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Governor

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Director

PRIVATE TAXPAYER RULING LR07-003

May 3, 2007

This private taxpayer ruling is in response to your letter dated May 26, 2006, as updated on August 31, 2006, in which you request the Arizona Department of Revenue ("Department"), to rule on behalf of . . . Bank, on the applicability of transaction privilege tax to income from providing safe deposit box services. Pursuant to Arizona Revised Statutes ("A.R.S.") § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

Statement of Facts

. . . Bank provides in part the following information based on the May 26, 2006 and August 31, 2006 correspondence:

Safe Deposit Box services, are provided to customers who enter into a "Safe Deposit Box Lease Agreement" ("Agreement") with . . . Bank. The Agreement is subject to the terms and conditions of . . . Bank's Safe Deposit Box service as outlined in the [A]greement, a copy of which is 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, . . . Bank provides Safe Deposit Box services to some of its customers. . . . Bank charges fees for Safe Deposit Box services. . . . Bank 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 . . . Bank, of providing its Safe Deposit Box services. Some of the security and safekeeping services that . . . Bank provides as part of its Safe Deposit Box service include:

1. . . . Bank locks safe deposit boxes inside the vault;
2. . . . Bank is protected by sophisticated security equipment;
3. . . . Bank has fire alarms and sprinkler systems to protect valuables stored within the bank from fire damage; and

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4. . . . Bank employees must escort customers into the vault and use . . . Bank's key, in conjunction with the customer's key, to open safe deposit boxes.

. . . Bank'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[n] . . . Bank employee;
3. Customers may not remove the boxes from . . . Bank's premises;
4. Customers may not place certain types of property in the boxes;
5. . . . Bank may terminate the Safe Deposit Box service Agreement at any time;
6. Under certain circumstances, . . . Bank may prevent its customers from accessing the boxes or permit others to access the boxes; . . .
7. . . . Bank may substitute another box or relocate the box at its sole discretion[; and]
8. The boxes are organized in freestanding clusters stacked on top of one another within . . . Bank's vaults.

Your Position

We believe that . . . Bank's revenues from providing safe deposit box services are not subject to state or local privilege taxes in Arizona because they are revenues from a nontaxable service rather than from leasing, renting, or licensing the use of property.

Conclusion and Ruling

The following ruling is given based on the contractual terms of . . . Bank's Agreement provided to the Department and incorporated by reference in your request.

The Department rules that, based on the terms of the Agreement, . . . Bank's gross proceeds or income 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

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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 conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated May 26, 2006 and August 31, 2006, respectively.

This response is a private taxpayer ruling and the determinations herein are 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 applicable only 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.