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Governor

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Director

PRIVATE TAXPAYER RULING LR05-013

December 20, 2005

This private taxpayer ruling is in response to your letter dated January 17, 2005, as updated on March 7, 2005, in which you request the Arizona Department of Revenue ("Department"), to rule on behalf of your client, . . . ("Taxpayer"), on the applicability of transaction privilege tax to fees charged for . . . time, food and beverages, and certain other tangible personal property. 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

Your correspondence of January 17, 2005 and March 7, 2005 provide in part the following information relating to Taxpayer's business:

[Taxpayer] is in the business of providing an indoor facility and planning services to hold

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Included in the . . . price is a specified length of supervised . . . time on . . . equipment in indoor . . . arenas and use of a . . . room where [Taxpayer's] employees serve the . . . food and drinks. Music is provided in the arenas. . . . , paper plates, napkins, cups and eating utensils are also provided as part of the . . . price. For additional, separately stated fees, pizza and beverages will be served, . . . to the . . . attendees. Other miscellaneous retail items are also sold such as . . . , cameras and film.

* * *

The [T]axpayer does not have contracts for . . . programs.

* * *

The [T]axpayer does not have contracts for . . . non-program arrangements with its customers.

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The [T]axpayer does not use an exemption certificate to purchase tangible personal property provided in the . . . program arrangements such as cups, napkins, plates, utensils, etc. [Taxpayer] purchase[s] the items at [retail] and pay[s] sales tax on them at the time of purchase.

* * *

The [T]axpayer does use an exemption certificate for some of the items purchased for resale such as pizza and soda. For cameras, film and other low volume miscellaneous items, they pay sales tax at the time of purchase, rather than using an exemption certificate, and then charge tax at the time of sale.

Issues

1. Are the fees charged for admission to and use of the . . . arena and . . . rooms subject to transaction privilege tax?
2. Are additional amounts charged to Taxpayer's customers for pizza, beverages, . . . , cameras and film subject to transaction privilege tax?

Your Position

Taxpayer's position as stated in your letter of January 17, 2005:

We believe the fee charged for the . . . time and use of the . . . room should not be subject to transaction privilege tax as it is a service activity under the retail classification and is exempt as outlined under A.R.S. § 42-5061(A)(2). The invitations, paper plates, napkins, cups, and eating utensils are exempt as inconsequential elements of the service provided as stated in A.R.S. § 42-5061(A)(1).¹ The amount charged for food and beverages will be subject to transaction privilege tax under the restaurant classification in accordance with A.R.S. § 42-5074. The . . . other miscellaneous retail items

¹ Based on information provided in your request and as part of its . . . price, Taxpayer provides printed invitations, paper plates, napkins, cups and eating utensils for each Taxpayer opines that it should be able to purchase these items tax-exempt. 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. Because the Department may issue private taxpayer rulings to *taxpayers* only, the Department is unable to give the purchaser a ruling on the transaction privilege tax obligations of the seller of the purchased printed invitations, paper plates, napkins, cups and eating utensils. However, as a point of information only, the seller would be required to pay transaction privilege tax.

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will be subject to transaction privilege tax under the retail classification in accordance with A.R.S. § 42-5061.

Conclusion and Ruling

Issue 1

A.R.S. § 42-5073 imposes the transaction privilege tax on the business of charging admission or user fees for exhibition, amusement or entertainment. Taxpayer is engaged in the business of operating or conducting an amusement. Taxpayer's admission fees for . . . use of the indoor . . . arena, . . . or . . . rooms including charges for . . . plans are therefore subject to transaction privilege tax under the amusement classification. A.R.S. § 42-5073(A).

Issue 2

In addition to its admission fees, Taxpayer separately charges for food, beverages, . . . , cameras and film.

It is possible for a taxpayer to be engaged in two or more lines of business. The determination of whether or not Taxpayer engages in more than one line of business activity depends on the facts and circumstances surrounding Taxpayer's business, and is so fact intensive the Department is unable to rule on that issue. Pursuant to Arizona General Tax Procedure GTP 01-3, the Department does not issue private taxpayer rulings if the problem or question involves a fact intensive issue.

Whether the Taxpayer has separate lines of business in addition to the amusement classification would depend upon the relevant facts and circumstances pursuant to the three-part test established by the Arizona Supreme Court in *State Tax Commission v. Holmes & Narver, Inc.*, 113 Ariz. 165, 548 P.2d 1162 (1976). The three-part test in *Holmes & Narver* provides that where it can be readily ascertained without substantial difficulty which portion of the business is for non-taxable professional services (design and engineering), the amounts in relation to the company's total taxable Arizona business are not inconsequential, and those services cannot be said to be incidental to the contracting business, the professional services are not merged for tax purposes into the taxable contracting business and are not subject to taxation.

If the relevant facts and circumstances fail to satisfy the three-prong test under *Holmes & Narver*, all gross proceeds or income would be subject to transaction privilege tax under the amusement classification.

If the relevant facts and circumstances satisfy the three-prong test under *Holmes & Narver*, so that the Taxpayer has two or more separate lines of business, the gross proceeds or

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income would be subject to tax under the appropriate transaction privilege tax classification.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated January 17 and March 7, 2005 respectively.

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.