

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-39

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:

Transaction privilege tax treatment of commercial rentals between affiliated parties.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1310.09 levies the transaction privilege tax under the commercial lease classification upon the business of leasing the use or occupancy of real property that is used by the lessee for commercial purposes.

A.R.S. § 42-1310.09.C.5 provides an exemption under the commercial lease classification for:

Leasing real property by a corporation to an affiliated corporation. For purposes of this paragraph, "affiliated corporation" means a corporation which owns or controls at least eighty percent of the lessor, is at least eighty percent owned or controlled by the lessor or is at least eighty percent owned or controlled by a corporation which also owns or controls at least eighty percent of the lessor. Ownership and control are determined by reference to the voting shares of a corporation.

DISCUSSION:

A.R.S. § 42-1310.09.C.5 provides an exemption from transaction privilege tax under the commercial lease classification for the lease of real property by a corporation to an affiliated corporation.

Affiliated corporation is defined as a corporation which owns or controls at least eighty percent of the lessor, is at least eighty percent owned or controlled by the lessor or is at least eighty percent owned or controlled by a corporation which also owns or controls at least eighty percent of the lessor. Ownership and control are determined by reference to the voting shares of a corporation.

This exemption requires common ownership from one corporation to another corporation. A corporation is an entity separate from its shareholders. *Modern Pioneers Insurance Co. v. Nandin*, 103 Ariz. 125, 437 P.2d 658 (1968). It follows that a corporation is also separate from other entities its shareholders may own.

Taxpayers are free to choose the form in which they do business, but in choosing a form they must accept its disadvantages as well as its advantages. *Higgins v. Smith*, 308 U.S. 473 (1940). There are no exemptions under the commercial lease classification which apply to affiliated parties other than corporations. Entities such as individuals, trusts, estates, partnerships, joint ventures, and associations are not considered to be corporations for purposes of this section. Therefore, the following examples would be taxable under the commercial lease classification:

A lease between a corporation and its individual shareholders.

A lease between a trust and a corporation, where both entities are owned by the same individuals.

A lease between a partnership and its wholly owned corporation.

For information regarding the applicability of the affiliated corporate exemption under the commercial lease classification for nonprofit corporations and subchapter S corporations see Arizona Transaction Privilege Tax Ruling TPR 93-9.

See TPR 93-7 regarding agricultural leases prior to 7/17/93. See A.R.S. § 42-1310.09.C.12 regarding agricultural leases after 7/17/93.

RULING:

Commercial real property rentals made between affiliated parties are taxable unless both parties are corporations and meet the eighty percent ownership or control requirement. (Please note exceptions for agricultural real property leases.)

Harold Scott, Director
Signed July 6, 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.