

# ARIZONA DEPARTMENT OF REVENUE

## ARIZONA TRANSACTION PRIVILEGE TAX RULING

### TPR 93-23

(Note: the footnote was added on 9/2/2020)

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:**

Determining the party liable for payment of the transaction privilege tax imposed on amusement machines under the amusement classification.

#### **APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 42-1310.13.A<sup>1</sup> 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

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<sup>1</sup> Since the publication of this ruling, the Amusement classification was renumbered as A.R.S. § 42- 5073. Some changes have been made to the amusement classification since this ruling was published, such as the removal of instruction from the classification. However, none of the changes would impact this ruling.

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.

In *Rowe International, Inc. v. Arizona Department of Revenue*, 165 Ariz. 122, 796 P.2d 924 (Ariz. App. 1990), the court held that the word "games" in the statute governing transaction privilege taxes included coin-operated video games, and was not limited to contests to which an admission fee was charged.

Arizona Administrative Code (A.A.C.) R15-5-403 provides:

Income from the operation of coin-operated and other machines which provide amusement is taxable under this classification. Examples of such devices include: record players, electronic games, pinball games, and billiard tables.

1. The taxable income from the operation is the gross amount received without deduction for commissions paid, rental cost for the equipment, or other expenses.
2. Liability for payment of the tax rests with the operator of the machines. For purposes of this rule, "operator" shall mean the individual having direct control of the funds generated by the amusement machines.

In *Kunes v. Samaritan Health Service*, 121 Ariz. 413, 590 P.2d 1359 (1979), the Supreme Court of Arizona held, in part, that the parties to a commercial transaction cannot change the essential nature of a tax imposed upon one of them by agreeing that the other shall be liable for payment of the tax.

## **DISCUSSION:**

*Rowe International* ruled that the imposition of Arizona transaction privilege tax on revenues derived from coin-operated video games is proper under

the amusement classification. The word "games" in the statute is not limited to contests to which an admission fee is charged, but includes coin-operated video games. The ruling that follows addresses the liability for payment of the transaction privilege tax imposed on the revenues of amusement machines.

**RULING:**

Income from the operation of coin-operated amusement machines is taxable under the amusement classification.

The owner of the amusement machines is generally liable for the tax. However, if there is an operator (an individual having "direct control of the funds" generated by the amusement machines) other than the owner, that individual shall be liable for the tax. An individual is deemed to have "direct control of the funds" generated if such individual has possession of the keys for the lock box on the machine. Therefore, the owner of the machine loses control of the funds generated when he/she relinquishes access to the lock box of the amusement machine.

Pursuant to *Kunes*, the fact that the amusement machine "operator" and a third party contractually agree that the third party shall pay the transaction privilege tax on the proceeds from the amusement machine does not relieve the operator from transaction privilege tax liability. The incidence of the tax falls on the operator only, notwithstanding any contractual agreement transferring liability for the tax payment from the operator to another.

The following are examples of different situations involving amusement machines:

1. Joe purchases an amusement machine and puts it in his business establishment. Joe retains the keys to the lock box, and empties the machine regularly. Joe is the operator and is liable for payment of tax under the amusement classification on the gross amount generated by the machine.
2. Joan agrees to grant Frank a license to place an

amusement machine, which he owns, in her business establishment. If Frank gives Joan possession of the keys to the lock box of the amusement machine, Joan is in control of the funds generated by the amusement machine, and is liable for payment of the tax. If Frank retains the keys to the lock box of the machine, he controls the funds generated by the amusement machine and is liable for payment of the tax.

3. Roger purchases an amusement machine and places it in his business establishment. Roger gives Ted, his employee, the responsibility of holding the keys to the machine's lock box. Ted is also responsible for emptying the money from the amusement machine. Since Ted is Roger's employee and is performing a duty within the scope of his employment, Ted is performing the duty on behalf of Roger. Therefore, Roger remains in control of the funds generated and is liable for payment of the tax.

4. Ernie owns amusement machines and places them in various business establishments, including one owned by Ralph. The revenues are collected from each machine on a regular route. Neither Ernie nor Ralph has direct control over the funds generated between the times of collection. At the time of collection, all revenue in each machine is counted by Ernie and Ralph and divided according to the percentage mutually agreed upon by both. If the individual collecting the revenues on a regular route is an employee of Ernie, then Ernie is in control of the funds generated and is liable for payment of the tax. If the individual collecting the revenues is an employee of Ralph, then Ralph is in control of the funds generated and is liable for payment of the tax.

Please note:

Pursuant to *Rowe International*, when the amusement machine is initially sold to an Arizona purchaser, the sale is subject to the Arizona transaction privilege tax because the machine is sold for use in an amusement activity and not for resale. If the Arizona purchaser initially purchased the

amusement machine from an out-of-state vendor, the purchase is subject to the Arizona use tax.

Harold Scott, Director

Signed April 16, 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.