

## PRIVATE TAXPAYER RULING LR03-001

March 3, 2003

This private taxpayer ruling is in response to your letter of March 28, 2002. You request the Department to rule on behalf of your client, . . . ("Client"), regarding the application of Arizona transaction privilege tax to Client's gross receipts from providing safe deposit box services. In addition to this issue, you asked that the Department determine whether Client's safe deposit boxes are real or personal property if the Department ruled that Client's services are a lease, rental, or license to use property.

We sincerely apologize for the delay in providing this answer to your request, and thank you for your patience. The following are the facts as presented in your letter:

Safe Deposit Box services, as they are referred to in [Client's] Consumer and Business Account Agreements, are provided to customers who enter into a "Safe Deposit Box Lease Agreement" ("Agreement") with [Client]. The Agreement is subject to the terms and conditions of [Client]'s Safe Deposit Box service as enumerated in [Client]'s Consumer and Business Account Agreements. A copy of the Agreement and of [Client]'s Consumer and Business Account Agreements, which include the terms and conditions of its Safe Deposit Box service, are attached. The substance of these documents is hereby incorporated by reference into this ruling request and the facts that we consider material is summarized herein.

In exchange for a fee, [Client] provides Safe Deposit Box services to some of its customers in program cities around the state. . . . [Client] charges fees for Safe Deposit Box services. [Client] uses safe deposit boxes to provide Safe Deposit Box services to its customers.

Security and safekeeping services, rather than the storage space afforded by a safe deposit box, appear to be the most valuable components, and the greatest expense for [Client], of providing its Safe Deposit Box services. . . .

Some of the security and safekeeping services that [Client] provides as part of its Safe Deposit Box service include:

1. [Client] locks safe deposit boxes inside vaults within its branch offices;
2. [Client] branch offices themselves are protected by sophisticated security equipment and, sometimes, security personnel;
3. [Client] branch offices have fire alarms and sprinkler systems to protect valuables stored within the branch office from fire damage; and
4. [Client] employees must escort customers into the vault and use [Client]'s key, in conjunction with the customer's key, to open safe deposit boxes.

[Client]'s terms and conditions for providing Safe Deposit Box services . . . restrict its customers from exercising exclusive possession and control over the safe deposit boxes. For example:

1. Customers may only access the boxes during banking hours;
2. Customers may not enter the vault where boxes are located unless accompanied by a [Client] employee;
3. Customers may not remove the boxes from [Client]'s premises;
4. Customers may not place certain types of property in the boxes;
5. [Client] may terminate the Safe Deposit Box service Agreement at any time;

6. Under certain circumstances, [Client] may prevent its customers from accessing the boxes or permit others to access the boxes; and
  
7. [Client] may substitute another box or relocate the box at its sole discretion.

The boxes are organized in freestanding clusters stacked on top of one another within [Client]'s vaults. . . .

### Your Position

Client's proceeds from providing safe deposit box services are not subject to state or local privilege taxes in Arizona because they are proceeds from a nontaxable service rather than from leasing, renting, or licensing the use of property. Alternatively, Client's proceeds from providing safe deposit box services fall outside the scope of state transaction privilege tax but within the scope of local privilege taxes because the services involve licensing the use of property.

### Conclusion and Ruling

The following ruling is given based on the contractual terms provided in copies of Client's Consumer and Business Account Agreements ("Agreements") that you provided to the Department and incorporated by reference in your request.

The Department rules that, based on the terms of the Agreements, Client's gross receipts from providing safe deposit box services are not subject to Arizona transaction privilege tax. Nevertheless, they may be subject to local privilege taxes on the licensed use of property; please refer to the Model City Tax Code or the appropriate city to determine proper tax treatment for particular locations. The Department does not reach the question of whether safe deposit boxes in this instance are real property or personal property because no lease, rental, or license has been found for purposes of imposing state transaction privilege tax.

The conclusion of this private taxpayer ruling does not extend beyond the facts and documents presented with your request of March 28, 2002.

This response is a private taxpayer ruling and the determination herein is 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 determination is subject to future change depending on changes in statutes, administrative rules, case law, or notification of a different Department position.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited, nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.