



Douglas A. Ducey
Governor

David Briant
Director

TAXPAYER INFORMATION RULING LR18-002

May 31, 2018

Thank you for your letter requesting a taxpayer information ruling on behalf of your unnamed client (“the Company”). Specifically, you requested a ruling regarding whether Company’s fees charged to restaurant customers for access to premium content on its “Mobile Point of Sale Devices” are subject to Arizona’s transaction privilege tax. Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Arizona Department of Revenue (“Department”) may issue taxpayer information rulings to taxpayers and potential taxpayers on request.

ISSUE:

Whether Company’s fees charged to restaurant customers for access to premium content on its “Mobile Point of Sale Devices” are subject to Arizona’s transaction privilege tax?

RULING:

Company’s gross income derived from fees charged to restaurant customers for access to premium content on its “Mobile Point of Sale Devices” is subject to transaction privilege tax under the restaurant classification.

SUMMARY OF FACTS:

The Company is *** full service *** dining companies with restaurant locations in *** including Arizona. The Company has initiated a pilot program incorporating the use of a mobile point of sale device (herein “Mobile Point of Sale Device” or “Device”) that will accommodate tabletop menu, ordering, and payment in some of its Arizona locations. The Mobile Point of Sale Device is an Android tablet with a touch screen interface that will be placed at each table that provides pictures/detailed descriptions of the menu items and allows customers to place drink, appetizer, and entrée orders, and pay their check directly through the Device. The customer has the option to pay their guest check by credit card, debit card, or gift card on the Device. Alternatively, it can be paid through their server/wait staff if preferred.

The Mobile Point of Sale Device also allows restaurants *the option* to enhance the customer experience by allowing access to premium content located on the Device, for a fee. This content could include news, sports, current events, selecting songs to be played

on the restaurant's playlist as well as access to interactive games. The game application software resides within each Device. . . . The Device does not provide Internet access to restaurant guests. The premium content fee will be included as a separate line item on the customer's food and beverage bill. . . .

. . . .

DISCUSSION & LEGAL ANALYSIS:

Arizona imposes a transaction privilege tax on the privilege of conducting business in the State of Arizona. The authority to levy the transaction privilege tax is found in Arizona Revised Statutes (A.R.S.) § 42-5008.

A.R.S. § 42-5074 imposes the transaction privilege tax under the restaurant classification. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business.

Company will utilize a "Mobile Point of Sale Device" that allows restaurant customers to view the menu, place orders and pay their checks directly through the Device. In addition, restaurant customers may access premium content on the "Device" for a separate fee. The premium content includes news, sports, current events, songs and games. Each premium content fee will appear as a separate line item on the customer's bill. For example, access to games and news will each appear as separate premium content fees on the customer's bill.

Fees charged to restaurant customers for access to premium content on its "Mobile Point of Sale Devices" are part of a restaurant's gross income. There is no specific exemption or exclusion from the restaurant classification for such fees. Therefore, Company's gross income derived from such fees is subject to transaction privilege tax under the restaurant classification.

This response is a taxpayer information ruling (TIR) and the determination herein is 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 information 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.

If the Department is provided with required taxpayer identifying information and taxpayer representative authorization before the proposed publication date (for a published TIR) or date specified by the Department (for an unpublished TIR), the TIR will be binding on the Department with respect to the taxpayer that requested the ruling. In addition, the ruling will apply only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The ruling may not be relied upon, cited, or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the taxpayer information ruling. If the required information is not provided by the specified date, the taxpayer information ruling is non-binding for the purpose of abating interest, penalty or tax.