



Janice K. Brewer
Governor

John A. Greene
Director

TAXPAYER INFORMATION RULING LR13-007

July 10, 2013

The Arizona Department of Revenue (the "Department") issues this taxpayer information ruling in response to your letter ("Request") in which you request a ruling on behalf of your undisclosed client ("Taxpayer"). Specifically, you request a ruling regarding whether Taxpayer's professional extended multi-day guided tour and shorter (*i.e.*, half-day or full-day) tour, river-rafting, kayaking, hiking, mountain and road biking and team building activities are subject to Arizona's transaction privilege tax under the amusement classification.

ISSUE:

Whether Taxpayer's professional extended multi-day guided tour and shorter (*i.e.*, half-day or full-day) tour, river-rafting, kayaking, mountain and road biking and team-building activities are subject to Arizona's transaction privilege tax under the amusement classification.

RULING:

Taxpayer's professional extended multi-day guided tour and shorter (*i.e.*, half-day or full-day) tour, river-rafting, kayaking, mountain and road biking and team-building activities do not fall within the scope of the amusement classification for purposes of Arizona's transaction privilege tax.

FACTS ASSERTED BY COMPANY:

The following is excerpted from your July 6, 2012 letter:

Taxpayer engages in professional extended multi-day guided tour and shorter (*i.e.*, half-day or full-day) tours and activities. Taxpayer possesses an Arizona transaction privilege tax license and reports and pays tax on its otherwise taxable activities (*i.e.*, retail and rentals of tangible personal property). The great majority of Taxpayer's activities consist of multiple-day professionally supervised guided tours and treks to and through scenic areas in Arizona, including the Grand Canyon, Havasu Falls, Sedona, the Maricopa County Parks System and the McDowell Sonoran Preserve. These extended multiple-day adventure treks generate well in excess of half of Taxpayer's guided tour revenues and, in some years, perhaps as much as 70% to 80% of the total revenues. Taxpayer also conducts professionally-guided and supervised "day tours" (*i.e.*, half-day and full day) involving hiking, river-rafting, kayaking and mountain and road biking in addition to the multiple-day tours and may also be called upon, on a contract basis, to conduct various "team building" events for corporate and institutional

TAXPAYER INFORMATION RULING LR13-007

July 10, 2013

Page 2

clients to foster and promote corporate and business cohesiveness and team-working capabilities. Taxpayer operates, in conjunction with a third party partner, kayaking and rafting tours in the Lower Salt River Recreation Area. The fee charged by Taxpayer for the day tours, multi-day treks, river rafting, kayaking, mountain and road biking tours and team building activities are all-inclusive for the tour guide and related professional services.

DISCUSSION & LEGAL ANALYSIS:

A.R.S. § 42-5073 imposes the transaction privilege tax under the amusement classification. The tax base for the amusement classification is the gross proceeds of sales or gross income derived from the business. The amusement classification is comprised of the following:

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.

In *Wilderness World, Inc. v. Arizona Dep't of Revenue*, 182 Ariz. 196, 895 P.2d 108 (1995), the Arizona Supreme Court held that the business of providing guided river rafting trips does not fall within the scope of the amusement classification for purposes of Arizona's transaction privilege tax. *Wilderness World, Inc.* ("Wilderness World") was a California corporation that operated an oar-powered river rafting service through Grand Canyon National Park. *Wilderness World's* trips carried passengers down the Colorado River between Lee's Ferry and Diamond Creek, Arizona. The typical river trip lasted twelve days and covered several hundred miles. Passengers met the *Wilderness World* guides and staff in Flagstaff, Arizona for orientation and were then transported to Lee's Ferry where the trips began. Professional river guides and employees conducted the river trips and provided first-aid if necessary. A typical river trip was guided by a lead guide, who was required to have a bachelor's degree and several years' experience guiding river trips. In addition, other employees, about one guide per four passengers were present on the trips. *Wilderness World* charged a single fee for a river trip, pursuant to National Park Service (NPS) concessionaire guidelines. The fee included transportation to the river, guide services, food, beverages, lodging, and necessary equipment. NPS regulations prohibited concessionaires from charging an admission fee for entrance to Grand Canyon National Park.

The Arizona Supreme Court held the following:

TAXPAYER INFORMATION RULING LR13-007

July 10, 2013

Page 3

When construing a tax statute, words must be given their “plain and ordinary meaning.” “Admission” is defined as “[t]he price required or paid for entering: an entrance fee.” The NPS prohibits Wilderness World from charging an admission fee to the Grand Canyon National Park, where the river trips take place. . . . Therefore, we conclude that Wilderness World is not charging an admission fee, and, consequently, river trips are not taxable under the plain language of the statute.

The court concludes that the fee charged by Wilderness World to “its customers is for the skill, direction, and service provided by the guide, the food and equipment for the trip, and the transportation to and from the river.” *Id.* at 198, 110. Moreover, under the doctrine of *ejusdem generis*, the court states that river trips could be an “amusement” under the statute if they were of the same kind or nature of activity as those specifically enumerated by the statute. However, the court held that the activities specifically listed in the statute are mainly “spectator events of short duration or participatory activities requiring no supervision. None of these activities resembles a river trip, which can be best characterized as a journey or expedition of extended duration covering hundreds of miles.” *Id.* at 199, 111.

The Department, therefore, determines that Taxpayer’s activities do not meet the definition of an amusement subject to transaction privilege tax under A.R.S. § 42-5073.

This response is a taxpayer information ruling (TIR) and the determination herein is based solely on the facts provided in the Request. Therefore, the conclusions in this taxpayer information ruling do not extend beyond the facts presented in your correspondence dated July 6, 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 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 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.