

**SANITIZED DECISION – 05-399 RC – BY ROBERT W. KIEFER, JR. ALJ –  
SUBMITTED for DECISION on MAY 16, 2006 – ISSUED on NOVEMBER 15, 2006**

**SYNOPSIS**

**CONSUMERS’ SALES AND SERVICE TAX – EXEMPTION REQUIREMENTS FOR PURCHASES BY 501(c)(3) or (4) ORGANIZATIONS** – In accordance with W. Va. Code § 11-15-9(a)(6)(C), a taxpayer is exempt on its purchases of tangible personal property and services provided that: 1) It is a corporation or organization which has a current registration certificate issued under W. Va. Code § 11-12-1, *et seq.*; 2) It is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended; and 3) It annually receives more than one half of its “support” from any combination of gifts, grants, direct or indirect charitable contributions or membership fees.

**CONSUMERS’ SALES AND SERVICE TAX – 501(c)(3) or (4) ORGANIZATIONS’ “SUPPORT”** – For purposes of W. Va. Code § 11-15-9(a)(6)(C), “support” includes, but is not limited to, those items listed in W. Va. Code § 11-15-9(a)(6)(F)(I)-(VI).

**CONSUMERS’ SALES AND SERVICE TAX – 501(c)(3) or (4) ORGANIZATIONS’ “GROSS RECEIPTS FROM FUND RAISERS”** – For purposes of W. Va. Code § 11-15-9(a)(6)(F)(II), “gross receipts from fund raisers” includes, but is not limited to: 1) Receipts from admissions in any activity which is not an unrelated trade or business; 2) Receipts from sales of merchandise in any activity which is not an unrelated trade or business; 3) Receipts from the performance of services in any activity which is not an unrelated trade or business; and 4) Receipts from furnishing of facilities in any activity which is not an unrelated trade or business.

**CONSUMERS’ SALES AND SERVICE TAX – HOSPITAL’S RECEIPTS FROM OPERATIONS AS “GROSS RECEIPTS FROM FUND RAISERS”** – The Petitioner’s receipts from the operation of its hospital and related facilities, including its receipts from admissions, sales of merchandise, the performance of services and the furnishing of its facilities, are not receipts from an unrelated trade or business. Therefore, for purposes of W. Va. Code § 11-15-9(a)(6)(F)(II), the Petitioner’s receipts from the operations of its hospital and related facilities are included in “gross receipts from fund raisers.”

**CONSUMERS’ SALES AND SERVICE TAX – APPLICATION OF CLEAR AND UNAMBIGUOUS STATUTE** – W. Va. Code § 11-15-9(a)(6)(F)(II) is clear and unambiguous. Therefore, it is the duty of this Office to accept the plain meaning of the statute without resorting to rules of interpretation.

**CONSUMERS’ SALES AND SERVICE TAX – APPLICATION OF CLEAR AND UNAMBIGUOUS STATUTE** – There is no need to resort to rules statutory construction when, as here, the statutory language and the legislative intent are clear and unambiguous.

## FINAL DECISION

On May 9, 2005, the Petitioner, filed a claim for refund of consumers' sales and service tax and purchasers' use tax in the amount of \$ for calendar year 2002. The Sales Tax Unit of the Internal Auditing Division ("the Division") of the West Virginia State Tax Commissioner's Office ("the Commissioner" or the "Respondent"), by letter dated May 12, 2005, denied the claim.

Thereafter, by mail postmarked July 6, 2005, and received in the offices of the West Virginia Office of Tax Appeals on July 8, 2005, the Petitioner timely filed with this tribunal a petition for refund. W. Va. Code §§ 11-10A-8(2) [2002] and 11-10A-9(a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

## FINDINGS OF FACT

1. The Petitioner in this matter operates a hospital and related facilities that provide professional and personal medical services to its patients.
2. The Petitioner purchases a substantial number of items of tangible personal property that it uses and consumes in the course of providing services to its patients.
3. For calendar year 2002, the petitioner had a current registration certificate issued pursuant to W. Va. Code §§ 11-12-1 *et seq.*
4. The Petitioner is an organization that is exempt from the payment of federal income tax pursuant to the provisions of 26 U.S.C. § 501(c)(3). *See* Petitioner's Exhibit 4, Line J.
5. For calendar year 2002, the Petitioner received the following support:

Gifts, grants, contributions and membership fees	\$
Gross receipts from admissions, sales of merchandise, provision of services, or furnishing of facilities in any activity that is not an unrelated trade or business	\$
Net income from unrelated business activities	\$
Gross investment income	\$
Tax revenues levied for the benefit of the Petitioner, either paid to or expended on behalf of the Petitioner	-0 <sup>1</sup>
The value of services or facilities furnished by a govern- mental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986	-0 <sup>2</sup>

6. The Petitioner has presented evidence to show that for calendar year 2002 it paid consumers' sales and service tax in the amount of \$. *See* Petitioner's Exhibit No. 1 & State's Exhibit No. 1.

7. The Respondent has presented evidence which, according to him, shows that the Petitioner is not entitled to credit for the entire amount of consumers' sales and service tax that it paid, because certain of those vendors were out-of-state vendors who were not authorized to collect consumers' sales and service tax on behalf of the State Tax Commissioner and remit the same to him.

8. The Respondent maintains that the Petitioner is not entitled to credit for \$ that it paid to vendors who were not authorized to collect the tax on behalf of the State Tax Commissioner. *See* State's Exhibits Nos. 4 & 5.

8. For calendar year 2002, the Petitioner paid purchasers' use tax in the amount of \$. *See* Petitioner's Exhibit No. 1.

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<sup>1</sup> *See* Line 11 of the Petitioner's Federal Form 990.

<sup>2</sup> *See* Line 11 of the Petitioner's Federal Form 990.

**DISCUSSION**

In contending that it is exempt from consumers' sales and service tax and purchasers' use tax on its purchases, the Petitioner maintains that it falls within the exemption contained in W. Va. Code § 11-15-9. This section provides, in relevant part, as follows:

(a) . . . The following sales of tangible personal property and services are exempt as provided in this subsection:

. . . .

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve [§§ 11-12-1 *et seq.*] of this chapter, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

\* \* \*

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions or membership fees;

. . . .

*(F) For purposes of this subsection:*

*(i) The term "support" includes, but is not limited to:*

*(I) Gifts, grants, contributions or membership fees;*

*(II) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;*

*(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;*

*(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;*

*(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and*

*(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state or local tax or any similar benefit;*

(ii) The term "charitable contribution" means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization; . . . . (Emphasis added.)

In short, a taxpayer may avail itself of this exemption if it meets three conditions. First it must be “a corporation or organization which has a current registration certificate issued under article twelve [§§ 11-12-1 *et seq.*] of this chapter. Second, it must be exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended[.]” Third, any gifts, grants, contributions or membership fees received by it exceed one-half of its total “support,” as that term is limited by the various items listed in subsections (F)(i)(I)-(VI).

The Petitioner has provided evidence sufficient to demonstrate that it is a corporation that has a current registration certificate issued under W. Va. Code § 11-12-1 *et seq.*, and that it is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986. It further contends that it receives more than one-half of its support from “any combination of gifts, grants, direct or indirect charitable contributions or membership fees[.]”

The Respondent contests only the latter conclusion.

The Petitioner maintains that it is entitled to the exemption for calendar year 2002 because it satisfies the following formula:

$$\frac{I}{I + II + III + IV + V + VI} > .50 (50\%)$$

According to it, for the year 2002, the formula, as applied to it, should be:

$$\frac{X}{A + B + C + D + 0 + 0} = \frac{X}{Y} = .6586 (65.86 \%)$$

This computation supports the Petitioner’s contention that its support derived from gifts, grants, contributions or membership fees for the calendar year 2002 exceeded one-half, or 50%, of its

support for that year, and that it is entitled to a refund of all of the consumers' sales and service tax and purchasers' use tax it paid on its purchases for that year.

The State Tax Commissioner does not take issue with the general principles of the formula, as proposed by the Petitioner. However, he does take issue with the computation one component of the formula's denominator. Specifically, he maintains that W. Va. Code § 11-15-9(a)(6)(F)(i)(II) should include all of the Petitioner's gross receipts from the operation of its hospital and related facilities. Because the Petitioner has substantial gross receipts from the operation of its hospital,<sup>3</sup> this has the effect of substantially increasing the denominator of the formula, resulting in a substantial decrease in the percentage of support derived from gifts, grants, contributions or membership fees to less than 50% for each of the years covered by the petition for refund. According to the Tax Commissioner, for the year 2002, the formula, as applied to it, should be:

$$\frac{X}{A + B + C + D + 0 + 0} = \frac{1,579,265}{66,577,476} = .0237 \text{ (2.37 \%)}$$

The State Tax Commissioner's computation supports his contention that the Petitioner's support derived from gifts, grants, contributions or membership fees for calendar year 2002 was less than 50%, or one-half, of its support for that year. Therefore, according to the Commissioner, the Petitioner is not entitled to a refund of the consumers' sales and service tax and purchasers' use tax it paid on its purchases for calendar year 2002.

The dispute in this matter is whether W. Va. Code § 11-15-9(a)(6)(F)(i)(II) includes the Petitioner's gross receipts from the operations of its hospital. Both parties contend that the plain language of the statute supports their respective positions.

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<sup>3</sup> In fact, the overwhelming majority of its gross receipts are derived from the operation of its hospital.

The Petitioner contends that in determining exactly what is to be included as gross receipts within W. Va. Code § 11-15-9(a)(6)(F)(i)(II), this Office must look to the plain language of the statute. W. Va. Code § 11-15-9(a)(6)(F)(i)(II) includes as support: “[G]ross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended[.]” According to the Petitioner, this language expressly includes only gross receipts from “fund raisers,” which the Petitioner would limit to events such as bake sales, raffles, cocktail parties and the like. Based on this, the Petitioner would limit the gross receipts included as “support” by this subsection to those amounts properly reported on Line 9a of the Federal Form 990. The Petitioner maintains that its gross receipts from the operation of the hospital, and its related facilities and services, are not “gross receipts from fund raisers.” As such, those receipts should not factor into the determination of “support.”

Like the Petitioner, the Tax Commissioner also contends that this Office should merely look to the plain language of the statute, and apply it. However, he disagrees with the Petitioner as to the meaning of the plain language of the statute. He agrees with the Petitioner that the plain language of the subsection includes all of the Petitioner’s receipts from the activities listed in the subsection. Unlike the Petitioner, he argues that “gross receipts from fund raisers” is not limited to the listed activities, because the term “include,” by necessary implication, means that there are receipts included within the term that are not expressly listed or identified in the subsection. Accordingly, the Tax Commissioner maintains that the statute does not limit gross receipts under W. Va. Code § 11-15-9(a)(6)(F)(i)(II) only to those amounts properly reported on Line 9a of the Federal Form 990. He argues that the amounts reported on Lines 2, 10a and 11 of the Federal

Form 990 are also included as gross receipts pursuant to W. Va. Code § 11-15-9(a)(6)(F)(i)(II). These include the Petitioner's gross receipts from the operation of its hospital and related facilities.

“[T]ax law is a creature of statute and it is the statute which determines the issue. It is well settled in this State that when a tax statute is clear and free from ambiguity, it will be applied and not construed.’ *State ex rel. Hardesty v. Aracoma-Chief Logan No. 4523, V.F.W.*, 147 W. Va. 645, [649-50,] 129 S.E.2d 921, 924 (1963); *J. D. Moore, Inc. v. Hardesty*, 147 W. Va. 611, [615,] 129 S.E.2d 722, 724-25 (1963).” *West Virginia Tractor & Equip. Co. v. Hardesty*, 167 W. Va. 511, 516, 280 S.E.2d 270, 274 (1981). “Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.” Syl. pt. 3, *B B Enter., Inc. v. Palmer*, 214 W. Va. 571, 591 S.E.2d 129 (2003); Syl. pt. 4, *Consol. Natural Gas Co. v. Palmer*, 213 W. Va. 388, 582 S.E.2d 835 (2003); Syl. pt. 4, *Syncor Intern’l Corp. v. Palmer*, 208 W. Va. 658, 542 S.E.2d 479 (2001); *Habursky v. Recht*, 180 W. Va. 128, 132, 375 S.E.2d 760, 764 (1988); Syl. pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970). “That the parties disagree as to the meaning or the applicability of [a statutory] provision does not of itself render [the] provision ambiguous or of doubtful, uncertain or obscure meaning.” *Trustees of Firemen’s Fund v. City of Fairmont*, 215 W. Va. 366, 370, 599 S.E.2d 789, 793 (2004); *Deller v. Naymick*, 176 W. Va. 108, 112, 342 S.E.2d 73, 77 (1985); *Estate of Resseger v. Battle*, 152 W. Va. 216, 220, 161 S.E.2d 257, 260 (1968). “Rules of interpretation are resorted to for the purpose of resolving an ambiguity, not for the purpose of creating it.” *Deller v. Naymick*, 176 W. Va. at 112, 342 S.E.2d at 77; *Crockett v. Andrews*, 153 W. Va. at 719, 172 S.E.2d at 387.

The clear, express and unambiguous language of the statute makes it apparent that receipts from activities expressly listed in W. Va. Code § 11-15-9(a)(6)(F)(i)(II) are *included* in “gross receipts from fund raisers.” These *include*: 1) Receipts from admissions in any activity which is not an unrelated trade or business; 2) Receipts from sales of merchandise in any activity which is not an unrelated trade or business; 3) Receipts from the performance of services in any activity which is not an unrelated trade or business; and 4) Receipts from furnishing of facilities in any activity which is not an unrelated trade or business. “Includes” is clearly language of inclusion, not language of exclusion or limitation. From this the conclusion must be drawn that the Legislature intended “gross receipts from fund raisers” to include receipts from activities not expressly listed, in addition to the activities listed, so long as they are not derived from an unrelated trade or business.”<sup>4</sup>

In addition to providing that “gross receipts from fund raisers” include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities, it provides that the receipts to be included shall be from “any” activity that is not an unrelated trade or business. Like “include,” the word “any” is broad and all-inclusive. It clearly evinces a legislative intent to include receipts from all activities, including those from admissions, sales of merchandise, performance of services and furnishing of facilities, so long as they are derived from a related trade or business.

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<sup>4</sup> This subsection is intended to exclude gross receipts from unrelated trades or businesses, because receipts from unrelated business activities are included pursuant to W. Va. Code § 11-15-9(a)(6)(F)(i)(III), which provides for inclusion of net income from those unrelated business activities. Including gross receipts from an unrelated trade or business in W. Va. Code § 11-15-9(a)(6)(F)(i)(II) would have the effect of including those sums twice. Clearly, all gross receipts expressly identified in W. Va. Code § 11-15-9(a)(6)(F)(i)(II) are necessarily from taxpayer’s primary business activity.

Contrary to the Petitioner's contention, the statute's plain language and structure make it clear that the Legislature intended the term "gross receipts from fund raisers" to include more than the items expressly listed therein.

Crucial to the Petitioner's argument is its contention that the term "gross receipts from fund raisers" limits W. Va. Code § 11-15-9(a)(6)(F)(i)(II) solely to receipts from certain activities, such as bake sales, raffles and similar activities.<sup>5</sup> In essence, it argues that only those items expressly identified in W. Va. Code § 11-15-9(a)(6)(F)(i)(II) are included in "gross receipts from fund raisers." Not only does it argue that "gross receipts from fund raisers" are limited to those items expressly identified in W. Va. Code § 11-15-9(a)(6)(F)(i)(II), in effect it argues that only a portion of those items is included, specifically that portion that traditionally would be categorized as being derived from "fund raisers." In effect, the Petitioner asserts that "gross receipts from fund raisers" limits the broader language that follows. However, this assertion is unfounded in several respects.

It is within the power of the Legislature to define terms used in a statute. While the items following "gross receipts from fund raisers" are not, strictly speaking, a *definition* of that term, in large measure they define it. Their broad, inclusive language demonstrates that the Legislature intended that term to be broader than gross receipts derived from activities such as bake sales, raffles, cocktail parties, and the like, as suggested by the Petitioner. The term cannot limit itself to something less than that which is included therein by statute. In effect, the Petitioner argues that the term excludes gross receipts that are, by "definition," expressly included therein.<sup>6</sup> The

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<sup>5</sup> *Merriam-Webster Online Dictionary* discloses the following definition, "fund-raiser : . . . noun . . . 2 : a social event (as a cocktail party) held for the purpose of raising funds."

<sup>6</sup> The Petitioner's argument in this respect raises an interesting question: "How can a term that is expressly all-inclusive actually limit itself to something less than what is expressly included therein?" Logic dictates that it cannot.

term has a broader “definition” or scope than that used by the Petitioner. For purposes of this statute, it is apparent from the language used that the Legislature intended “gross receipts from fund raisers” to be broader than the ordinary meaning of the words might suggest in other circumstances. This Office must adhere to the Legislature’s “definition” of the term.

This Office also is of the opinion that a reading of W. Va. Code § 11-15-9(a)(6)(F)(i), in its entirety, lends credence to this conclusion. W. Va. Code § 11-15-9(a)(6)(F)(i) provides that “‘support’ includes, but is not limited to” the six different classes of receipts listed therein. As the items listed after “gross receipts from fund raisers” is not an exhaustive list, so, too, is the list of items included in “support,” contained in W. Va. Code § 11-15-9(a)(6)(F)(i)(I)-(VI), not exhaustive. Additionally, the various items listed in subsections 11-15-9(a)(6)(F)(i)-(vi) are so broad and all-encompassing that it is impossible to conclude anything except that the Legislature intended to include all of the receipts from a taxpayer within “support,” except as expressly excluded.

In general terms, the list of items contained in W. Va. Code § 11-15-9(a)(6)(F)(i)(I), (III), (IV), (V) & (VI) include charitable contributions, net income from unrelated business activities, gross investment income, tax revenues levied for the benefit of the taxpayer, and the value of services or facilities furnished by a governmental unit without charge to the taxpayer. Charitable contributions can include cash or other liquid assets, or tangible or intangible property. Net income from an “unrelated business,” may be received by the taxpayer in the form of cash or it may be retained by the unrelated business, resulting in an increase to the taxpayer’s overall net value. Gross investment income is most likely received in the form of cash or other liquid assets, but may be received in the form of tangible or intangible property. Tax revenues constituting support may be received by the taxpayer and expended by it, or the taxpayer may directly benefit

from their expenditure on its behalf. The value of services and facilities furnished to a taxpayer by a governmental unit is, by definition, an in-kind attribution of value to the taxpayer. These items encompass “support” from a broad range of sources. They are not limited to receipts of cash, other liquid assets or tangible property. They also include value that is attributed to the taxpayer. Use of the term “includes” means that this list is not exhaustive. Consequently, it appears that the Legislature intended to include all receipts, from any source whatsoever, as “support.” In fact, one must think hard to come up with a source of support that is not included in the statute.

Also, the word “support” is not defined in the statute. Thus, this Office must look to the ordinary meaning of the term. “Support” is defined as, “n. . . . 2: . . . a: a means of livelihood, sustenance or existence . . . .” *Webster’s Third New International Dictionary, Unabridged*, G. & C. Merriam Co., Springfield, Mass., 1966, p. 2297. The ordinary meaning of “support” is so broad as to encompass all receipts of a taxpayer, whether in cash, in kind, or as a benefit accruing to it. This definition comports with the broad scope of the statute. It clearly encompasses gross receipts from the operation of the hospital and its related facilities. Not merely are its gross receipts from the operation of the hospital and related facilities a means of existence of the taxpayer, they are its primary means of existence.

Reading W. Va. Code § 11-15-9(a)(6)(F)(i)(II) in light of the remainder of the subsection, this Office holds that including income from a non-profit taxpayer’s primary business as “support” is consistent with the legislative intent to include all forms of receipts as “support.” Given the broad nature of “support” derived from other sources, and in light of the language of W. Va. Code § 11-15-9(a)(6)(F)(i)(II), it is not logical that the Legislature would exclude the taxpayer’s primary source of revenue. In considering the language of the statute, it appears that

the intention of the Legislature, as clearly expressed in the plain language of the statute, is that gross receipts from the operation of a business by a non-profit organization must be included as part of the organization's "support."

The Petitioner also argues that this Office should consider the fact that this statute is derived from a similar federal statute, 26 U.S.C. § 509(d). It maintains that the addition of the term "gross receipts from fund raisers," which is not part of the corresponding federal statute, indicates the legislative intent to limit "support" derived from sources identified in W. Va. Code § 11-15-9(a)(6)(F)(i)(II) to those from "fund raisers," as it defines the term.

In comparing the two statutes, this Office must conclude that there is little to no functional difference between the two. In the federal statute, subsection (2) consists of "gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of 26 U.S.C § 513). The corresponding state statute, W. Va. Code § 11-15-9(a)(6)(F)(i)(II), consists of "gross receipts from fundraisers," which includes "receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended." All that the Legislature did was add the term "from fund raisers" to the statute, and then include therein exactly the same items as are included in the federal statute. Both statutes include the same receipts as "support." The Legislature just chose to use a slightly different term than did Congress.<sup>7</sup> The Petitioner's argument to the contrary has superficial appeal, but when analyzed in depth, it is without merit.

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<sup>7</sup> As concluded above, the term "gross receipts from fund raisers" cannot limit the items that the Legislature has expressly included therein.

## CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In accordance with W. Va. Code § 11-15-9(a)(6)(C), a taxpayer is exempt on its purchases of tangible personal property and services provided that: 1) It is a corporation or organization which has a current registration certificate issued under W. Va. Code § 11-12-1, *et seq.*; 2) It is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended; and 3) It annually receives more than one half of its “support” from any combination of gifts, grants, direct or indirect charitable contributions or membership fees.

2. For purposes of W. Va. Code § 11-15-9(a)(6)(C), “support” includes, but is not limited to, those items listed in W. Va. Code § 11-15-9(a)(6)(F)(I)-(VI).

3. For purposes of W. Va. Code § 11-15-9(a)(6)(F)(II), “gross receipts from fund raisers” includes, but is not limited to: 1) Receipts from admissions in any activity which is not an unrelated trade or business; 2) Receipts from sales of merchandise in any activity which is not an unrelated trade or business; 3) Receipts from the performance of services in any activity which is not an unrelated trade or business; and 4) Receipts from furnishing of facilities in any activity which is not an unrelated trade or business.

4. The Petitioner’s receipts from the operation of its hospital and related facilities, including its receipts from admissions, sales of merchandise, the performance of services and the furnishing of its facilities, are not receipts from an unrelated trade or business. Therefore, for purposes of W. Va. Code § 11-15-9(a)(6)(F)(II), the Petitioner’s receipts from the operations of its hospital and related facilities are included in “gross receipts from fund raisers.”

5. W. Va. Code § 11-15-9(a)(6)(F)(II) is clear and unambiguous. Therefore, it is the duty of this Office to accept the plain meaning of the statute without resorting to rules of statutory construction or interpretation.

#### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund in the amount of \$ of consumers' sales and service tax and purchasers' use tax, for calendar year 2002, is hereby **DENIED**.