

**PRIVATE TAXPAYER RULING LR02-015**

September 12, 2002

The following private taxpayer ruling is in response to your letter dated July 31, 2002, and additional information received on August 13, 2002. You have requested a ruling on behalf of . . . ("Taxpayer") regarding the Arizona transaction privilege tax ("transaction privilege tax") and . . . hotel tax ("hotel tax") implications on the re-rental of hotel rooms.

**Statement of Facts:**

Taxpayer is engaged in the business of providing luxury accommodations. To date, Taxpayer has been paying transaction privilege tax and hotel tax on the gross receipts from its business under the transient lodging classification; however, Taxpayer neither owns nor operates hotels. Rather, Taxpayer negotiates with a hotel to rent rooms at a discount. Taxpayer then re-rents the rooms to its customers based on cost plus a mark-up pursuant to a "Rental Agreement".

Consequently when a customer of Taxpayer arrives at a hotel, the customer signs in as a guest but pays no money, because Taxpayer is responsible for paying the hotel. The customer does pay the hotel for such incidental expenses such as room service fees and movie charges.

**Issue:**

Whether the business activity of Taxpayer is subject to transaction privilege tax and hotel tax.

**Your Position:**

It is your position that the business activity of Taxpayer does not fall within the scope of the transient lodging classification or any other transaction privilege tax classification.

**Applicable Law:**

Arizona Revised Statutes ("A.R.S.") § 5-804 levies a hotel tax at the rate of 1% in the County of Maricopa on the gross proceeds of sales or gross income derived from the business,

including both lodging rental income and income from all activities directly related to and interwoven with the lodging business.

A.R.S. § 5-840(B) establishes that the Arizona Department of Revenue is responsible for collecting the hotel tax.

A.R.S. § 42-5001(1) defines "business" as 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.

A.R.S. § 42-5001(8) defines "person" as "any individual, firm, partnership, joint venture, association, corporation, estate or trust, this state, any county, city, town, district other than a school district, or other political subdivision and any other group or combination acting as a unit...."

A.R.S. § 42-5061(A)(1) provides that professional or personal services are not subject to transaction privilege tax.

A.R.S. § 42-5070 *Transient lodging classification* imposes a transaction privilege tax on businesses that operate establishments that provide lodging to transients.

A.R.S. § 42-5070(A) defines "transient" as any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than 30 consecutive days.

Arizona Administrative Code ("A.A.C.") R15-5-1001(A) states that the transient lodging classification does not apply to occupancies in excess of 30 consecutive days.

### Discussion:

Arizona's transaction privilege tax is a tax on the privilege of conducting business in the State of Arizona. It is a tax on the seller, not on the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax. The Arizona transaction privilege tax is imposed under 17 separate business classifications, including retail sales of tangible personal property. Additionally, county excise taxes "piggyback" the imposition of the state's transaction privilege tax. All sales that are subject to the transaction privilege tax are also subject to applicable county excise taxes.

The transient lodging classification is comprised of the business of operating, for occupancy by transients, a hotel, motel or other similar establishment. The term "transient" means any person who either at his own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or any other basis for less than

30 consecutive days. A.R.S. § 42-5070(A); A.A.C. R15-5-1001(A). In addition, the tax base includes the gross proceeds of sales or gross income derived from the business, including both lodging rental income and income from all activities directly related to and interwoven with the lodging business. A.R.S. § 42-5070(C).

Based on the information provided in your request, Taxpayer is not in the business of operating a hotel. The word operating is not defined by statute; therefore, when construing a tax statute, words must be given their "plain and ordinary meaning." Board of Equalization v. Jackson Hole Ski Corp., 737 P.2d 350, 354 (Wyo. 1987). In determining the ordinary meaning of a word, courts may refer to an established and widely used dictionary. State v. Mahaney, 975 P.2d 156, 158 (Ariz. C. App. 1999) *citing* State v. Wise, 137 Ariz. 468, 470, 671 P.2d 909, 911 (1983). "Operate" is defined as "to cause to occur: bring about by or as if by the exertion of positive effort or influence; to manage and put or keep in operation whether with personal effort or not...." Webster's Third New International Dictionary, 1580-1581 (Unabridged, 1993).

Accordingly, it is the department's opinion that the taxes are imposed on the person actually conducting the taxable activity. "Person" is defined as "any individual, firm, partnership, joint venture, association, corporation, estate or trust, this state, any county, city, town, district other than a school district, or other political subdivision and any other group or combination acting as a unit...." Therefore, the transaction privilege tax is imposed directly on the entity operating the transient lodging business. A.A.C. R15-5-2002. Consequently, the hotels are responsible for transaction privilege tax on gross receipts received from Taxpayer for the cost of accommodations. However, the entity operating the transient lodging business may pass the burden of the tax on to Taxpayer.

The issue in this case, then, is whether the gross receipts received by Taxpayer for the mark-up are subject to transaction privilege tax. The mark-up is the amount charged in addition to Taxpayer's negotiated cost of the room and constitutes a fee for services provided by Taxpayer. Pursuant to A.R.S. § 42-5061(A)(1) a professional or personal service is not subject to tax. As a result, Taxpayer's business activity is not subject to tax under any of the business classifications.

### Conclusion and Ruling:

The following ruling is based on the facts presented in your request. The department rules that the re-rental of hotel rooms by a business that does not operate a transient lodging facility does not fall within the scope of the transient lodging classification or any other transaction privilege tax classification and is therefore not subject to transaction privilege tax or hotel tax.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your letter dated July 31, 2002, and subsequent information received August 12, 2002.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations are 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.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.