq.; M.S.A. 1963 Cum. Supp. and Cur. Mat. §§ 7.521 et seq., imposes a tax upon all persons engaged in the business of making sales of tangible personal property at retail. For the purposes set forth in Sec. 2 of the Sales Tax Act, requiring the keeping of accounts and imposing the tax, a person is defined at Sec. 1¹ to include:

“* * * any individual, firm, copartnership, joint venture, association, social club, fraternal organization, municipal or private corporation, whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, state of Michigan, county, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.” M.S.A. 1964 Cur. Mat. § 7.521.

Section 4a of the Act provides the following exemption:

“No person subject to tax under this act need include in the amount of his gross proceeds used for the computation of the tax any sales of tangible personal property:

(a) Not for resale, and when not operated for profit, to schools, hospitals, homes for the care and maintenance of children or aged persons, and other health, welfare, educational, charitable or benevolent institutions and agencies, operated by an entity of government, a regularly organized church, religious or fraternal organization, a veterans' organization, or a corporation incorporated under the laws of the state of Michigan, when the income from the operation does not inure, in

¹ Sec. 1 was last amended by Act 214, P.A. 1964.

whole or in part, to the benefit of any individuals or private shareholder, directly or indirectly: [Provided, That in all such cases, at the time of the transfer of the tangible personal property, the transferee shall sign a statement, in a form approved by the department of revenue, stating that such property is to be used or consumed in connection with the operation of such institution or agency and that the said institution or agency qualifies as an exempt entity under the provisions of this subsection. Such statement shall be accepted by all courts as prima facie evidence of the exemption and the said statement shall provide that in the event the claim for tax exemption shall be disallowed the transferee will reimburse the transferor for the amount of tax involved.]” [The bracketed material was added by Act 76, P.A. 1955.] C.L.S. 1961 § 205.54a; M.S.A. 1963 Cum. Supp. § 7.525.

The law is well settled in Michigan that liability for payment of sales tax is controlled by statute, not by rulings or regulations of the Department of Revenue. *Acorn Iron Works, Inc. v. State Board of Tax Administration*, 295 Mich. 143 (1940); *R. C. Mahon Co. v. Department of Revenue*, 306 Mich. 660 (1943).

Act 139, P.A. 1956, as amended, being C.L.S. 1961 §§ 331.651 et seq., M.S.A. 1963 Cum. Supp. §§ 14.1281 et seq., is the Nursing Home and Homes for the Aged Licensing Act. Sec. 2 of the Act (C.L.S. 1961 § 331.652; M.S.A. Cum. Supp. § 14.1282) contains the following definition of home for the aged:

“* * * shall be defined as an establishment or institution other than a hospital, hotel, or nursing home which provides room and board to non-transient unemployed individuals 65 years of age or older;
* * *”

Thus, it is clear that by definition a home for the aged is an establishment which does not resell goods and commodities in the nature of personal property purchased for use in operation of such a home, but rather consumes such property in the course of providing room and board.

The exemption of homes for the care or maintenance of the aged from the sales tax as provided in Sec. 4a of Act 167, P.A. 1933, supra, was before the Michigan Supreme Court in *R. C. Mahon Co. v. Department of Revenue*, supra. The Court concluded that personal property used in the construction of houses for the care or maintenance of aged persons not operated for profit was exempt from the sales tax because the statute so provides. Such housing, of course, serves as shelter for aged persons.

Aid to the aged or infirm has long been recognized as charitable. Aged people require care and attention separate and apart from financial assistance and the supply of this care and attention is a charitable and benevolent purpose. *In re Estate of Henderson*, 112 Pac. 2d 605 (1941); *Fredericka Home for the Aged v. San Diego County*, 221 Pac. 2d 68 (1950).

The words “care” and “maintenance” have been construed to include all the necessities that are required to sustain life in comfort. Where there is a problem of age and infirmity, such a person is less able to care for himself and the need is more acute. *Hetzler v. Kah*, 65 N.E. 2d 515 (1945).

In *Snyder v. Lane*, 65 S.E. 2d 483 (1951) the word "maintenance" when applied to persons, was held to comprehend the necessities of life including, but not limited to, food, shelter and clothing.

All purchases made by an institution established by a testator for the "aged, decrepit and worn out sailors" were held exempt from sales tax imposed by the City of New York in *Trustees of Sailors' Snug Harbor in City of New York v. McGoldrick*, 5 N.Y.S. 2d 322, affirmed in 20 N.E. 2d 7 (1939).

The Attorney General ruled in O.A.G. 1957-58, Vol. I, No. 2937, page 193, that performance of services is not subject to the Sales Tax Act.

Under the decision in *R. C. Mahon Co.*, supra, purchase of material for the housing of aged persons, under Sec. 4a of Act 167, P.A. 1933, supra, is exempt from payment of sales tax. Purchase of food and other necessities for the care and maintenance of aged persons, under Sec. 4a of Act 167, P.A. 1933, supra, must also be exempt from payment of a sales tax, because the statute so provides. It is abundantly clear that in order for aged persons to be provided care and maintenance, food and other necessities of life must be provided, as well as shelter.

Since, as above set forth, homes for the aged are establishments which furnish care in the form of room and board to elderly persons, such establishments are not persons engaged in retail sales as defined by the Sales Tax Act. The exemption provided by Sec. 4a specifically includes sales to homes for aged persons.

Therefore, it is my opinion that a nonprofit organization operating a home for the care and maintenance of aged persons need not pay sales tax upon purchases of food and other personal property used by such establishments in furnishing care to such aged persons in the course of operation of such home for the aged.

It is my further opinion that establishments other than homes for the aged furnishing care to elderly persons, such as nursing homes, hospitals, governmental institutions, or church, religious, fraternal, veterans' or non-profit organizations such as those described in Sec. 4a are likewise free from the duty to pay sales tax, for the reason that any such organization furnishing care to elderly persons is outside the orbit of the Sales Tax Act because no resale of personal property to elderly persons occurs, but rather any of such organizations are principally engaged in furnishing care in course of which tangible personal property is purchased for the care of elderly inmates.

FRANK J. KELLEY,
Attorney General.