



Janice K. Brewer
Governor

David Raber
Director

PRIVATE TAXPAYER RULING LR14-001

April 14, 2014

The Department issues this private taxpayer ruling in response to your letters (“Request”) requesting a ruling on behalf of *** (“Company”). Specifically, you request a ruling on the application of the Arizona Transaction Privilege Tax (“TPT”) to Company’s gross proceeds of sales or gross income derived from its *** offering (“Subscription Memberships”). Pursuant to Arizona Revised Statutes (“A.R.S.”) § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

ISSUES:

1. Whether Company’s gross proceeds of sales or gross income derived from Subscription Memberships to Arizona customers are subject to Arizona TPT?
2. Whether Company’s gross proceeds of sales or gross income derived from trial memberships (“Trial Subscription Memberships”) are subject to Arizona TPT?

RULING:

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

Company is subject to transaction privilege tax under the personal property rental classification on its gross proceeds of sales or gross income derived from its sales of Subscription Memberships to Arizona customers. In regard to the Trial Subscription Memberships, there is no tax due because Company has no gross receipts.

FACTS ASSERTED BY COMPANY:

The following are facts excerpted from the letters dated April 25, 2013 and June 3, 2013:

Participants in the Subscription Membership program are referred to as members (“Members”). Members enter into contracts with Company for a Subscription Membership. To meet its contractual obligations, Company pays its affiliates to provide the underlying service related to each benefit. Customers purchase a Subscription Membership for a single fee. The single fee Subscription Membership includes the following components:

- *** Instant Video – Members may view movies and television shows an unlimited number of times during the course of their Subscription Membership. The *** Instant Videos are viewed on the Members’ television, computer, Xbox gaming system, ***, or other compatible device.

PRIVATE TAXPAYER RULING LR14-001

April 14, 2014

Page 2

- *** [e-book] Library – The *** Lending Library allows eligible Members who own *** devices to choose from a designated subset of the electronic books (“e-books”) sold on the *** to borrow, as frequently as a book a month, with no due dates. Members must own a *** device that is registered to the same Website account as the eligible Subscription Membership.
- Shipping – Members are entitled to receive *** shipping benefits for select shipping options on eligible purchases made on the Website. Also, certain products sold by third party merchants participating in *** through *** are eligible for *** shipping benefits. In order for a third party to provide *** shipping benefits for sales on their website, they must use ***. In addition to using ***, the third party must also meet one of the following criteria: (1) the third party’s website must be created through *** or (2) the third party must use the *** services.

The Subscription Membership charge is not bifurcated for *** Instant Video, *** Shipping, or the *** e-book Library. A Member could use his or her Subscription Membership to only watch *** Instant Videos. Company also provides a Trial Subscription Membership. Under the Trial Subscription Membership, there is no charge.

DISCUSSION & LEGAL ANALYSIS:

A.R.S. § 42-5071 imposes tax on the business of leasing or renting tangible personal property for a consideration. The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business. The term “renting” is not specifically defined in statute. For undefined terms, as a general rule of construction, courts consult an established and widely used dictionary to determine their common and ordinary meaning. See, e.g., *United Dairymen of Ariz. v. Rawlings*, 217 Ariz. 592, 596, 177 P.3d 334, 338 (Ct. App. 2008). In *State Tax Comm’n v. Peck*, 106 Ariz. 394, 476 P.2d 849 (1970), the Arizona Supreme Court defines the verb “to rent” as “to obtain possession and use of a place or article for rent.” *Id.* at 396, 476 P.2d at 851. The court added that “[i]n our view, . . . exclusive use and control comes within the meaning of the term ‘renting’ as used in the statute.” *Id.* In *Energy Squared, Inc. v. Arizona Department of Revenue*, 56 P.3d 686 (Ariz. Ct. App. 2002), the Court of Appeals reaffirmed that the imposition of TPT upon a personal property lease or rental “hinges on the degree of control over the property in question that is ceded to its putative ‘lessee’ or ‘renter.’” *Id.* at 689.

Company’s gross receipts derived from Subscription Memberships to Arizona customers are subject to TPT under A.R.S. § 42-5071. The total amount of the Subscription Membership fee is subject to tax under the personal property rental classification because it is a single fee bundled transaction that includes taxable personal property rental components, including *** shipping, *** Instant Video and *** e-book Library. In regard to the Trial Subscription Memberships, there is no tax due because Company has no gross receipts.

PRIVATE TAXPAYER RULING LR14-001

April 14, 2014

Page 3

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 April 25, 2013 and June 3, 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.