

PRIVATE TAXPAYER RULING LR02-010

May 22, 2002

The following private taxpayer ruling is in response to your letter of December 3, 2001, in which you requested a private taxpayer ruling on behalf of In your letter of April 1st, you agreed to an extension of time to allow the department the opportunity to conduct additional research.

Statement of Facts:

The following is a restatement of the facts presented in your letter.

* * *

In order to generate electrical power for its customers, . . . must purchase natural gas from commercial suppliers. This natural gas is transported via a series of pipelines owned and operated by the commercial suppliers of natural gas. Ultimately, the gas is transferred to a pipeline section owned and operated by This pipeline connects the commercial supplier's lines to the . . . generating facility located in The gas is then transported through that section of pipeline owned by . . . whereupon the transported gas is used to provide fuel for the generation of electricity. A certain percentage of that gas is consumed for the sole purpose of fueling compressor equipment to pressurize the pipeline and keep the gas flowing along the pipeline to the plant.

Compressor fuel or transport fuel is necessary to pressurize the pipeline in order to ensure that the total amount of fuel received is what is ordered and transported via the pipeline to the electric generating plant. It should be noted that the gas used to pressurize the pipeline is consumed in a portion of the pipeline section owned and operated by the commercial supplier in providing gas to the plant and that gas is paid for by In other words, . . . is purchasing the compression gas for use to pressurize the commercial supplier's pipeline in order to supply gas to However, it does not own the compression equipment (or compressor stations), which are powered by natural gas purchased by . . . to provide pressure for transmission of gas to its system.

Physically, the portion of the pipeline that is owned and operated by . . . is approximately 6645 feet in total length. One section of the pipeline that runs from the commercial supplier's metering station to the plant is approximately 782 feet and has a diameter of 8 inches. An additional length of pipeline, 12 inches in diameter, runs approximately 766 feet from the commercial supplier's pipeline to the plant itself. The remainder of the pipeline length runs throughout the station and through the property on which the generating facility is located and

supplies the station with the fuel necessary to generate the electricity for distribution to its customers.

A certain amount of gas that is purchased by . . . is diverted from a pipeline (owned by a commercial supplier) and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline to keep gas flowing to . . .'s facility. Although . . . does not physically own the compression equipment itself, it nevertheless is charged for gas used to fuel the compressor equipment that pressurizes the pipeline.

You have requested a ruling on the issue of whether . . . is a pipeline operator for purposes of applying A.R.S. § 42-5159(A)(45). Furthermore, you have requested that the department confirm that . . . is not precluded from claiming the exemption under this subsection simply because it does not own the compressor equipment which is powered by natural gas purchased by . . . to provide adequate pressure to its natural gas pipeline.

Your Position:

A.R.S. § 42-5159(A)(45) provides an exemption for:

Gas diverted from a pipeline, by a person engaged in the business of operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

You believe the above statute seems to have three requirements for compression gas users as follows:

1. The gas must be diverted from a pipeline.
2. By a person engaged in the business of operating a natural gas pipeline, and
3. Used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

Clearly the gas is diverted from a pipeline, so you assert that requirement one is met by Additionally, you believe that requirement three is met in that the gas in question is used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline. You have identified no requirement, under Arizona law, which requires the user/purchaser of the compression gas to actually own the compression equipment for which the gas is used. Rather, the statute simply requires that it be "used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline", as in this case. . . . does in fact purchase and pay for the fuel used in the compression process, the sole use of which is to pressurize the natural gas pipeline owned by the commercial supplier of gas. Based on these facts, you believe that the first and third requirements under the statute are clearly met.

However, requirement two stipulates that the compression gas used must, in fact, be used or consumed by a person engaged in the business of operating a natural gas pipeline. . . ., as an owner/operator of a pipeline, is required to be registered with the Arizona Corporation Commission as such. This is required under state law. Further, Webster's dictionary defines a pipeline as "a connected line of pipes equipped with machinery, for conveying oil, water, gas, etc. from one point to another as from a refinery to a market." . . . appears to clearly meet this dictionary definition of a pipeline. It does, in fact, have a set of connected line of pipes equipped with machinery for conveying gas from one point to another. Hence, under Webster's definition, . . . operates a pipeline. Thus, requirement two noted previously would be met under this definition.

Additionally, under the Arizona public utilities statute dealing with industrial gas pipelines, an industrial gas pipeline is defined as "any pipeline or system of pipelines and all necessary appurtenances to the pipeline used to transport . . .". (A.R.S. § 9-551) Hence, a broad definition of a pipeline seems to be favored by the Arizona public utilities statute. Although not dealing specifically with natural gas (rather it deals with industrial gas), this statute, by analogy, is instructional to determine how a pipeline is defined generally, in Arizona. Based on this definition, you believe that . . . would be considered an operator of a pipeline.

Although Arizona is somewhat limited in its published authority relating to how it may define a pipeline for purposes of the subject statute, it may be concluded that, under both Federal law and Arizona law, the definition of a pipeline is somewhat broad, if not general.

. . . has over a mile of pipeline for the sole purpose of transporting natural gas to and within the generating facility. Based on this, and the fact that the . . . pipeline appears to meet the definition of a pipeline both under state as well as federal law, you conclude that . . . is in fact a pipeline operator for purposes of applying the subject Arizona statute.

Applicable Statutory Provisions:

Arizona Revised Statutes (A.R.S.) § 42-5061 levies the transaction privilege tax on the business of selling tangible personal property at retail.

A.R.S. § 42-5061(S) provides that for the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

A.R.S. § 42-5155 levies a use tax on the storage, use or consumption in this state of tangible

personal property purchased from a retailer or utility business.

A.R.S. § 42-5159(A)(45) provides that the use tax does not apply to the use or consumption of gas diverted from a pipeline, by a person engaged in the business of operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

Discussion:

A person that operates a pipeline for the purpose of transporting natural or artificial gas belonging to others for compensation, is engaged in the business of operating a pipeline. In order to keep the pipeline pressurized, the pipeline company must withdraw some of its customer's gas from the pipeline and burn it as fuel to operate its compressors.

When the customer's gas is diverted from the pipeline by the pipeline company and used to fuel the compressor equipment that pressurizes the pipeline, it is not, under the retail classification, a taxable sale of the gas to the operator of the pipeline. [A.R.S. § 42-5061(S)]

Additionally, the use tax does not apply to the use or consumption of gas diverted from a pipeline, by a person engaged in the business of operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline. [A.R.S. § 42-5159(A)(45)]

To qualify under this provision, the gas must be diverted from a pipeline by a person engaged in the business of operating a natural or artificial gas pipeline. The use tax exclusion is not applicable for a person that is engaged in the business of generating electricity that simply owns a section of pipeline through which gas that they have purchased is transported.

Conclusion and Ruling:

The following ruling is given based on the facts presented in your request.

The department rules that the use tax exclusion provided by A.R.S. § 42-5159(A)(45) only applies to a person that is engaged in the business of operating a natural or artificial gas pipeline and, therefore, does not apply to . . .

The conclusions in this private taxpayer ruling do not extend beyond the facts as presented in the request for a private taxpayer ruling dated December 3, 2001.

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 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.