



PRIVATE TAXPAYER RULING LR11-007

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Governor

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Director

May 11, 2011

The Department issues this private taxpayer ruling in response to the ruling request on behalf of your client ("Taxpayer") dated September 28, 2010. You request the Department to rule as to the applicability of Arizona transaction privilege tax to Taxpayer's income derived from sales of a direct mail advertising program to Taxpayer's customers in Arizona. You specifically question the tax base for this transaction, as Taxpayer provides separate "discount coupon credit" invoices to its customers.

While your private taxpayer ruling request indicates that the direct mail advertising program is an ongoing business activity, Arizona Revised Statutes (A.R.S.) § 42-2001(I) specifies:

A private taxpayer ruling or taxpayer information ruling may be issued only if no tax has accrued with respect to the transactions, events or facts contained in the request. The department may issue a private taxpayer ruling or taxpayer information ruling addressing a taxpayer's ongoing business activities, except that the ruling applies only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.

Statement of Facts:

The following facts are excerpted from your private taxpayer ruling request dated September 28, 2010:

[Taxpayer] purchases a direct mail advertising program from a third-party vendor . . . and re-sells it as the [Taxpayer's Program] to [Taxpayer's customers] . . . in Arizona that choose to participate in the program. The end products of this program are service reminders and service coupon mailers, direct mailed by [the third-party vendor] to [Taxpayer's customer's current and prospective clients]. The objective of the mailers is to promote the [Taxpayer's customer's] business.

. . . The total amount of program fees billed to [Taxpayer's] customer represents the combined "billed costs" . . . of the different parts of the program utilized for that customer during the month (for example: service reminder mailers, coupon mailers, mailer customization setup costs). For purposes of this inquiry, this will also be referred to as the "list price." The arrangement, which applies to all [of Taxpayer's customers], is that the sales price will be discounted 50% from the "list price." . . . [W]ith the (occasional) exception of "optional data processing fees," the program fees

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are billed by [Taxpayer] to [its] customers at 50% of the total cost rate (i.e. 50% of the "list price"). The terms also indicate that taxes are billed at 100% (meaning sales tax is charged on the "list price"). . . .

Every month [Taxpayer] bills each of the participating customers for their monthly . . . program fees. As a way to continuously remind [Taxpayer's customers] that [Taxpayer] is selling the . . . Program to them at the (50% off) discounted sales price, the monthly billing is done in two invoices. The first invoice is for 100% of the "program fees," which is the established "list price." The second invoice is a "discount coupon credit" for 50% of the "program fees" that are billed on the corresponding invoice. The "discount coupon credit" is absorbed entirely by [Taxpayer], meaning [Taxpayer] does not receive reimbursement for the coupon from a third-party. The invoices are generated on the same date, typically are two consecutive invoice numbers, and contain the same description. The invoice and its corresponding discount coupon credit are delivered to the [Taxpayer's] customer together, and together they represent the discounted billing of the monthly program activity for [Taxpayer's] customer. The following example is provided for purposes of this inquiry:

Customer No.	100450	100450
Invoice No.	101	102
Invoice Date	12/1/09	12/1/09
Invoice Description	NOV [Program]	NOV [Program]
Invoice Amount before Tax	\$100.00	(\$50.00)
(Discounted Sales Price = \$50.00)		
Tax Rate	8.8%	8.8%
Tax Amount	\$8.80	(\$4.40)

In addition to the "optional data processing fees" noted above, the "[Program] Enrollment Form" (provided as an attachment to your private taxpayer ruling request) indicates that [the third-party vendor] may also charge [Taxpayer additional] "set-up fees"

Issue:

What is the tax base under the retail classification for [Taxpayer's] sales of its direct mail advertising program . . . to [its customers].

Your Position:

As stated on Page 3 of your private taxpayer ruling request dated September 28, 2010:

Our opinion is that the taxable sales price is \$50.00. The definition of "sales price" excludes discounts, including coupons that are not reimbursed by a third party, and

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as such these coupons are considered a reduction of the sales price. The credits issued simultaneously by [Taxpayer] with their [sic] corresponding invoices represent such coupons for which the retailer [Taxpayer] does not have recourse to their supplier for reimbursement, and therefore should be deducted in arriving at the taxable discounted net sales price. ...

Applicable Law / Authority:

A.R.S. § 42-5061 *Retail classification*, imposes the transaction privilege tax upon persons engaged in the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. All sales of tangible personal property are subject to the transaction privilege tax under the retail classification unless specifically exempted or excluded by statute.

A.R.S. § 42-5001(13) provides that a "sale" includes any transfer of title or possession of tangible personal property for a consideration in any manner or by any means.

A.R.S. § 42-5001(5) provides the following definition:

"Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but cash discounts allowed and taken on sales are not included as gross income.

A.R.S. § 42-5001(7) provides the following definition:

"Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense. Gross receipts do not include cash discounts allowed and taken nor the sale price of property returned by customers if the full sale price is refunded either in cash or by credit.

Arizona Administrative Code (A.A.C.) R15-5-129. *Discounts, Refunds, and Coupon Redemption*, in pertinent part, states:

...

D. Coupons issued by a retailer and later redeemed by the retailer as a discount on the price of merchandise sold by him are considered a reduction of the selling price. In such cases the net selling price is subject to tax.

(Emphasis added)

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A.A.C. rule R15-5-1709 *Coupon Redemption*, states:

A restaurant that accepts coupons is subject to transaction privilege tax on the full sales price of the food or beverage before the coupon value is deducted if the restaurant receives advertising, services, or products in exchange for providing the discounts.

A.R.S. § 42-5002(A)(1), in pertinent part, states that “[a] person who imposes an added charge to cover the tax levied by this article or which is identified as being imposed to cover transaction privilege tax shall not remit less than the amount so collected to the department.”

In *State Tax Commission v. Ryan-Evans Drugs Stores*, 89 Ariz. 18, 357 P.2d 607, (1960), the Arizona Supreme Court found that trading stamps provided to customers and redeemed by a third party were not “cash discounts.” In its holding, the Court provided that the legislature has limited discount exclusions to those of cash only, meaning an actual cash reduction in price for prompt payment, but also stated:

. . . It is an inescapable conclusion that the Legislature did not intend to tax the retailer on money he did not receive; but on the other hand, the Legislature did not intend to allow the retailer to pay tax on something less than that which he did receive. . . .

In *Carriage Trade Management Corporation v. Arizona State Tax Commission*, 27 Ariz.App. 584, 557 P.2d 183, (1976), the Arizona Court of Appeals found that a company that sold restaurant discount booklets was engaged in advertising (which was taxable at that time), but noted that the restaurant that was redeeming the coupon was taxable on the total sales price including the coupon, because the restaurant was receiving the value of advertising provided by the restaurant discount booklet.

Discussion:

Taxpayer is an Arizona retailer that purchases a direct mail program from a third party vendor and resells the program to [its customers]. The program provides service reminders and service coupon mailers that are sent directly to [Taxpayer’s customers’] current and prospective [clients]. Taxpayer’s gross proceeds of sales or gross income derived from the business of selling the direct mail program to [its customers], including optional data processing fees and any set-up fees, is subject to the transaction privilege tax imposed under the retail classification.

Taxpayer provides a separate “discount coupon credit” invoice to each [customer] that purchases the direct mail program. Taxpayer is not monetarily reimbursed by any third party for the amount of the discount coupon credit, and does not derive any value from any other party in relation to the discount provided to [its customer].

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However, A.A.C. R15-5-129 references the “net selling price” that is subject to tax. For both cash discounts and redemptions of coupons, the amount of the discount or coupon is clearly shown on the purchaser’s invoice and/or receipt, resulting in a stated “net selling price” that is subject to tax. A separate “discount coupon credit” invoice issued to a [customer] for a previously invoiced transaction does not show the “net selling price” that is due from the customer.

The amount of the discount coupon credit may qualify as a nontaxable coupon that is issued and redeemed by Taxpayer pursuant to A.A.C. R15-5-129. If a single invoice does not show the sales price, the discount coupon credit amount, the net selling price, the tax computed (unless the tax is factored), and the net amount due from the [customer], then a single receipt must be provided to the [customer] that shows these separate amounts. A separate record of the [customer’s] payment must match the net amount due for this transaction. If the sales transactions are properly documented in this manner and maintained in Taxpayer’s records, the amount of the discount coupon credit may be excluded from Taxpayer’s gross income.

Conclusion and Ruling:

Based on the facts and documentation provided, the Department rules as follows:

The tax base for Taxpayer’s retail sales of the direct mail program to [its customers] is the gross proceeds of sales or gross income derived from the business, including optional data processing fees and any set-up fees billed to the ... customers.

The amount of the discount coupon credit may qualify as a nontaxable coupon that is issued and redeemed by Taxpayer pursuant to A.A.C. R15-5-129 if a single invoice or receipt shows the sales price, the discount coupon credit, the net selling price, the tax computed (unless the tax is factored), and the net amount due from the [customer]. A separate record of the [customer’s] payment must match the net amount due for this transaction. If the sales transactions are properly documented in this manner and maintained in Taxpayer’s records, the amount of the discount coupon credit may be excluded from Taxpayer’s gross income subject to tax.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated September 28, 2010.

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 private 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.

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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. In addition, this private taxpayer ruling only applies to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.

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