



Janice K. Brewer
Governor

Gale Garrriott
Director

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

This taxpayer information ruling is in response to your letter dated August 14, 2009, as supplemented by your letter dated October 11, 2009, in which you requested a taxpayer information ruling on behalf of an undisclosed client. Specifically, you requested a taxpayer information ruling regarding the applicability of Arizona's transaction privilege tax to an event coordinator or consolidator.

Statement of Facts

Below is a restatement of the facts as provided in your August 14, 2009 letter:

Our client's business ("Business") is that of an event coordinator, or an event consolidator, for their clients ("Client"). Business retains items and services to organize and coordinate an event for Client. That event could be an annual meeting of shareholders, a high school prom, a trade show, an awards banquet for a company, a company management retreat, a board of directors meeting, a nonprofit fundraising event, etc.

Business coordinates the event in conjunction with Client's requirements. Business then consolidates all the various services and items in order for the event to occur smoothly for the participants. This includes making all the arrangements for lodging accommodations, arranging transportation to and from the event, reserving meeting rooms, coordinating meals and/or meal reservations, hiring speakers, making sure the appropriate amenities are handled, renting required furniture, fixtures and equipment for all aspects of the event, organizing ancillary events for the participants and /or their spouses, purchasing prizes or awards if requested, etc.

....

The method of pricing for the services of Business has evolved over time. Initially there was just one line item for "service fee," and all other line items were shown at actual cost. Now each line item of the invoice has a 5 to 20 percent service/administrative fee built into it to cover the payroll and operating costs related to providing each particular line item on the invoice. This simplifies the process of Client choosing which items or services to have as part of their event. Client can add and delete line items based upon their budget for their event, and this method of pricing allows Business to be able to quickly add and delete items for Client without having to prepare a new "service fee" each time.

There are no separate purchase or rental agreements between Client and the vendors Business uses for the event activities. Business contracts directly with their many vendors to coordinate and consolidate the necessary items and services for

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

Page 2

the event. If any TPT [is] required to be paid, Business pays for [it] when they contract with the vendor. Client has no direct involvement with the vendor providing the items and services for the event, nor generally does Client even know who the vendors are.

The lodging accommodations and transportation services are a significant part of many events. Business contracts directly with the lodging and transportation providers, and pays any applicable TPT at that point. Generally, Client only has input as to the location of the event, and the number of people at the event.

Rented items are another large portion of most events. Business contracts directly with the vendor providing the rented items and pays all applicable TPT at that point. The vendor delivers the rented items, helps to set up the items, and picks up the rented items after the event. Rented items range from tents and furniture, to casino tables, to table-top amenities.

Meals and entertainment also comprise a significant portion of most all organized events. Meals and/or entertainment may be handled at the lodging facility, or could be coordinated with another outside restaurant or entertainment establishment. Business contracts with the vendor for these meals or entertainment events and pays them directly, including paying all applicable TPT at that time. Entertainment events such as golf outings are popular in this state, and often the golf course is located at or near the lodging facility.

Issue

Whether services provided by, or tangible personal property transferred from, Business are subject to Arizona's transaction privilege tax.

Taxpayer's Position

Below is a restatement of your position as provided in your August 14, 2009 letter:

We believe Business is not subject to the TPT on the services they provide. Business is in the business of providing event coordination/consolidation services. Business is not in the business of directly providing any of the above described items or services at the event.

Applicable Law

A.R.S. § 42-5008 levies a transaction privilege tax measured by the amount or volume of business transacted by persons on account of their business activities.

A.R.S. § 42-5023 states that "[i]t is presumed that all gross proceeds of sales and gross income derived by a person from business activity classified under a taxable business classification comprise the tax base for the business until the contrary is established."

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

Page 3

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

A.R.S. § 42-5062 imposes the transaction privilege tax on the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state.

A.R.S. § 42-5069 imposes the transaction privilege tax on the business of leasing for a consideration the use or occupancy of real property.

A.R.S. § 42-5070 imposes the transaction privilege tax on the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.

A.R.S. § 42-5071 imposes the transaction privilege tax on the business of leasing or renting tangible personal property for a consideration.

A.R.S. § 42-5073 imposes the transaction privilege tax on the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts, except as provided in subsection B of this section, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement or entertainment, including the operation or sponsorship of events by a tourism and sports authority under title 5, chapter 8. For purposes of this section, admission or user fees include, but are not limited to, any revenues derived from any form of contractual agreement for rights to or use of premium or special seating facilities or arrangements.

A.R.S. § 42-5074 imposes the transaction privilege tax on the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

Arizona Administrative Code ("A.A.C.") R15-5-2004 states that a person who engages in more than one type of business under each license shall maintain books and records so that the gross proceeds of sales or gross income of each taxable business classification is shown separately. Failure to maintain appropriate books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

Page 4

or gross income applicable to a classification under which the taxpayer is doing business.

Discussion

The facts provided in your August 14, 2009 letter indicate that Business has significant revenues under several different taxable business classifications. Thus, Business does not have a primary business classification and the Department will make a determination regarding the tax consequences of revenue received under each of the applicable classifications.

A.R.S. § 42-5061 imposes the transaction privilege tax under the retail classification. The retail classification is comprised of the business of selling tangible personal property at retail. A.R.S. § 42-5001(13) defines the term “sale” as “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever . . . of tangible personal property . . . for a consideration . . . ” Therefore, Business’s transfer of tangible personal property to clients and/or their attendees (e.g., flower arrangements, prizes, gift bags, golf hats and shirts, signage and attendee information packets, including name badges and lanyards, etc.) constitutes a sale for transaction privilege tax purposes.

Moreover, A.R.S. § 42-5023 states that “[i]t is presumed that all gross proceeds of sales and gross income derived by a person from business activity classified under a taxable business classification comprise the tax base for the business until the contrary is established.” Therefore, Business’s gross proceeds of sales or gross income derived from the sale of each item, including any mark-up to the item, are subject to tax under the retail classification. However, A.R.S. § 42-5061(V)(3) defines “selling at retail” as “a sale for any purpose other than for resale in the regular course of business.” A.A.C. R15-5-101(A) also states that “[g]ross receipts from the sale of tangible personal property to be resold by the purchaser in the ordinary course of business are not subject to tax under the retail classification.” Thus, Business may provide an exemption certificate to a vendor when purchasing tangible personal property to be resold to clients.

A.R.S. § 42-5071 imposes the transaction privilege tax under the personal property rental classification. The personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration. Therefore, Business’s lease or rental of tangible personal property to clients (e.g., linens, table decorations, room décor, lighting and sound equipment, etc.) is subject to tax under the personal property rental classification. As with retail sales above, Business’s gross proceeds of sales or gross income derived from the lease or rental of each item, including any mark-up to the item, are subject to tax under the personal property rental classification. However, A.A.C. R15-5-1502(C) states that “[g]ross income from the lease of tangible personal property to a lessee who subleases the property is not taxable under the personal property rental classification if the lessee is engaged in the

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

Page 5

business of leasing the property under the personal property rental classification.” Thus, as with under the retail classification above, Business may provide an exemption certificate to a vendor when leasing or renting tangible personal property to be re-leased to clients.

A.R.S. § 42-5074 imposes the transaction privilege tax under the restaurant classification. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

Business is engaged in business as a caterer when it arranges for a client’s attendees to receive, for example, wine and cheese plates, cookies and soft drinks, box lunches, lunch or dinner in a hotel facility or third-party restaurant, etc. Therefore, Business’s gross proceeds of sales or gross income derived from the sale of food or drink, including any mark-up to the item, are subject to tax under the restaurant classification. However, A.R.S. § 42-5074(B)(1) exempts “[s]ales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.” Therefore, sales of food or drink by a hotel or restaurant to Business to be resold to a client are exempt from tax.

A.R.S. § 42-5069 imposes the transaction privilege tax under the commercial lease classification. The commercial lease classification is comprised of the business of leasing for a consideration the use or occupancy of real property. Business’s gross proceeds of sales or gross income derived from the rental of a meeting or banquet room to a client, including any mark-up to the rental, are subject to tax under the commercial lease classification. However, A.R.S. § 42-5069(C)(3) exempts the following:

[l]easing real property to a lessee who subleases the property if the lessee is engaged in business classified under the commercial lease classification or the transient lodging classification.

Therefore, the lease of a meeting or banquet room to Business to be re-leased to a client is exempt from tax.

A.R.S. § 42-5073 imposes the transaction privilege tax under the amusement classification. A.R.S. § 42-5073(B)(5) states that the tax base for the amusement classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

The gross proceeds of sales or gross income derived from:

.....

(b) Business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

Page 6

exclusion, exemption or deduction under this section or § 42-5062, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(c) Business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

Therefore, Business's gross proceeds of sales or gross income derived from arranging an amusement activity, including any mark-up to the activity, are subject to tax under the amusement classification. However, Business may deduct the consideration paid to the person conducting the activity, whether the activity is taxable or not taxable to that person due to an exclusion, exemption or deduction.

For example, a private or group golf lesson is excluded from the amusement classification under A.R.S. § 42-5073(A)(2). Business may deduct the cost of the lesson under A.R.S. § 42-5073(B)(5)(b). However, any mark-up by Business is subject to tax under the amusement classification.

A.R.S. § 42-5062 imposes the transaction privilege tax under the transporting classification. A.R.S. § 42-5062(B)(4) provides the following deduction:

The gross proceeds of sales or gross income derived from business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

Thus, Business's gross proceeds of sales or gross income derived from arranging transportation, including any mark-up, are subject to tax under the transporting classification. However, Business may only deduct the consideration paid to the person providing the transportation if such transportation is subject to tax. If the exclusion provided under A.R.S. § 42-5062(A)(1), for motor carriers subject to the motor carrier fee under A.R.S. § 28-5852 or the light motor carrier fee under A.R.S. § 28-5492, applies to the person providing the transportation, then the entire amount received by Business, including consideration paid to the person providing the transportation and any mark-up, is subject to tax under the transporting classification.

A.R.S. § 42-5070 imposes the transaction privilege tax under the transient lodging classification. The transient lodging classification is comprised of the following:

the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

Page 7

location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.

Business is not in the business of operating a hotel or motel. The re-lease of hotel rooms to clients and their attendees does not fall under the transient lodging classification. Transaction privilege tax is imposed on the party actually operating the transient lodging facility. Thus, the transient lodging facility may pass the burden of the tax onto Business. Business, in turn, may charge his or her client for the cost of such lodging including any taxes paid or mark-up to the cost added. Business is not subject to tax on the cost of such lodging or any mark-up under the transient lodging classification.

A.A.C. R15-5-2004 states that a person who engages in more than one type of business under each license shall maintain books and records so that the gross proceeds of sales or gross income of each taxable business classification is shown separately. Failure to maintain appropriate books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales or gross income applicable to a classification under which the taxpayer is doing business. Thus, if Business does not maintain appropriate books and records separately stating each taxable business classification explained above, Business's entire gross proceeds of sales or gross income derived from the business will be subject to tax at the highest rate applicable to a classification under which it is doing business.

Conclusion and Ruling

The Department rules that Business may be subject to tax under the retail, personal property rental, restaurant, commercial lease, amusement and transporting classifications. However, Business is not subject to transaction privilege tax under the transient lodging classification.

The conclusions in this taxpayer information ruling do not extend beyond the facts presented in your letters dated August 14 and October 11, 2009.

This response is a taxpayer information ruling (TIR) 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 information 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.

If the Department is provided with required taxpayer identifying information and taxpayer representative authorization before the proposed publication date (for a

TAXPAYER INFORMATION RULING LR10-011

August 10, 2010

Page 8

published TIR) or date specified by the Department (for an unpublished TIR), the TIR will be binding on the Department with respect to the taxpayer that requested the ruling. In addition, the ruling will apply only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The ruling may not be relied upon, cited, or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the taxpayer information ruling. If the required information is not provided by the specified date, the taxpayer information ruling is non-binding for the purpose of abating interest, penalty or tax.

Lrulings/10-011-D