

## ARIZONA TRANSACTION PRIVILEGE TAX RULING

## TPR 99-7

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:

Whether a business that provides individual mailboxes on their premises for the delivery of mail to customers is subject to transaction privilege tax.

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 gross income derived by businesses that fall under this business classification.

In *Ulan v. Vend-A-Coin, Inc.*, 27 Ariz. App. 713, 558 P.2d 741 (1976), the court found that an arrangement that 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 (App. 1979), the court held that income derived from an agreement which provided access to real property for specific purposes but did not convey any rights or interest in real property, was a license rather than a lease of real property and was not subject to the City of Phoenix privilege tax.

DISCUSSION AND RULING:

For a consideration, many "mailbox businesses" provide the service of receiving U.S. mail for customers. Typically, the customer signs a release, authorizing the business to receive the customer's mail from the U.S. Postal Service and other private contract mail carriers or transporters. Mailbox businesses may engage in other business activities that are not at issue here.

A separate agreement may grant the use of an individual mailbox located on the business' premises for mail delivery purposes, providing convenience for both the mailbox business and its customer. The individual mailbox is an instrument used by the business in its mail delivery service. A customer is granted access to an individual mailbox only to receive mail. The agreement may also allow access to the business premises during non-business hours.

There are distinctions between leases of real property and licenses to use real property. 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 the licensor's premises, for certain limited purposes set forth in the license agreement. *Tanner Companies v. Arizona State Land Department*, 142 Ariz. 183, 688 P.2d 1075 (App. 1984); *Ulan v. Vend-A-Coin, Inc.* A license agreement for the use of real property is not a commercial lease of real property; income derived from license agreements is not subject to privilege tax. *Wenner v. Dayton-Hudson Corporation*.

While aspects of a mailbox arrangement are similar to a lease of real property, an agreement that provides for the use of an individual mailbox for mail delivery purposes will be considered a nontaxable license of real property, if the agreement contains the following characteristics:

1. Access to the mailbox is provided only to facilitate the business' delivery of mail to the customer;
2. The agreement is revocable at the will of the business; and
3. The agreement does not convey an estate in the real property.

Income derived from such agreements is not subject to the state's transaction privilege tax or related county excise taxes.

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#### 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.