

PRIVATE TAXPAYER RULING LR95-001

June 28, 1995

The following private taxpayer ruling is in response to your letter dated February 2, 1995, requesting a clarification of the motion picture production company refund provision. The following is a restatement of the facts in your letter.

Statement of facts:

..., a ... corporation, is a ... qualified to do business in Arizona. ... will perform ... on more than one ... at any given time. Each ... takes approximately ... to complete. ... Special equipment has been (and will be) purchased by ... for the ..., including ..., which No other activities besides ... are currently planned to be carried on at will expend more than \$1 million from its Arizona account every ... in connection with its activities in Arizona.

Your position:

1. A ... taking more than 12 months to complete will qualify for the refund for the entire production period as long as the \$1 million expenditure threshold is met each reporting period.
2. The initial purchase of ... and other equipment qualify for the refund.
3. Provided that the \$1 million expenditure threshold has been met for a reporting period, it is permissible for ... to apply for a refund

Under this schedule the applicable reports would be due to be filed with the Department of Revenue within the period prescribed by the then current law. Applicable statutory provision: Arizona Revised Statutes (A.R.S.) 42-1322.01 provides that a motion picture production company that produces one or more motion pictures in this state may apply for a refund of 50 percent of the transaction privilege and use taxes imposed with respect to tangible personal property purchased or leased in this state by the motion picture production company. Arizona Administrative Code (A.A.C.) rules R15-5-2240 through R15-5-2242 discuss the requirements which must be met to qualify for a refund under A.R.S. 42-1322.01. Additionally, Senate Bill 1046 (Chapter 98) effective July 13, 1995, with a retroactive effective date to July 1, 1994, amends and clarifies existing law regarding the refund.

Discussion:

Arizona imposes a transaction privilege tax which differs from the sales tax imposed by most states. The Arizona transaction privilege (sales) tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of

the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax. The sale or lease of tangible personal property is subject to tax unless a specific exemption applies in statute. (A.R.S. 42-1310.01 and 42-1310.11, respectively.)

A.R.S. 42-1322.01 provides for a refund of 50 percent of taxes paid by a motion picture production company for purchases or leases of tangible personal property, if certain conditions are met. The current statutory refund provision requires that the motion picture production company produce one or more motion pictures in Arizona in a 12 month period. In addition, the motion picture production company must expend more than \$1 million in connection with the production of one or more motion pictures. The 12 month period is established by the earliest reported expenditure.

A.A.C. R15-5-2241 provides that it is within the discretion of the motion picture company to determine the date of the first reported expenditure. The production of the motion picture does not have to begin and end within 12 months. However, during a 12 month period the statutory expenditure requirements must be met. A film, whose production activities take more than 12 months to complete will qualify for the refund for the entire time period as long as the other statutory expenditure requirements are met.

A.A.C. R15-5-2240.A.4 defines "production activities" as those support activities related to the filming of a motion picture but which may occur before or after the actual filming begins or ends in Arizona.

For example: ... begins production of the motion picture in Arizona on January 1, 1995. The motion picture is to be completed by June 1, 1996. The first reported expenditure with regard to this production is January 1, 1995. The expenditures made from January 1, 1995 through December 1, 1995 would qualify for refund treatment if the \$1 million expenditure requirement is also met during that 12 month period. Expenditures made between January 1, 1996 through June 1, 1996 may be included in the subsequent 12 month production period if the other requirements are met. Effective July 13, 1995, the statute clarifies the period for production of a motion picture. The changes to the current statutory provision apply retroactively to July 1, 1994. All tangible personal property, upon which Arizona tax has been paid, which is purchased or leased in Arizona from an Arizona vendor or an out of state vendor, while the motion picture production company is engaged in production or filming in Arizona qualifies for refund treatment of the transaction privilege or use tax.

Under current statute, the motion picture production company must apply with the Department of Revenue within 60 days after completion of production in Arizona in order to obtain a refund. The 60 day requirement is a limitation on how long after filming is completed or the bank account is closed a motion picture production company may apply for a refund. A motion picture production company may apply prior to this time so long as all statutory requirements are met. Effective July 13, 1995, a motion picture production company will have up to six months after completing filming or production activities to apply for the refund but may apply at any time after it reaches \$1 million in expenditures. Again, this change to the current provision applies retroactively to July 1, 1994.

For example: ... begins production of the motion picture in Arizona on January 1, 1995. The motion

picture is to be completed by June 1, 1996. The first reported expenditure with regard to this production is January 1, 1995. ... reaches \$1 million in expenditures by October 15, 1995. ... may apply for the refund at anytime after October 15, 1995.

Conclusion and ruling:

The following ruling is given based on the facts presented in your request. The department rules that a motion picture production company which produces a film which takes more than 12 months to complete qualifies for the refund of 50 percent of taxes paid on tangible personal property purchased or leased if the expenditure requirements are met within a 12 month period. The department also rules that all tangible personal property purchased or leased by ... for use in film production qualifies for the refund, including In addition, the department rules that ... may apply for the refund The applicable reports should be filed with the department within the period required by law. The conclusions in this private taxpayer ruling do not extend beyond the facts as presented in your letter of February 2, 1995 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.