



Janet Napolitano
Governor

Gale Garriott
Director

PRIVATE TAXPAYER RULING LR05-009

September 21, 2005

This private taxpayer ruling is in response to your letter dated April 25, 2005, as supplemented by your letters dated June 9, June 23, and June 27, 2005, in which you requested a private taxpayer ruling on behalf of . . . ("Bank"). Specifically, you requested that the Department rule that proceeds from providing safe deposit box services are not subject to Arizona's transaction privilege tax. Pursuant to Arizona Revised Statutes ("A.R.S.") § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

Statement of Facts:

Below is a restatement of the facts as provided in your April 25, 2005 request made on behalf of . . . Bank:

Safe Deposit Box services, as they are referred to in our . . . Bank Consumer and Business Account Agreements, are provided to customers who enter into a "Safe Deposit Bank Lease Agreement" ("Agreement") with . . . Bank. The Agreement is subject to the terms and conditions of . . . Bank Safe Deposit Box services as enumerated in . . . Bank Consumer and Business Account Agreements. . . .

In exchange for a fee, . . . Bank provides Safe Deposit Box services to some of its customers around the state. . . . Bank charges fees for Safe Deposit Box services. . . . Bank uses safe deposit boxes to provide Safe Deposit Box services to its customers.

Security and safekeeping services, rather than the storage space afforded by a safe deposit box, are the most valuable components, and the greatest expense for . . . Bank, of providing its Safe Deposit Box services. Some of the security and safekeeping services that . . . Bank provides as part of its Safe Deposit Box services include:

1. . . . Bank locks safe deposit boxes inside vaults within its branch offices;

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2. Sophisticated security equipment and, sometimes, security personnel protect . . . Bank branch offices;
3. . . . Bank branch offices have fire alarms and sprinkler systems to protect valuables stored within the branch office from fire damage; and
4. . . . Bank employees must escort customers into the vault and use a . . . Bank key, in conjunction with the customer's key, to open safe deposit boxes.

. . . Bank terms and conditions for providing Safe Deposit Box services restrict its customers from exercising exclusive possession and control over the safe deposit boxes.

For example:

- Customers may only access the boxes during banking hours;
- Customers may not enter the vault where boxes are located unless accompanied by a . . . Bank employee;
- Customers may not remove the boxes from . . . Bank premises;
- Customers may not place certain types of property in the boxes;
- . . . Bank may terminate the Safe Deposit Box Service Agreement at any time;
- Under certain circumstances, . . . Bank may prevent its customers from accessing the boxes or permit others to access the boxes;
- . . . Bank may substitute another box or relocate the box at its sole discretion; and
- The boxes are organized in freestanding clusters stacked on top of one another within . . . Bank vaults.

. . . Bank's Position:

. . . Bank submits that proceeds from providing safe deposit box services are not subject to the Arizona transaction privilege tax because they are proceeds from a nontaxable service rather than from leasing, renting, or licensing the use of property.

Conclusion and Ruling:

The following ruling is given based on the contractual terms provided in copies of . . . Bank's "Safe Deposit Box Lease Agreement" ("Agreement") that was provided to the Department and incorporated by reference in your request.

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The Department rules that, based on the terms of the Agreement, . . . Bank's gross receipts from providing safe deposit box services are not subject to Arizona transaction privilege tax.

The conclusions of this private taxpayer ruling do not extend beyond the facts as presented in your letters dated April 25, June 9, June 23, and June 27, 2005.

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 applicable only 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.