

PRIVATE TAXPAYER RULING LR94-015

November 7, 1994

The following private taxpayer ruling is in response to your request that the department rule that..., Inc. (...) is not subject to transaction privilege tax under the rental of personal property classification.

Statement of Facts:

The following is a restatement of the facts as presented in your letter. ...was incorporated in Minnesota in September of 1990. Since June of 1994,... has been operating an airplane, a Saberliner Model NA265-40, purchased in February of 1991 (the "Aircraft") and has been using that Aircraft to provide transportation and service. ... is considering entering into Aircraft Timesharing Agreements ("Timesharing Agreement") with various persons. Pursuant to the Timesharing Agreement, ... will provide users with the Aircraft and a flight crew, including pilots. The users will agree to pay ... all costs associated with the flight, including the cost, multiplied by 2, of any fuel, oil, lubricants and other additives; the travel expense of the aircraft crew, including food, lodging and ground transportation; and any hanger and tie down costs incurred when the Aircraft is away from its place of operation in Scottsdale, Arizona. ... will be required to carry liability and property damage insurance on the Aircraft and will have priority in the scheduling and use of the Aircraft. Pursuant to the agreement, ... will be able to "bump" a user from a scheduled flight at any time up to 48 hours before a user's scheduled flight.

Recap of Your Position:

The monies paid to ... under the Timesharing Agreement will not be subject to Arizona's transaction privilege tax under the rental of personal property classification. The rental of an airplane with a flight crew is not a rental of tangible personal property because when an operator is provided the fundamental elements of a lease — possession, command and/or control of the personal property are absent. When an operator is provided the customer is provided with a service rather than the lease of tangible personal property.

Applicable Statutory Provisions:

Arizona Revised Statutes (A.R.S.) 42-1310.11.A imposes transaction privilege tax on the business of renting or leasing tangible personal property. The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business.

Discussion:

The rental or lease of tangible personal property is subject to Arizona's transaction privilege tax under the rental of personal property classification. ... will be entering into "Timesharing Agreements" with

various persons. The timesharing agreements provide that ... will provide an aircraft with flight crew as provided in FAA Reg. 91.501(c)(1). (Timesharing Agreement, paragraph 5.)

The Federal Aviation Administration defines an aircraft time sharing agreement as "an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section." (FAA Reg. 91.505(c)(1).)

The principal characteristic of a rental or lease is the giving up of possession to the lessee so that he, as opposed to the lessor, exercises control over and uses the leased or rented property. The rental of equipment with an operator is not "renting" within the meaning of the transaction privilege tax. *City of Phoenix v. Bentley Dille Gradall Rentals, Inc.*, 136 Ariz. 289, 665 P.2d 1001 (App. 1983).

Conclusion and Ruling:

On the basis of the information provided, we rule that in regard to the Aircraft Timesharing Agreement, ... is not engaged in the business of leasing or renting tangible personal property. Therefore, ... is not subject to transaction privilege tax under the rental of tangible personal property classification on the gross income derived from the time sharing agreements. The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the request for a private taxpayer ruling and related documents dated September 19, 1994.

This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department and is valid for a period of four years from the date of issuance except as set out herein. This determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.