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The Honorable Jeffrey J. Hill
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I90-049 (R89-144)

Dear Senator Hill:

You requested our opinion regarding a \$1,000 income tax deduction for persons affected by the recently enacted transaction privilege tax (sales tax) collection acceleration program. See Laws 1989 (2nd Spec. Sess.) Ch. 1. Specifically, you question whether this provision constitutes "special interest" legislation and whether it constitutes a "gift" of public monies violative of the Arizona Constitution.

Your question relates to the following provisions of the act:

Sec. 7. Subtraction for estimated sales tax expenses

A. In addition to the subtractions allowed by section 43-1122, Arizona Revised Statutes, a subtraction is allowed in computing Arizona taxable income of a corporation for accounting, bookkeeping, computer programming and reporting expenses incurred by the taxpayer in the 1990 taxable year in order to make estimated payments of transaction privilege, telecommunication services

excise and county excise taxes required under section 42-1322, subsection D, Arizona Revised Statutes.

B. The maximum amount of the subtraction allowed by this section is one thousand dollars.

Laws 1989 (2nd Spec. Sess.) Ch. 1 (emphasis supplied).

The above subtraction for 1990 expenses of reporting and paying estimated telecommunication and county sales taxes was allowed corporate taxpayers affected by a sales tax collection procedure as prescribed in A.R.S. § 42-1322(D), which was added to accelerate the date whereby all taxpayers having an annual tax liability of \$100,000 or more must pay estimated taxes. Laws 1989 (2nd Spec. Sess.) Ch. 1, § 2. You ask whether the subtraction constitutes "a special piece of legislation which helps a definite class and may be considered a gift, contrary to the Constitution." We conclude that it does not, for the reasons stated below.

The constitutional prohibition against gifts by the state and its political subdivisions is found in article 9, section 7 of the Arizona Constitution:

Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.

This prohibition was intended to prevent governmental bodies from expending public funds or conveying public property where the value received by the public is "far exceeded" by the consideration paid by the public. Wistuber v. Paradise Valley Unified School District, 141 Ariz. 346, 349, 687 P.2d 354, 357 (1984).

In providing for a \$1,000 subtraction from gross income, the statute merely prescribes a method for calculating taxable income for certain taxpayers. Thus, the subtraction or deduction is not a grant of the state's property because no monies are due the state until the calculation is complete. As noted in Proctor v. Hunt, 43 Ariz. 198, 201, 29 P.2d 1058, 1059

(1934), article 9, section 7 requires that "money raised by public taxation is to be collected for public purposes only, and can only legally be spent for such purposes and not for the private or personal benefit of any individual." (Emphasis supplied.) Consequently, the deduction does not constitute an unconstitutional gift of public property.

As to whether the statute constitutes "special interest" legislation, article 4, part 2 of the Arizona Constitution prohibits the enactment of any special law under the following applicable provisions:

Section 19. No local or special laws shall be enacted in any of the following cases, that is to say:

9. Assessment and collection of taxes.

. . . .

13. Granting to any corporation, association, or individual, any special or exclusive privileges, immunities, or franchises.

. . . .

18. Relinquishing any indebtedness, liability, or obligation to this State.

. . . .

20. When a general law can be made applicable.

"A special law applies only to certain members of a class or to an arbitrarily defined class which is not rationally related to a legitimate legislative purpose." Arizona Downs v. Arizona Horsemen's Foundation, 130 Ariz. 550, 557, 637 P.2d 1053, 1060 (1981). This means that a law will be considered "special" legislation and, therefore, invalid if it has no broader application in the future, Petitioners for Deannexation v. Goodyear, 160 Ariz. 467, 472, 773 P.2d 1026, 1031 (App. 1989), or if it creates a classification which is not rationally related to a legitimate legislative purpose, Chevron Chemical Co. v. Superior Court, 131 Ariz. 431, 441, 641 P.2d 1275, 1285 (1982).

The prohibition against special legislation applies to laws establishing tax exemptions. State v. Levy's, 119 Ariz. 191, 192, 580 P.2d 329, 330 (1978). Consequently, whether this legislation is "special" will depend upon whether its

distinction between certain corporations and individuals is a legitimate classification which permits other entities to come within the class "within a reasonable time, if at all."
Petitioners for Deannexation, 160 Ariz. at 472, 773 P.2d at 1031.

Concerning whether the law impermissibly creates a "closed" class, we note that A.R.S. § 42-1322(D) applies to corporations having a tax liability over \$100,000 in any tax year, thus leaving the class open for qualified corporations which may be formed in the future or for existing corporations which later may incur a tax liability over \$100,000. The subtraction permitted by section 7 of the act does not apply until a corporation achieves this status. Therefore, we conclude that the statute is proper general legislation in the sense that it is capable of broader application within a reasonable time.

Regarding the "rational basis" for the statute's distinction between certain corporations and individuals, we note that a state legitimately may grant a tax benefit to corporations which is not also provided to individuals. Lawrence v. State Tax Commission of Mississippi, 286 U.S. 276, 283 (1932) (holding constitutional a state statute which excluded out-of-state corporate income from taxation even though no such exclusion was provided to individuals). Accord, Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 360 (1973) (same principle applied to statute taxing corporate personal property, but not taxing individuals). Furthermore, state legislatures are given broad discretion in prescribing classifications for taxation purposes. "A state may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, West Virginia, 488 U.S. ___, 102 L.Ed.2d 688, 697 (1989), citing Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526-527 (1959) (upholding an Ohio property tax exemption for merchandise or agricultural products belonging to a nonresident if held for storage only in a warehouse).

The purpose of this legislation is to provide a one-time deduction for program changes necessary to ensure future compliance by corporations (which are responsible for collecting and paying the majority of the state's sales tax revenues) in reporting and paying accelerated sales taxes, thus enhancing the state's deficit-reduction efforts. We conclude that this classification is reasonable and rationally related to the state's legitimate efforts of budget enhancement. Therefore, the statute is proper general legislation in the sense that it is rationally related to a legitimate legislative purpose.

In summary, we conclude that A.R.S. § 42-1322(D) is not a

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gift of public monies in violation of the Arizona Constitution,
article 9, section 7, nor is it "special" legislation in
violation of the Arizona Constitution, article 4, part 2,
section 19.

Sincerely,



BOB CORBIN
Attorney General

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