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PRIVATE TAXPAYER RULING LR08-006

August 5, 2008

The following private taxpayer ruling is in response to your letter dated September 8, 2006 and follow up letter dated October 3, 2006. Your letter requests a determination of the application of Arizona's transaction privilege tax to the *** concerning sales of web-based discount and service membership program/clubs.

The following is a restatement of the facts as presented in your letter.

Statement of Facts:

*** provides Internet-based discount and service membership programs and clubs for its clients. Potential clients sign up for the offered services over the Internet. Clients either seek out these services themselves over the Internet or they are solicited by *** web-based partners. For a small monthly fee, members receive benefits such as discounts to hundreds of attractions, restaurants, hotels, car rentals and air fares, best price guarantee protection, delivery guarantees, road and towing protection, credit card fraud protection and theft and loss protection on member's Internet purchases. Some of the clubs also offer credit report access, daily credit report monitoring services and identity theft protection. As part of its services and intangible benefits, one of the clubs provides a free weekly e-newsletter and monthly magazine. *** has on-line subscribers from all over the country including Arizona.

Club Membership Programs

1. Club A (***) – provides up to 50% discount at hundreds of attractions, restaurants, retailers, service providers and cinemas for members. The membership benefits also include trip delay, hotel over-booking, baggage delay and loss, road and towing protections.
2. Club B (***) – provides up to 50% discount on hundreds of hotels, up to 25% discount on car rentals, the receipt of road protection, up to \$500 savings (discounts) on airfare and hotel fire/theft protection.
3. Club C (***) – provides discounts and rebates at hundreds of online merchants. It also provides best price guarantee protection of up to \$100 per claim on the difference per claim on the between the price paid by a member to various retailers and any lower price offered by those retailers within 90 days. Other benefits include delivery guarantees, and protection for credit card fraud and unauthorized charges. It also automatically protects any members on their purchases from retailers, by giving members free (limited) extended warranty protection on their purchase equal to the

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original warranty period provided by the manufacturer. In addition, damage, theft and loss protection is provided for purchases for 90 days.

4. Club D (***) – provides essentially the same benefits and privileges as Club C, except it does not provide discounts and rebates at hundreds of online merchants.
5. Club E (***) – provides a free daily credit monitoring service and unlimited online credit report access to its members. The credit report information is provided by a third party credit card reporting agency. A \$25,000 Identity Theft Insurance and \$1,000 in credit card loss and theft protection is included. Dispute forms and tools and assistance services are also provided to assist members in correcting any inaccuracies in their credit reports.
6. Club F (***) – provides a 10% discount to certain *** events, access to insider *** events, special pass programs and *** benefits, \$700 in savings (discounts or other offers) for *** related programs, free access to special member related interactive websites, access to special free offers and *** related discounts for members, a free subscription to members magazine, a free weekly e-newsletter and up to 50% in discounts at certain attractions, restaurants, etc. The members' magazine and e-newsletter provides the member with additional information on members' benefits and discounts. In addition, during the free trial period, the prospective paying member will receive a membership kit which includes a free member decal, referral cards, baseball cap, patch and other items. (Not yet available)
7. Club G (***) – provides a twenty-four (24) hour concierge service, discounts at national amusement parks and movie theaters, a complementary magazine subscription, discounts on hotel and car rentals, and travel related protections including trip delay hotel overbooking, hotel fire/theft, baggage delay and loss, travel accident insurance and credit card fraud protection.

Your Position:

Clubs A through E provide numerous intangible benefits and privileges to their members. It neither provides nor charges for tangible personal property or services that are taxable in Arizona. As with Clubs A through E, Clubs F and G's membership fees are not subject to Arizona Sales and Use Tax. However, the purchase price Clubs F and G pay to third parties for tangible personal property provided for no additional charge as part of the membership benefits and privileges provided to their members in Arizona may be subject to Arizona Sales and Use Tax. Therefore, the cost of any paper, ink or printing of the members' magazine sent to the Arizona members may be taxable. Likewise, the cost of the membership kit provided for delivery to an Arizona member may be taxable.

Opinions Requested:

1. The monthly membership fees paid for the memberships in clubs A through G are not subject to Arizona sales and use tax.

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2. Any tangible personal property provided without additional charge to Arizona members of the Clubs, either in the free trial period or as part of the membership benefits and privileges provided, (e.g., magazine) is taxable at the cost of such property or service to the Clubs.

Relevant Law:

Arizona Transaction Privilege Tax

Arizona's transaction privilege tax differs from the sales tax imposed by most states. It is a tax on the privilege of conducting business in the State of Arizona, and is imposed on the seller. The seller may pass the burden of the tax on to the purchaser, but the seller is ultimately liable to Arizona for the tax. The transaction privilege tax is imposed under sixteen separate business classifications, including the **retail and job printing** and classifications discussed below. Additionally, county excise taxes "piggyback" the imposition of the state's transaction privilege tax. All sales subject to the transaction privilege tax are also subject to applicable county excise taxes.

Arizona Revised Statutes (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.

A.R.S. § 42-5066 **Job Printing Classification**, imposes the transaction privilege tax on the business of job printing, engraving, embossing and copying.

Arizona Use Tax

In contrast to the transaction privilege tax, A.R.S. § 42-5155(A) provides that "[t]here is levied and imposed an excise tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer or utility business, as a percentage of the sales price."

A.R.S. § 42-5155(E) provides that "[e]very person storing, using or consuming in this state tangible personal property purchased from a retailer or utility business is liable for the tax. The person's liability is not extinguished until the tax has been paid to this state."

A.R.S. § 42-5152 provides that "[i]t shall be presumed that tangible personal property purchased by any person and brought into this state is purchased for storage, use or consumption in this state."

Arizona Administrative Code (A.A.C.) R15-5-2304(B) provides that "[t]he burden of proof that a purchase is not subject to use tax rests upon the purchaser."

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Advertising

In Arizona, a company which sold booklets providing discounts for the purchasers at the participating restaurants was held to be engaged in the business of advertising because the main focus of the business was the promotion and public exposure of the individual establishments which provided the discounts. *Carriage Trade Management Corporation v. Arizona State Tax Commission*, 27 Ariz. App. 584, 557 P.2d 183 (1976). The State of Arizona does not tax the sale of advertising.

Conclusion and Ruling:

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

*** is in the business of promoting individual establishments which provide discounts. The proceeds of *** internet-based discount and service memberships and Clubs A, B, C, F, and G are not subject to Arizona's transaction privilege tax under the retail classification because Arizona does not tax the sale of advertising.

Clubs D and E are not discount clubs and instead offer buyer's assurance and identity theft protection, respectively. Although Clubs D and E are not specifically engaged in advertising, the services they provide are not subject to Arizona's transaction privilege tax.

*** offers an e newsletter and magazine in its *** (Club F). According to the taxpayer, both the e newsletter and magazine in Club F provide members with additional information on discounts and benefits. Accordingly, both the e newsletter and the magazine are also considered advertising and not subject to Arizona's transaction privilege tax under the retail classification.

The Department also rules if the membership materials are purchased from an out-of-state job printer or retailer, *** is subject to Arizona use tax on the purchase.¹

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated September 8, 2006 and October 3, 2006, respectively.

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 taxpayer ruling shall be null and void. Further, the

¹ An Arizona job printer is subject to tax on the gross income derived from the sale of the printing of the membership materials provided to *** clubs members. An Arizona retailer is subject to tax on any sales of tangible personal property provided to *** clubs members.

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determination is subject to the future change depending on changes in the statutes, administrative rules, case law or notification of a different Department position.

The determinations in this private taxpayer ruling are applicable only to the taxpayer requesting the ruling and may not be relied upon, cited or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.

Lrulings/08-006-D