

## ARIZONA DEPARTMENT OF REVENUE

### ARIZONA TRANSACTION PRIVILEGE TAX RULING

#### TPR 89-1

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#### **Issue:**

This ruling arises out of the need to articulate the Department's administration of transaction privilege tax relating to amusement events. In particular, the ruling is prepared in order to specify the Department's position on application of existing transaction privilege tax law to sports events.

#### **Applicable Law:**

A.R.S. § 42-1301.1 "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.

A.R.S. § 42-1301.7 "Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses. (Emphasis supplied.)

A.R.S. § 42-1309

A. The tax imposed by this article is levied and shall be collected at the rate of five percent of the gross proceeds of sales or gross income from the business of every person engaging or continuing in this state in the following business classifications. (Emphasis supplied.)

1. Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard and pool

parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches and any business charging admission fees for exhibition, amusement or instruction, other than projects of bona fide religious or educational institutions. The tax imposed by this section does not apply to events sponsored by the Arizona coliseum and exposition center board or county fair commissions.

## **Discussion:**

Competitive sporting activities, as conducted in this state and country, are generally conceded to be amusement events. The Department's position has consistently been that these competitive sporting events come within the transaction privilege tax amusement classification under A.R.S. § 42-1309.A(1) and its predecessors.

The transaction privilege tax concept encompasses the broad range of activities carried on by a person or company engaged in business for gain, benefit or advantage. In construing gross receipts or gross proceeds of sales by that person or company, the Department looks to those receipts or proceeds normally received by that business in the given industry. For example, lessors of commercial real property are subject to privilege tax on the lessor's billing of real property taxes, fire insurance and common area maintenance fees, to the tenant. Additionally, electric utilities are subject to tax on such disparate sources of income as electric meter setting fees, connect and disconnect service, charges for up and down pole placement for temporary service and the transporting of another utility's electricity over one's own lines.

The following cited cases are used to illustrate the breadth of the transaction privilege taxation scheme.

In Arizona State Tax Comm. v. Garrett Corp., 79 Ariz. 389, 291 P.2d 208 (1955) the Arizona Court of Appeals held that the legal incidence of the tax was on the person engaging in the business of selling tangible personal property at retail, and not upon the transaction, i.e., the sales.

In a similar vein, in Miami Copper Company v. State Tax Comm., 121 Ariz. 150, 589 P.2d 24 (1978) the same Court noted that:

"In 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, 57 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 supplied.)

In State Tax Comm. v. Quebedeaux Chevrolet, 71 Ariz. 280, 226 P.2d 549 (1951) at issue was the levy of privilege tax on the amounts of privilege tax collected by the taxpayer from its customers. The taxpayer argued that they were not engaged in the business of selling "taxes" and therefore any taxes collected by it were not a part of the gross income from the business. The court held: "...that the terms "gross proceeds of sales" or "gross income from the business" upon which the tax is based includes any and all sums received, regardless of whether or not the retailer separately bills to his customers the privilege tax he is passing on to them, and whether or not he segregates the amounts thus received."

From the foregoing cases it is evident that the transaction privilege tax is levied upon more than income from ticket sales to amusement events. Persons, as defined in A.R.S. § 42-1301, engaged in the amusement business receive income under a variety of labels from a variety of sources. Competitive sporting events which are promoted, operated or conducted by profit or nonprofit organizations not otherwise exempt under A.R.S. § 42-1309 are subject to the transaction privilege tax under the amusement classification. As an ongoing business activity, the gross income of the person promoting, operating or conducting competitive sporting events is subject to the transaction privilege tax. Competitive sporting events which are taxable are those where the potential exists for payment(s) to be made to the participant(s), the team or the owner.

Competitive sport events are amusement events of varied nature. Typical of these events are team athletic contests or games, individual competitions and sports tournaments. Preliminary or qualifying events for an actual competitive event would be included as a part of a competitive sporting event. Therefore, events may take place over a series of days and are not limited to a final championship contest or game. Events occur at all times during the year including, if applicable, off-season, pre-season, season and post-season periods. Events are not limited to those with professional participants and may include amateur participants.

### **Ruling:**

The following activities are considered to generate taxable gross income for a person promoting, operating or conducting competitive sporting events in Arizona. This typical listing of income sources is not meant to be, nor is it to be considered to be, an exhaustive listing of income sources.

1. Ticket sales or admissions income. Income from ticket sales which occur in-state and out-of-state for competitive sports events taking place in Arizona is subject to the transaction privilege tax. Note: income from ticket sales which occur

in-state for out-of-state events is not subject to the transaction privilege tax.

Income from admissions to the event or portions of the event taking place in Arizona is subject to the transaction privilege tax.

2. Income from premium seat charges and other specialized seating charges for athletic events taking place in Arizona is subject to the transaction privilege tax.

3. Any other income received for which admission or attendance rights are granted, received or associated.

In addition to the amusement classification, the person promoting, operating or conducting competitive sporting events may be subject to privilege tax under other classifications, depending on the activities conducted. Examples include, but are not limited to:

Privilege tax under the retail classification: The direct sale of programs and souvenirs by the person.

Privilege tax under the restaurant and bar classification: The direct sale of food and beverages by the person.

Privilege tax under the rental of real property classification: The direct rental of parking spaces to the public by the person.

Paul Waddell, Director  
Signed May 12, 1989