

PRIVATE TAXPAYER RULING LR94-023

February 27, 1995

The following private taxpayer ruling is in response to your letter dated December 7, 1994 requesting clarification of Arizona transaction privilege tax liability under the retail classification for sales of prepaid telephone calling cards.

Statement of facts:

... owns and operates ... stores throughout the United States. ... will sell "units" of long distance service provided by registered telephone long distance providers. Each unit represents one minute of long distance service. These units will be packaged in the form of telephone cards, each card having a value of 15, 30 or 60 units(minutes) of long distance service. The registered telephone long distance provider may or may not know the retail selling price of the cards, however, they will know the value of the units being debited from the cards. ... will not know the originating or terminating location of the service when used.

Your position:

The sale of prepaid calling cards by ... does not constitute a taxable sale of tangible personal property, rather it is a sale of an intangible right to future telephone usage. Moreover, the true object of the buyer is not the prepaid calling card, but rather the value of the prepaid telephone service the card represents. Tax will be due at the point and time of usage of the service in the same manner as traditional telephone service is currently taxed. The tax base will be the amount expressed in terms of money that the units or minutes are debited from the card balance, which will be the amount per unit charged to ...

Applicable statutory provision:

Arizona Revised Statutes (A.R.S.) § 42-1301.13 defines "sale" as any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration, ...

A.R.S. § 42-1301.16 defines "tangible personal property" as personal property which may be seen, weighed, measured, felt or touched or is in any manner perceptible to the senses.

A.R.S. § 42-1310.01 imposes the transaction privilege tax on the retail classification.

Discussion:

Arizona's transaction privilege (sales) 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 transaction privilege tax is imposed on the business of selling tangible personal property at retail in accordance with Arizona Revised Statutes (A.R.S.) § 42-1310.01. The tax base is the gross proceeds of sales or gross income derived from the business. All sales of tangible personal property are subject to tax unless specifically exempted by statute.

A sale is the transfer of title or possession to tangible personal property. The customer of ... is obtaining title to and possession of the telephone calling card.

Additionally, the telephone calling card is tangible personal property. Tangible personal property is any item that may be seen, weighed, felt or touched or is perceptible to the senses. In interpreting this definition of tangible personal property, Arizona courts have held that:

[t]he playing of the record is perceptible to the sense of hearing and, hence, constitutes what the statute terms tangible personal property. The statute could not have made the playing of a record, in response to a coin placed in the slot, a sale of tangible personal property any more effective if it had made a special provision covering the situation. State of Arizona v. Jones, 60 Ariz. 413, 415, 137 P.2d 970.

The sale of a prepaid telephone calling card is a transfer of title and possession of tangible personal property. The tax base for the retail classification is the gross proceeds of sales. Gross proceeds of sales means the value proceeding or accruing from the sale of tangible personal property. Thus, ... is subject to tax under the retail classification on the gross proceeds of sales from the sale of prepaid telephone calling cards.

Conclusion and ruling:

The following ruling is based on the facts presented in your request.

... sales of prepaid telephone calling cards are sales of tangible personal property subject to transaction privilege tax under the retail classification. The tax base is the gross proceeds of sales or gross income derived from the business.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letter dated December 7, 1994 in this request for a private taxpayer ruling.

This response is a private taxpayer ruling and the determination herein is based solely on the

facts provided in your request. The determination in this taxpayer ruling is the present position of the department and is valid for a period of four years from the date of issuance except as set out herein. This determination is 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.