

PRIVATE TAXPAYER RULING LR96-005

February 29, 1996

The following private taxpayer ruling is in response to your letter dated November 2, 1995, and follow-up letter dated December 12, 1995. In your request you ask for the transaction privilege tax implications of the ... arranging for third party vendors to provide goods and services for its customers.

The following is a restatement of the facts in your letters.

Statement of Facts:

The ... is a full service resort operation and provides many services and activities in addition to those covered under the transient lodging classification. In addition to the transient lodging services and other taxable activities, the ... arranges for third party vendors to provide goods and services to its guests. The arrangements may be made for regular guests of the resort or they may be made to a convention or group which is utilizing the services of the resort.

All these services and arrangements are provided through ..., a division of the All arrangements are made pursuant to the customer's instructions. Examples of the goods and services ... arranges for third party vendors to provide to its guests include:

Hot air balloon rides
Costume rental
Restaurant reservations
Golf course reservations
Caterers
Gift or award purchases
Tuxedo rental
Rental of other personality
Alternative lodging
Travel or tour packages
Tickets for events

These arrangements are typically made without the need for a written contract. Regardless of the written contractual arrangements, ... is contractually bound with the third party vendor. Examples of arrangements provided by ...:

1. ... arranges for jeep tours provided through various tour operators. The jeep tour operator provides transportation and various beverages. The operator provides the transportation and various beverages. The operator invoices ... for the cost of the activity which includes gratuity and tax.
2. ... arranges for a group to attend an event at a restaurant. The restaurant provides food and beverages to the group. The restaurant invoices ... for the cost

of the activity which includes gratuity and tax.

After arranging the activity, ... receives the invoice from the third party vendor and pays the invoice. If the goods or services are taxable, the invoice includes a charge for transaction privilege tax. ... charges its customers by one of two methods.

1. ... invoices the charges for the services on the bill of a customer. There is no mark-up of cost, only a pass-through of the costs. ... may, but not always, receive a commission from the third party vendor.

2. ... includes a charge for the services provided by the third party vendor. Additionally, a mark-up charge is included to reimburse ... for the service of making the arrangements. The charge to the customer is not separately delineated between the cost of the service and the mark-up.

Issues:

1. What are the transaction privilege tax implications if ... arranges for services for resort guests or groups, a third party vendor invoices ... and ... passes the charge on to its guest or group?

2. What are the transaction privilege tax implications if ... arranges for services for resort guests or groups, a third party vendor invoices ... and ... passes the charge, with a markup, on to its guest or group?

Your Position:

The activities between ... and its guests relate to the service of arranging the purchase of goods and services from third party vendors. These activities display the characteristics of personal services and place ... in a role similar to that of an agent for the guest. ... is not acting in its capacity of providing transient lodging. It merely facilitates the exchange of services or goods between third party vendors and guests. This professional or personal service is not subject to transaction privilege tax per Arizona Revised Statutes (A.R.S.) § 42-1310.01.A.1.

Further, when ... arranges for third party vendors to provide goods and services, it is not engaged in a taxable "business" activity. Business only includes those activities or acts engaged in for the object of gain, benefit or advantage. A.R.S. § 42-1301.1. By just introducing the third party vendor and the guest, ... does not become engaged in the business activity provided by the third party vendor. The tax remains upon the person conducting the business and not upon the sale. *Combustion Engineering, Inc. v. Arizona State Tax Commission*, 91 Ariz. 253, 371 P.2d 879 (1962). The person conducting the activity, and the person which is taxable, is the third party vendor. ... merely facilitates the business transaction between the

third party vendor and the guest.

... is only taxable under the transient lodging or other appropriate classifications for the gross proceeds of sales or gross income derived from the transient lodging business or other taxable activities provided to guests. A.R.S. § 42-1310.10.C; Arizona Transaction Privilege Tax Ruling TPR 92-3. ... is not providing a taxable transient lodging service or other taxable activity when it facilitates the exchange of goods or services.

The sale of the goods or services provided by the third party vendor to guests is properly subject to transaction privilege tax only once. For example, when ... arranges for a restaurant to serve guests, the restaurant is properly subject to transaction privilege tax under the restaurant classification. However, if ... is also subject to the tax on this transaction, the same property and services would be subject to taxation twice. To impose a tax on ... would be to improperly double tax, because it is on provision of the exact same good or service, for the same purpose, for the same taxing period, by the same taxing authority. *New Cornelia Cooperative Mercantile Co. v. Arizona State Tax Commission*, 23 Ariz. App. 324, 533 P.2d 84 (1974); *Miami Copper Co. v. State Tax Commission*, 121 Ariz. 150, 589 P.2d 24 (App. 1978).

As part of the charge from the third part vendor, ... may receive a commission directly from the third party vendor. In these circumstances, the arrangements provided by ... are similar to arrangements provided by a travel agency. ... receives a commission for arranging travel or other services for guests. This service and the commission received have been deemed to be exempt from transaction privilege tax. *Opinion of the Attorney General*, November 30, 1937. Thus, neither the charge passed on to the resort guest or group nor the commission received by ... is subject to transaction privilege tax. The same argument applies if ... includes a markup on the goods and services provided by third part vendors.

Applicable Law:

A.R.S. § 42-1310.10.A states that "[T]he transient lodging classification is comprised of the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy."

A.R.S. § 42-1310.10.C states that "[T]he tax base for the transient lodging classification is the gross proceeds of sales or gross income derived from the business, except that the tax base does not include any amount attributable to the recreational vehicle spaces surcharge under § 48-4235."

A.R.S. § 42-1301.1 provides that business "includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales."

In *Miami Copper Company v. State Tax Comm.*, 121 Ariz. 150, 589 P.2d 24 (1978), the Arizona Court of Appeals noted that "[i]n construing the intent of the privilege tax, 'business' is to be given its ordinary definition. *Arizona State Tax Commission v. First National Bank Building Corp.*, 5 Ariz. App. 594, 429 P.2d 481 (1967). If an activity is intended to benefit an organization, it is properly considered the 'business' of the organization. See § 42-1301, supra; *O'Neil v. United Producers and Consumers Cooperative*, 7 Ariz 295, 113 P.2d 645 (1941). See also, e.g., *State Tax Commission v. Ranchers Exploration and Development Corp.*, 22 Ariz. App. 480, 528 P.2d 866 (1975). Taxpayer's business includes, but is not limited to, mining. Its business extends to services required to prepare its mineral products for their intended sale, even if performed by others under contract. (Emphasis added.)

In addition, in *Miami Copper* the taxpayer argued that the smelting activity it contracted out to Inspiration and Phelps Dodge is subject to transaction privilege tax, to impose a tax on taxpayer including the value added by the smelting results in double taxation. The court stated "[w]e do not agree. Double taxation occurs 'when the same property or person is taxed twice for the same purpose for the same taxing period by the same taxing authority...' *Milwaukee Motor Transportation Co. v. Commissioner of Taxation*, 292 Minn. 66, 193 N.W.2d 605, 612 (1971). In the case before us, different 'persons' are being taxed for different privileges. Inspiration and Phelps Dodge are taxed for the privilege of operating a smelter within the state, while taxpayer is taxed for the privilege of mining and preparing for sale the products it mines. *Cf. Boise Bowling Center v. State*, 93 Idaho 367, 461 P.2d 262 (1969)."

In *Trico Electric Cooperative v. State Tax Commission*, 79 Ariz. 293, 288 P.2d 782 (1955), the Supreme Court of Arizona held that "[i]f activities are incidental in the sense that they are inseparable from the principal business and interwoven in the operation thereof to the extent that they are in effect an essential part of the major business, they cannot be taxed as a separate business."

Discussion:

Persons engaged in the transient lodging business, as set forth in A.R.S. § 42-1310.10, derive income from a variety of services and activities offered to their guests in the normal course of operations. It is evident from A.R.S. 42-1310.10 and the above cited cases that the transaction privilege tax is levied upon more than simply the rental of rooms.

The ... is a resort hotel. The business of operating, for the occupancy of transients, a resort hotel is taxable under A.R.S. § 42-1310.10. The tax base is the gross proceeds of sales or

gross income derived from the business of operating the resort hotel. Income from services and activities that are directly related to and interwoven parts of the business of running a resort hotel are taxable under the transient lodging classification. Income from activities that are not interwoven with the resort hotel will be subject to tax, if at all, under the applicable classification. However, the arrangement of services for resort guests or groups from third party vendors is a regular activity that is interwoven with the business of running a resort hotel. This is supported by Arizona Transaction Privilege Tax Ruling TPR 92-3 that states "when various services and activities are provided or offered at a taxable lodging operation and are included in the lodging charges, rather than the guest paying the service or activity provider directly, the income from those various services and activities is taxable under the transient lodging classification."

The ... does not become engaged in the business activity of the third party vendor when it arranges for a service to be provided to its guests. However, the ... is taxable under the transient lodging classification on its gross receipts from operating a resort hotel, including the receipts from arranging for services for its guests. This does not create double taxation because different "persons" are being taxed for different privileges. The ... is being taxed for the privilege of operating a resort in this state and the third party is being taxed, if at all, for the privilege of operating their business in this state.

Conclusion and Ruling:

The following ruling is given based on the facts presented in your request.

The department rules that: when ... arranges for services for resort guests or groups; a third party vendor invoices ...; and ... passes the charge on to its guest or group; the amount collected by ... from the guest is subject to transaction privilege tax under the transient lodging classification.

The department also rules that: when ... arranges for services for resort guests or groups; a third party vendor invoices ...; and ... passes the charge, with a markup, on to its guest or group; the amount collected by ... from the guest is subject to transaction privilege tax under the transient lodging classification.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your letter dated November 2, 1995 and follow-up letter dated December 12, 1995.

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.