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Governor

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Director

PRIVATE TAXPAYER RULING LR13-003

May 13, 2013

The Department issues this private taxpayer ruling in response to your letter of February 20, 2013 (the "Request") requesting a ruling on behalf of . . . (the "Company"). Specifically, you request a ruling on the application of Arizona's transaction privilege tax ("TPT") to Company's shipping and handling fees ("S&H Fees") charged to Arizona customers. Pursuant to Arizona Revised Statutes ("A.R.S.") § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

ISSUE:

Whether the Company's gross proceeds of sales or gross income derived from S&H Fees are subject to Arizona's transaction privilege tax?

RULING:

Based on the facts and documentation provided, the Department rules as follows:

Company is subject to TPT under the retail classification on its gross proceeds of sales or gross income derived from its S&H Fees on products delivered to Arizona.

FACTS ASSERTED BY COMPANY:

The following are facts excerpted from your February 20, 2013 letter:

Company sells tangible personal property listed on the . . . website to Arizona customers. The distribution, fulfillment and related services (e.g., inventory storage, packaging and shipping services) for such sales are handled by . . . ("Centers"), including . . . Centers in Arizona, which are leased and operated by Company's affiliated entities. Centers purchase products from various vendors and hold the inventory for resale to both related and unrelated parties. When a customer purchases tangible personal property from Company listed on the . . . website, a Center will ship the tangible personal property to the customer via common carrier. Additionally, Centers provide labeling, packaging, shipping and other related services to Company.

When a customer purchases tangible personal property from Company, the customer will generally be charged a S&H Fee. The S&H Fee is a charge for the following: (1) preparing the order for shipment which includes picking,

PRIVATE TAXPAYER RULING LR13-003

May 13, 2013

Page 2

packaging and fulfilling the order, and (2) shipping the order from the Center to the customer via common carrier. The S&H is separately stated on the customer's order summary or receipts as a single line item, separate from the total sales price of the tangible personal property and any applicable TPT, Use Tax, or other charges.

Company's shipping charges for tangible personal property shipped within the contiguous U.S. vary based on the following: (1) the product category of the item(s) shipped, and (2) the shipping speed selected by the customer. Generally, the quicker the delivery method, the greater the total shipping costs. In addition to the shipping charge, the S&H Fee also includes a handling charge/fee. The handling fee is a charge for picking, packing and fulfilling the customer's order. In addition, there are . . . categories of items sold by Company that may require "special handling" and an additional handling fee is charged as part of the S&H Fee.

LEGAL ANALYSIS:

The retail classification, found at A.R.S. § 42-5061, imposes transaction privilege tax on a person's gross proceeds of sales or gross income derived from "the business of selling tangible personal property at retail." A.R.S. § 42-5061(A)(2) allows a deduction for "[s]ervices rendered in addition to selling tangible personal property at retail." In order to qualify for the deduction under A.R.S. § 42-5061(A)(2), an item must be shipped from the retailer's location to the purchaser's location and the delivery charge must be separately stated on the invoice.¹ The term "delivery" is not specifically defined in statute by the Arizona Legislature. For undefined terms, as a general rule of construction, courts consult an established and widely used dictionary to determine their common and ordinary meaning.² The term "delivery" is defined as follows:

4. a. The action of handing over, or conveying into the hands of another; *esp.* the action of a carrier in delivery letters or goods entrusted to him for conveyance to a person at a distance.³

The costs associated with "delivery," then, would be those directly attributed to the conveyance of goods to the exclusion of costs attributable to activities that occur before such conveyance. Therefore, a retailer's deductible delivery charges are limited to its actual costs to ship merchandise to a customer, whether delivery is performed by the retailer itself or through a third-party carrier. A charge is not deemed to be a deductible delivery charge if it includes any amount other than the actual cost of delivering or shipping.

¹ Arizona Administrative Code R15-5-133(A).

² See, e.g., *United Dairymen of Ariz. v. Rawlings*, 217 Ariz. 592, 596, 177 P.3d 334, 338 (Ct. App. 2008).

³ "Delivery, *n.*" OXFORD ENGLISH DICTIONARY ONLINE [hereinafter OED ONLINE] (2d ed. 1989).

PRIVATE TAXPAYER RULING LR13-003

May 13, 2013

Page 3

Pursuant to the Request, the S&H Fees include “a handling charge/fee” for “picking, packing and fulfilling the customer’s order.” The S&H Fees include an amount other than the actual cost of delivering or shipping. Specifically, a portion of the S&H Fees is attributable to activities which occur before the conveyance of goods to a person at a distance. Therefore, the S&H Fees do not constitute a delivery charge that is deductible under A.R.S. § 42-5061(A)(2) and Company is subject to TPT on its gross proceeds of sales or gross income derived from S&H Fees on products delivered to Arizona.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in the Request. Therefore, the conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated February 20, 2013. 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 private 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. In addition, this private taxpayer ruling only applies to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.