

# ARIZONA TRANSACTION PRIVILEGE TAX RULING

## TPR 99-2

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

### ISSUE:

The taxability of businesses that provide parking.

### APPLICABLE STATUTES AND CASE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5069 *Commercial Lease Classification*, addresses businesses which lease or rent for a consideration the use or occupancy of real property. A.R.S. § 42-5010(A)(4) provides that the transaction privilege tax rate applicable to the commercial lease classification has been reduced to zero percent. However, some county excise taxes are still applicable to income derived by businesses which fall under this business classification. A.R.S. § 42-5069(C)(3) provides an exclusion from the commercial lease classification for leases of real property that is re-leased by a person engaged in business under the commercial lease classification.

Arizona Administrative Code (A.A.C.) R15-5-1609 *Commercial property - licensee agreements*, provides that an agreement that does not give a person exclusive right to a specific portion of real property, is deemed to be a license agreement rather than a lease of real property.

In *Ulan v. Vend-A-Coin, Inc.*, 27 Ariz. App. 713, 558 P.2d 741 (1976), the court held that an arrangement that merely granted the right to enter real property for a specific purpose, was a *license* to use real property rather than a lease of real property.

In *Wenner v. Dayton-Hudson Corporation*, 123 Ariz. 203, 598 P.2d 1022 (1979), the court held that income derived from an agreement to occupy a nondesignated space within a department store did not rise to the level of a leasehold interest. Therefore, the agreement was a mere license rather than a lease of real property and was not subject to the City of Phoenix privilege tax.

## DISCUSSION:

A transaction which provides for the use of a parking lot space by a customer, may comprise either a taxable lease of real property or a nontaxable license to use real property, depending on the terms of the agreement. Generally, an agreement which provides for the use or occupancy of a particular parking space (or spaces), for a specified time period for a designated consideration, is a taxable lease of real property. In contrast, a parking lot which allows a customer to park in any available parking space after receiving a metered parking ticket, and does not grant the customer an interest in a specific parking space, is not a taxable lease of real property.

There are specific distinctions between leases of real property and licenses to use real property recognized by Arizona courts. A *lease* gives the right of possession of the leased property and exclusive use or occupation of the property to the lessee, for all purposes not prohibited by its terms. A license merely grants the licensee the right to enter onto the licensor's property for certain limited purposes. *Tanner Companies v. Arizona State Land Department*, 142 Ariz. 183, 688 P.2d 1075 (App.1984); *Ulan, supra*. A license agreement for the use of real property is not a commercial lease of real property; income derived from a license agreement is not subject to privilege tax. *Wenner, supra*.

An agreement which provides for the rental of a specific parking space to a designated lessee for a specified term and consideration, contains the requisite characteristics of a lease and is subject to taxes applicable to a lease of real property. An agreement that allows a customer to leave and return to the same designated space during the term of the agreement, or allows the customer to let other persons use the parking space, is considered a lease of real property. While the state no longer taxes income derived from leases of real property under the commercial lease classification, some county excise taxes remain applicable to such income.

## RULING:

Businesses that operate parking lots where customers park their vehicles in a nonspecified parking space for an hourly or daily fee, grant access only for the limited purpose of parking. This constitutes a license to use real property rather than a lease, if the arrangement does not convey any greater interest in the real property. The license relationship ends at the time the customer removes the vehicle from the parking lot. Income derived from real property license arrangements is not subject to tax under the commercial lease classification.

An agreement which provides for the rental of a particular parking space to a designated lessee for a specified term, constitutes a lease of real property. A lease allows a customer to leave and return to the same designated space during the term specified by the agreement. Income derived from a lease of real property is subject to tax applicable to the commercial lease classification. While the state no longer taxes income derived from leases of real property, some county excise taxes remain applicable.

The following are examples of parking space rental agreements or scenarios that are considered taxable commercial leases:

(1) A parking lot business leases specific parking spaces to customers for specified time periods for a consideration. The customer receives an interest in the specific parking space due to the terms of the agreement between the two parties. The income derived from the agreement falls under the commercial lease classification.

(2) A parking lot business enters into an agreement to lease a specific block of parking spaces to Company A, for use by Company A's employees. Company A does not re-lease specific spaces to its employees, but allows its employees to freely park anywhere within the block of spaces. The income derived from the agreement between the parking lot business and Company A falls under the commercial lease classification.

(3) A parking lot business leases a specific block of parking spaces to Company B. Company B enters into agreements with employees to re-lease specific spaces. While both transactions are considered commercial leases, Company B may provide a certificate to the parking lot business which documents that the first lease is exempt from tax pursuant to A.R.S. § 42-5069(C)(3). The income derived from the agreements between Company B and its employees is taxable under the commercial lease classification.

The following are examples of transactions which are not taxable under the commercial lease classification:

(1) A parking lot facility provides parking spaces where customers can temporarily park their vehicle. Customers drive onto the property and are given a metered ticket which indicates the time the customer entered, and then park their vehicle in any available space within the facility. When departing the facility, the customer presents the ticket to an attendant, who computes a fee based on the length of time the vehicle has parked in the lot. (Other similar scenarios exist, such as placing cash in a designated receptacle periodically checked by an attendant.) These transactions are nontaxable, because the income is derived from a license

to use real property and not a commercial lease.

(2) A parking lot facility charges customers a fee for a specific length of time (i.e., a week, a month, or a year) to park in the facility in any available space. This type of transaction is nontaxable, because the income is derived from a license to use real property and not a commercial lease.

(3) A valet parking business parks cars for customers and retrieves the cars when the customer is ready to depart. Car keys are given to an attendant, who parks the car in a space (that is not leased by the customer) and retains the keys to later retrieve the car. These transactions are considered bailments and are not taxable under the commercial lease classification.

Mark W. Killian, Director

### Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.