

2012 Exempt Organization Information Sheet

Which Organizations Are Exempt From Arizona Corporate Income Tax?

Arizona Revised Statutes (ARS) § 43-1201(A) states that organizations that are exempt from federal income tax under Internal Revenue Code (IRC) § 501 are exempt from the corporate income tax imposed under Title 43 of the Arizona Revised Statutes. ARS § 43-1201(A) also lists specific types of organizations that are exempt from the corporate income tax imposed by Title 43 of the Arizona Revised Statutes. A nonprofit medical marijuana dispensary (NMMD) under Arizona Revised Statutes Title 36, Chapter 28.1, is exempt from the corporate income tax imposed under Title 43 of the Arizona Revised Statutes in accordance with ARS § 43-1201(B).

NOTE: Homeowners associations described in IRC § 528 are not exempt from tax under ARS § 43-1201(A) [associations that file federal Form 1120-H or 1120]. These organizations must file an Arizona corporate income tax return on Form 120A or Form 120. However, certain homeowners associations are federally tax exempt under IRC § 501(c)(4), as social welfare organizations, or under IRC § 501(c)(7), as clubs organized for pleasure or recreation. These homeowners associations are similarly tax exempt for Arizona income tax purposes. These organizations may file Form 99.

Does the Exemption From Corporate Income Tax Apply to Other Taxes?

No, the tax exempt status provided by ARS § 43-1201 applies only to corporate income taxes.

The organization or dispensary may still be subject to other taxes, such as withholding, transaction privilege or use tax.

Does the Organization Have to Apply for Exempt Status Under ARS § 43-1201?

No, it is not necessary to apply to the Department of Revenue for tax exempt status for corporate income tax purposes. NMMDs must apply to the Department of Health Services and provide its registry identification number when filing its return(s) with the Department of Revenue.

Does the Exempt Organization Have to File an Annual Information Return?

Most organizations that have tax exempt status under ARS § 43-1201 must file Form 99 or a copy of the organization's federal return of organization exempt from income tax *only if their gross income exceeds \$25,000*.

NOTE: HB 2212 (2012) provides that returns are only required if the organization's gross receipts exceed \$50,000 for taxable years ending after August 2, 2012. "Gross receipts" means the total amount the organization received from all sources during its annual tax year without subtracting any costs or expenses.

However, the following exempt organizations do not have to file Form 99 or a copy of the organization's federal return of organization exempt from income tax *regardless of the amount of gross income (or gross receipts, for taxable years that end after August 2, 2012)*:

- A religious organization exempt under ARS § 43-1201(A)(4). The organization must be organized exclusively for religious purposes. No part of the organization's net earnings may inure to the benefit of any private shareholder or individual. No substantial part of the organization's activities may be carrying on propaganda or otherwise attempting to influence legislation.
- An educational organization exempt under ARS § 43-1201(A)(4). The organization must normally maintain a regular faculty and students in attendance at the place where its educational activities are regularly conducted.
- A charitable organization or an organization for the prevention of cruelty to children or animals, exempt under ARS § 43-1201(A)(4). The organization must receive its support, in whole or in part, from funds contributed by the United States, or any state or political subdivision thereof, or receive its primary support from contributions of the general public.
- An organization exempt under ARS § 43-1201(A)(4) if the operation, supervision, or control of the organization is by, or in connection with, a religious organization exempt under ARS § 43-1201(A)(4).
- An organization exempt solely under ARS § 43-1201(A)(2). The fraternal beneficiary societies, orders or organizations must: (a) operate under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (b) provide for the payment of life, sick, accident or other benefits to the members of the society, order or organization or their dependents.

DUE DATE: Form 99 or a copy of the organization's federal return of organization exempt from income tax is due by the 15th day of the fifth calendar month after the close of the taxable year.

How is Gross Receipts Determined?

"Gross receipts" means the total amount the organization received from all sources during its annual tax year without subtracting any costs or expenses in accordance with ARS § 43-1242(D). Total income, (Form 99, line 12) plus cost of goods sold (Form 99, line 2) plus any other expenses deducted to arrive at the income on lines 4 through 11, would equal the organization's gross receipts for the tax year.

Is There a Penalty for Failing to File, Filing Untimely, or Filing an Incomplete Form 99?

Form 99 is an information return. The penalty for failing to file, filing late (including extensions) or filing an incomplete information return is \$100 for each month, or fraction of a month, that the failure continues, up to a maximum penalty of \$500.

What Filing Extensions are Available to Organizations Exempt Under ARS § 43-1201(A) That File Form 99?

Organizations that file federal Form 990 or Arizona Form 99 with the department can request an automatic 6-month extension by filing Arizona Form 120EXT with the department by the original due date. Alternatively, the department will accept the federal extension for the same amount of time covered by the federal extension. Organizations can file federal Form 8868 with the IRS to request an automatic 3-month extension, and to apply for an additional (not automatic) 3-month extension, if the original 3 month extension was not enough time. To obtain this additional extension, the organization must show reasonable cause for the additional time requested. See the instructions for federal Form 8868. Check the appropriate extension box on Form 99. If the organization files federal Form 990 in place of Arizona Form 99, be sure to attach a copy of your federal extension(s) to the front of the return.

What Filing Extensions are Available to a Nonprofit Medical Marijuana Dispensary That Files Form 99?

NMMDs that file Arizona Form 99 with the department must request an automatic 6-month extension by filing Arizona Form 120EXT with the department by the original due date. Because NMMDs are not exempt organizations at the federal level, the NMMD *cannot* file Arizona Form 99 under a federal extension. Check box 82F on Form 99.

Is a Nonprofit Medical Marijuana Dispensary Required to File Forms Other Than Form 99?

NMMDs that are organized as a corporation or an LLC that is taxed as a corporation need only file Arizona Form 99 with the Department of Revenue. NMMDs that are organized as an S corporation or a partnership (or an LLC that is taxed as an S corporation or a partnership) must also file Arizona Form 120S or Arizona Form 165, respectively, with the Department of Revenue. See the instructions for each form for more information.

Is an Exempt Organization Subject to Arizona Corporate Income Tax on Its Unrelated Trade or Business Taxable Income?

Organizations that have tax exempt status under ARS § 43-1201(A) file Form 99T to report IRC § 512 unrelated trade or business income (UTBI). These organizations are subject to the corporate income tax on their UTBI.

Organizations exempt under ARS § 43-1201(A)(8) file Form 99T to report UTBI if their income is payable to a church or to a convention or association of churches. These organizations also file this return if their income is payable to another tax exempt organization required to file Form 99T.

DUE DATE: Form 99T is due by the 15th day of the fifth calendar month after the close of the taxable year.

What Penalties Apply to Form 99T?

Form 99T is subject to the same penalties as any other corporate tax form. See the instructions for Form 99T for details.