

PRIVATE TAXPAYER RULING LR99-009

November 16, 1999

The following private taxpayer ruling is provided in response to your letters dated May 13th and September 9th, 1999, in which you request the department to rule regarding the applicability of transaction privilege tax to income derived from providing access to a real estate and property tax database, by

It is understood that ... engages in many related business activities, which include the printing and sale of real estate listing books; the sale and rental of computer hardware, software, and related equipment; and many support activities related to the computer hardware and software. These activities are subject to tax under the *retail classification* [Arizona Revised Statutes (A.R.S.) § 42-5061]; the *personal property rental classification* (A.R.S. § 42-5069); and the *job printing classification* (A.R.S. § 42-5066). Income derived from support activities related to the sale of computer hardware and software, may qualify as nontaxable service activities per A.R.S. § 42-5061(A)(1), (2), or (3). [See also Arizona Transaction Privilege Tax Ruling TPR 93-48.] However, the individual taxability of these related business activities is not at issue in this private taxpayer ruling, which addresses only the taxability of income derived from annual subscriber fees associated with ... real estate and property tax information database, and software license fees related to the software provided by ... to its customers.

Statement of facts:

... provides mainframe computer and telecommunications equipment (the "system") to This equipment is housed and maintained by ... at a location leased by The operating software used on the computer and telecommunications equipment is a product developed and owned by ... known as

A ... member's access to ... allows the member to list properties for sale; search active and sold properties; track sale and purchase transactions; and access property tax data. Access to the system is limited to licensed active realtors associated with

Your ruling request describes two contractual agreements. Under the first agreement, ... bills the customer the following fees:

Annual Subscriber Fee: This fee, which is paid by each member, allows for the use of an ID and Password on any computer or terminal that has communications software that accesses the The member does not have to purchase ...'s software or pay a software license fee in order to access the system. If the member fails to pay this annual subscriber fee, the member is unable to access ... to obtain real estate or property tax information.

Monthly Software License Fees: Any broker or agent who is a member of ... may purchase communications software from also has certain communications software that is distributed free of charge. Regardless of the type of software obtained, the real estate broker or agent must enter into a software license agreement and pay a monthly fee for license privileges to use ... software.

Under the second contractual agreement, ... bills the customer only a single fee described as follows:

Annual Subscriber Fee: This fee, which is paid by each member, allows for the use of an ID and Password on any computer or terminal that has communications software that accesses The member does not have to purchase ...'s software to obtain an ID and Password that accesses [Software license fees are not paid under this contractual agreement.]

Your Position:

The "true object" of ...'s multiple listing service in Arizona is to provide information to customers. ... [p]articipants pay the annual subscriber fee and the monthly license access fee to access intangible information. Neither fee involves the sale of tangible personal property for a consideration. The fees do not fall under a taxable business classification.

Applicable statutory provisions and administrative guidance:

A.R.S. § 42-5061 *Retail classification*, imposes the transaction privilege tax on the gross proceeds of sales or gross income derived from the business of selling tangible personal property at retail.

A.R.S. § 42-5001 *Definitions*, defines "tangible personal property" as personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.

A.R.S. § 42-5064 *Telecommunications classification*, imposes the transaction privilege tax on the business of providing intrastate telecommunications services by telecommunications companies. Subsection C defines "intrastate telecommunications services" as "transmitting signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means if the information transmitted originates and terminates in this state."

Arizona Administrative Code (A.A.C.) R15-5-154 states that income from the multiple use of data processing equipment where no customer has exclusive use of the equipment for a fixed

period of time ... is nontaxable service income.

Arizona Transaction Privilege Tax Ruling TPR 93-48 addresses the taxation of sales of computer hardware, software, and related services. The ruling provides that the sale of a canned software program, regardless of whether characterized as a license agreement, is considered a taxable retail sale.

Discussion:

Arizona's transaction privilege tax statutes do not specifically address "online" information services. The business activity in question involves providing access to an interactive real estate and property tax database. ... charges annual subscriber fees to allow access to the database. ... also charges to those customers who have received software, monthly software license fees for "license privileges to use ... software". The department views these two categories of income separately.

TPR 93-48 addresses the taxability of sales of computer software. Income derived from both sales of "canned" computer software and from licensing agreements which provide for the continued use of the canned software program, are considered taxable retail sales. As ... is a canned computer program, proceeds derived from monthly software license fees are subject to tax as retail sales.

The annual subscriber fees are for access to ...'s database. Businesses that maintain and provide access to informational databases are not considered to be engaged in business under the telecommunications classification. This is because the use of phone lines by the customer to access the information is just a peripheral aspect of the business.

A.A.C. R15-5-154 addresses computer hardware and the taxability of sales of computer software. The rule also addresses the taxability of income derived from the "multiple use of data processing equipment", which is applicable to ...'s access charges for the use of its real estate listing and property tax database. Because no real estate broker or agent has exclusive control of ..., and because multiple users can access the database at the same time, the rule is applicable to ...'s database.

The income derived from the annual subscriber fees is considered to be nontaxable service income, as long as a canned software license fee is not a part of this charge. A.A.C. R15-5-105 provides that charges for nontaxable service activities must be separately stated on the sales invoice and in the business records.

Conclusion and Ruling:

On the basis of the information provided, the department rules that ...'s proceeds derived from

annual subscriber fees are not subject to transaction privilege tax, as this income is derived from providing multiple customer access to an informational database consisting of real estate and property tax information.

The department also rules that proceeds derived from monthly software license fees for ... are subject to tax as retail sales. The ... is a canned computer program created for multiple users; charges for the licensing of canned computer software programs are considered taxable retail sales.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in your letters dated May 13 and September 9, 1999, which comprise your 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. 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.