

PRIVATE TAXPAYER RULING LR99-003

February 26, 1999

The following private taxpayer ruling is in response to your letter of January 14, 1999. Your letter requests a determination regarding the application of transaction privilege tax on sales and purchases made by ... in connection with the publication of

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

Statement of Facts:

... will acquire ... in early 1999. ... is a monthly magazine devoted to the concerns of currently has no Arizona transaction privilege tax license but will obtain a license when it acquires

In publishing ..., ... will enter into contracts with printers in Arizona or in other states, who will print the magazine in accordance with ... specifications for a consideration. ... will distribute ... without consideration in ... and other locations frequented by All of ...'s gross receipts derived in connection with its publication of ... will be from advertisers who place their advertisements in

Your Position:

No transaction privilege or use tax should apply to ... purchase of printing in connection with the publication of ... or to ...'s gross income from advertising in connection with the publication of

... constitutes a "magazine" as defined in *Arizona Transaction Privilege Tax Ruling TPR 93-29*. It contains a miscellaneous collection of articles, stories, and pictures; it contains special material directed at a group having a particular interest; and it appears at regular intervals. The magazine contains advertising, but its primary focus is the editorials, articles, stories and pictures directed to its readership.

Under the job printing classification, the transaction privilege tax does not apply to sales to a person in this state who has a transaction privilege tax license issued in this state and who distributes the printing without consideration in connection with the publication of a newspaper or magazine. Since ... is a magazine that is distributed without consideration, ...'s purchases of job printing in connection with ... are not subject to transaction privilege tax. Because such purchases are not subject to transaction privilege tax, they are likewise exempt from use tax, which is complementary to the transaction privilege tax and applies only to the use of tangible

personal property for the same type of transaction or business activity that would be subject to the transaction privilege tax.

The transaction privilege tax applies to receipts from publishing, however, the tax base is reduced by a deduction for the gross income derived from advertising. Since all of ...'s gross income earned in connection with ... will be gross income from advertising, it will not be subject to transaction privilege tax.

Applicable Statutory Provisions:

Arizona Revised Statutes (A.R.S.) § 42-5066 levies the transaction privilege tax on the business of job printing. The tax base is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-5066(B)(1)(b) provides a deduction from the tax base for the gross income derived from sales to a person in this state who has a transaction privilege tax license issued in this state and who distributes the printing without consideration in connection with the publication of a newspaper or magazine.

A.R.S. § 42-5065 levies the transaction privilege tax on the business of publishing newspapers, magazines or other periodicals and publications if published in this state. The tax base is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-5065(B)(1) provides a deduction from the tax base for the gross income derived from advertising.

A.R.S. § 42-5155 imposes a use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer.

A.R.S. § 42-5159(A)(3) provides that the use tax does not apply to tangible personal property, the storage, use or consumption of which the constitution or laws of the United States prohibit this state from taxing.

Discussion:

Arizona's transaction privilege 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 business of publishing magazines is subject to tax under the publication classification if the magazine is published in this state. The tax base for the publication classification is the gross income derived from the business, however, a deduction from the tax base is provided

for the gross income derived from advertising. (A.R.S. § 42-5065)

The transaction privilege tax is imposed on the business of job printing, engraving, embossing and copying. The tax base for the job printing classification is the gross proceeds of sales or gross income derived from the business, but a deduction from the tax base is provided for sales to a person in this state who has an Arizona transaction privilege tax license and who distributes such printing without consideration in connection with the publication of a magazine. (A.R.S. § 42-5066)

Arizona's use tax applies to purchases of tangible personal property from an out-of-state vendor. (A.R.S. § 42-5155) The use tax does not apply to transactions which the constitution or laws of the United States prohibit this state from taxing. (A.R.S. § 42-5159)

The U.S. Constitution prohibits discrimination against interstate commerce. Therefore, purchases from an out-of-state printer are exempt from use tax to the same extent as sales of similar job printing by an Arizona printer are exempt from transaction privilege tax.

Arizona Transaction Privilege Tax Ruling TPR 93-29 provides guidance in determining whether a publication qualifies as a newspaper or magazine. "Magazine" means a periodical that usually contains a miscellaneous collection of articles, stories, poems, and pictures and is directed at the general reading public. A magazine may contain special material directed at a group having a particular hobby, interest or profession (as education, photography, or medicine) or at a particular age group (as children, teenagers). A periodical is a magazine or other publication of which the issues appear at stated or regular intervals. Although a magazine may contain advertising, the primary focus must be news, editorials, articles, stories, and pictures which are of interest to, and directed at, the general reading public in order to be defined as a magazine.

Conclusion and Ruling:

The following ruling is given based on the facts presented in your request and our review of the September, 1998 issue of ... which you furnished.

The department rules that the gross income derived by ... from its publication of ... which is derived solely from advertising, is not subject to transaction privilege tax under the publication classification.

The department further rules that ... constitutes a magazine that is distributed without consideration. Consequently, no transaction privilege tax is due on an Arizona printer's income from printing ... for ..., provided that ... possesses a valid Arizona transaction privilege tax license at the time of such sales. Furthermore, the use tax does not apply to ...'s purchases of such printing from out-of-state printers.

The conclusions in this private taxpayer ruling do not extend beyond the facts as presented in the request for a private taxpayer ruling dated January 14, 1999.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations in this taxpayer ruling are the present position of the department and are valid for a period of four years from the date of issuance except as set out herein. 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 determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.