

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 95-2

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.

(Note: On 10/14/2020 the statute references were updated to use their current numbers. See footnotes for details. No substantive changes were made.)

ISSUE:

Definition of publication.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5065¹ states that the publication classification is comprised of the business of publishing newspapers, magazines or other periodicals and publications if published in this state.

A.R.S. § 42-5065(A)(1)² provides that the publication classification does not include manufacturing or publishing books.

Arizona Administrative Code (A.A.C.) R15-5-1303 provides that:

* * *

¹ This ruling originally referenced A.R.S. § 42-1310.05 which was renumbered to A.R.S. § 42-5065.

² This ruling originally referenced A.R.S. § 42-1310.05.A.1 which was renumbered to A.R.S. § 42-5065(A)(1).

B. The term "publication" includes books, newspapers, magazines, music, periodicals, and any other literary work.

C. Effective 9/12/75, the term "publication" shall specifically exclude books. Sales of books directly to a final consumer, however, are taxable under the retail classification.

DISCUSSION:

A.R.S. § 42-5065³ levies the transaction privilege tax on the business of publishing newspapers, magazines or other periodicals and publications in this state. Newspapers, magazines, sheet music, periodicals, and any other literary work are included within the definition of "publication." However, the publication classification does not include the manufacturing or publishing of books.

The definition of publication was at issue in the 1985 Court of Appeals case of *Multiple Listing Service of Tucson v. City of Tucson*, 148 Ariz. 278, 714 P.2d 448 (App. 1985). The City of Tucson ordinance addressed by the court is similar to the provision in A.R.S. § 42-5065⁴. The court determined that "publication" means a communication made available to the general public.

The case involved a business which provided loose-leaf real estate listings to member real estate brokers. The multiple listing service limited its membership to real estate brokers. The service distributed the real estate listings only to its members and the members were required to keep the listings confidential. The court held that these factors indicated an intent to limit the distribution of the listings and to not make the listings available to the general public. Because the listings were not made available to the general public, the publications were not subject to tax.

The holding in *Multiple Listing Service* is very specific and applies to the definition of publication for state transaction privilege tax purposes.

³ See footnote number 1.

⁴ See footnote number 1.

Therefore, a publication targeted to a specialized audience, but which is available to anyone who requests and pays for the publication, is a taxable publication. Further, a publication is available to the general public and taxable under the publication classification when the publisher does not limit subscription to certain individuals or the use of the publication by those subscribers.

RULING:

As used in A.R.S. § 42-5065⁵, the term "publication" means a communication available to the general public and includes newspapers, magazines, sheet music, periodicals and other literary works made available to the general public.

A publication is available to the general public and taxable when its readership is not limited by any special qualifications. The publication need only be available to anyone without restriction, even though actual subscribers may constitute a certain segment of society.

A publication is not subject to tax when its circulation is limited and not made available to the general public. A publication is not available to the general public if a publication's readership is required to meet specialized qualifications, such as confidentiality requirements or membership in an organization. The publishing or manufacturing of books is not subject to tax under the publication classification regardless of the whether the book is intended for the general public. However, the gross proceeds from the sale of books is taxable under the retail classification.

Examples:

A magazine is directed to dog owners. Anyone may subscribe to the magazine. The magazine is available to the general public; therefore, it is a taxable publication.

For a fee, an electronics industry consulting business provides a newsletter which is available only to clients of the business. The clients are not required to meet any special qualifications

⁵ See footnote number 1.

or confidentiality restrictions and anyone with interest and money may obtain the newsletter. Although the newsletter is targeted to a specialized industry and only available to clients of the business, the newsletter is a taxable publication available to the general public.

A real estate multiple listing service provides a booklet of real estate listings to its members. Membership in the service is limited to real estate brokers who are required to keep the listings confidential and are subject to sanctions for violations of confidentiality. The booklet of real estate listings is not available to the general public because the membership qualifications and confidentiality requirements limit its circulation. Under these circumstances, the booklets of real estate listings are not publications subject to tax under the publication classification.

Harold Scott, Director

Signed April 11, 1995

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.