

PRIVATE TAXPAYER RULING LR02-017

September 24, 2002

The following private taxpayer ruling is in response to your request of May 24, 2002 and the receipt of subsequent information on July 16, 2002. Your letter requests a determination regarding the taxability of the sales to or purchases by the *** of buses and related equipment for use in the city transit system.

Based on the facts presented, the *** is not the seller of the buses and therefore not the taxpayer for purposes of Arizona transaction privilege tax. Arizona's transaction privilege tax is a tax on the privilege of conducting business in the State of Arizona. It is a tax on the seller, not on the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax.

Pursuant to A.R.S. § 42-2101 the department may issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request must be in writing and must be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer. As stated above, based on the information provided in your request *** is not the taxpayer for transaction privilege tax purposes. As a result, the department is not able to issue a private taxpayer ruling to the *** regarding Arizona transaction privilege tax. However, the department will issue a private taxpayer ruling to the *** regarding the taxability of the purchase of the buses and equipment under the use tax. As the transaction privilege tax and use tax are complimentary taxes, the analysis and reasoning of taxability under the use tax applies similarly to transactions subject to transaction privilege tax.

Statement of Facts:

The following is a statement of facts as presented in your request for a private taxpayer ruling.

The *** ("City") is a governmental entity. The City has the authority to join with other governmental entities to provide transportation systems for municipal and domestic purposes, and to construct the works necessary for their joint and several purposes and needs, and to unite with such entities in bond issues therefore, and to participate in the joint financing of such projects.

Furthermore, the laws of the State of Arizona authorize municipalities to (1) "engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from the municipal, ..." [A.R.S. § 9-511(A)]; (2) to "appropriate and spend public monies" on activities

that "will assist in the creation or retention of jobs or will otherwise assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of (its) inhabitants ..." [A.R.S. § 9-500.11]; and, (3) to "be vested with all of the powers of incorporated towns as set forth in title 9, in addition to all other powers vested in them pursuant to their respective charters or other provisions of law ..." [A.R.S. § 9-499.01]. *** and the *** voters approved the measure and the canvas of the votes certifying the passage of the measure for the special election was on the City's Formal Agenda ***.

As part of creating and operating this public transit system, the City will enter into purchasing agreements to buy vehicles for the transit system from ***. The *** will also purchase necessary component parts of the transit vehicles. The following is a list of the equipment that is subject to this request for a private taxpayer ruling.

Vehicle Equipment

1. Vehicle Control Head (VCH) - The VCH serves as the interface between the vehicle operators and the VMS. It provides an Operator display, numeric/function key buttons, storage for messages, and audible and visual annunciation for messages and alarms. This item is required for the operator to interface with the vehicle subsystems. The VCH is installed in or on, or attached to the bus.
2. Intelligent Vehicle Units (IVCU) - The IVCU serves as the on-board processor. As such, it is the interface between the on-board devices, serves as interface to the VAN, performs processing of on-board functions, and is the interface to voice and data radios. For this analysis (the Orbital-TMS proposal), this item is included as part of the VCH. This item is required, as it provides the vehicle intelligence to support the vehicle subsystems. The IVCU is installed in or on, or attached to the bus.
3. Vehicle Area Network (VAN) - This includes wiring, connectors, and device access boxes required for interfacing between on-board devices using the J1708/1587 scheme. This item is required to interconnect the vehicle systems. The VAN is installed in or on, or attached to the bus.
4. Vehicle Radios and Associated Equipment - This includes the mobile radios, antennae, handsets, modems, and other associated equipment to provide wireless communications. This item is required for the vehicle (Operator) to communicate with the central dispatch facility (Dispatcher). These items are installed in or on, or attached to

the bus.

5. Hidden Microphones and Alarm Switches - The hidden microphone is for monitoring sound in the vicinity of the bus operator by Radio Dispatchers whenever the silent emergency alarm has been activated. Alarm switches are used to activate the emergency alarm. This item is required to provide Operator and passenger safety in the event of an emergency. These items are installed in or on, or attached to the bus.

6. GPS Receivers and Antennae - This includes all receivers, antennae, and connections required for monitoring the location of the vehicle, including a back-up position-monitoring device. This item is required to determine vehicle location. This item is installed in or on, or attached to the bus.

7. Destination Sign Interfaces - This includes interfaces and control logic between all existing destination signs and the IVCU. This item is required to enable the automatic display of destination sign information for passengers. This item is installed in or on, or attached to the bus.

8. Farebox Interface - This includes the interface between the VMS vehicle system and the farebox. This item is required for the automatic logging of fare collection location information and automated Operator log-on. This item is installed in or on, or attached to the bus.

9. Automatic Audio Announcement Equipment - This includes the equipment used to provide a fully automatic high-quality audio output of recorded messages, including amplifiers and speakers. This item is required to meet the ADA requirement for the announcement of major stops, transfer points, and points of interest. This item is installed in or on, or attached to the bus.

10. Automatic Visual Display Equipment - This includes the equipment to provide a fully automatic visual display of stored data messages, including in-vehicle signs. This item is required to supplement the audio announcements with visual data, expected to soon become an ADA requirement. This item is installed in or on, or attached to the bus.

11. Other Device Interfaces, Wiring and Connectors - These include interfaces, wiring and connectors between the IVCU and on-board devices that do not reside on the VAN, like door sensors, wheelchair lifts, and status/alarms inputs. Also included is the interface with the on-board public address system. These are required to support the identified functions. These items are installed in or on, or attached to the bus.

12. Power Conditioning and Equipment Mounting Hardware - This includes vehicle power conditioning devices, and the custom hardware (shelves, brackets, etc.) required to mount the vehicle equipment in each vehicle type. These are required for all vehicles. These are installed in or on, or attached to the bus.

Radio Site Equipment

13. Base Stations, Antennae Systems, and Power Systems - This is equipment located at the remote radio communications sites from which the radio communication transmissions are sent to and received from the vehicles. This equipment is required for communications with the vehicles. This equipment is not installed in or on, nor attached to the bus.

Central Dispatch Equipment

14. Audio Announcement and Visual Display Recording Equipment - This equipment, located at a central dispatch location, is used to maintain the audio announcements and visual displays that are presented to the passengers on the buses. This equipment is required for the automatic announcement and display system. This equipment is not installed in or on, nor attached to the bus.

15. Wireless LAN PC's and WAN Equipment - This equipment is used to load the audio announcement and display information into the buses. This is generally a requirement of the audio announcement and display system, although this could be done manually for each bus. This equipment is not installed in or on, nor attached to the bus.

16. Server - Essential for the validation of the bus logins and downloading of schedule data. Also houses the central database regarding all of the information from the VMS system. This is not installed in or on, nor attached to the bus.

17. Multicast Controller (DCC) - Provides the over air protocol to talk to the buses. This is also an essential part of the equipment for the bus operations. This is not installed in or on, nor attached to the bus.

18. RDBS - Long term database housing all of the data necessary to operate the system. This is not installed in or on, nor attached to the bus.

19. ATIS Server - Provides the interface to the next bus signs necessary for Bus Rapid Transit. This is not installed in or on, nor attached to the bus.

20. OCC Printers - Printers necessary to print reports used to make decisions regarding bus operations. This is not installed in or on, nor attached to the bus.

21. Remote Site Printers - Printers necessary to print reports used to make decisions regarding bus operations. This in not installed in or on, nor attached to the bus.

22. OCC Computer Room - Printers necessary to print reports used to make decisions regarding bus operations. This is not installed in or on, nor attached to the bus.

23. OCC Radio Dispatcher - Fixed Route - Control station for the operations of the entire fleet. This is not installed in or on, nor attached to the buses.

24. Dispatcher Monitors - Necessary part of the controller workstation. This is not installed in or on, nor attached to the buses.

25. Remote Radio Dispatcher - Fixed Route - Control station for the operations of the entire fleet. This is not installed in or on, nor attached to the buses.

26. Central Dispatch Console Communications Equipment - Essential for the radio communications and operations with the three remote radio sites. This is not installed in or on, nor attached to the buses.

27. Radio Desk Sets - Operator interface to the back-up radio

system essential for redundancy and critical to transit operations. These include the OCC Radio Dispatcher, Remote Radio Dispatcher fixed route and Dial-a-Ride, and Special Events Coordinator. This is not installed in or on, nor attached to the buses.

28. Voice Radio Recording/Playback Equipment - Critical to keep historical communications required for litigation. This equipment also includes Road Supervisor Vehicle Voice Storage units. This is not installed in or on, nor attached to the buses.

29. Audio Announcement and Visual Display Recording and Maintenance Equipment (Central Recording Station) - Equipment necessary for maintenance and upkeep of the audio and visual data required by American with Disabilities Act (ADA). This is not installed in or on, nor attached to the buses.

30. Differential GPS Reference Receiver and Time Displays (DGPS Receiver) - Necessary for the synchronization of the vehicles and the server. This is not installed in or on, nor attached to the buses.

31. Communications Interfaces - Equipment necessary to provide communications and LAN interfaces to connect all servers, PC's, and controller workstations. The equipment includes the following: Customer service LAN I/F, Router, Router I/F, Ethernet switch, US Robotics 56K V.90 modem, remote consoles I/F and remote Operator Interface Equipment. This equipment is not installed in or on, nor attached to the buses.

32. Operator Training Hardware - Necessary equipment to provide training to the operators, dispatchers, and other personnel using the system. This equipment includes: Bus-In-A-Box Training Sets and ORBCAD-NT Console for Training. This equipment is not installed in or on, nor attached to the buses.

33. Radio Equipment - Fixed end radio equipment necessary for the daily operation and communications with the buses and between sites. The equipment includes: Radio System Control Panel, Elite Server, Centracom Gold central electronics, Mobile Radios, MCS2000 Type II, UHF ¼ Wave Roof Mount Antenna, 450-470 MHZ, handset/microphone, Portable Radios, shoulder mic/speaker/accessories, Multi-Unit Battery Chargers, Battery Analyzer and Exerciser, Vehicle Portable Adapters and other miscellaneous radio

equipment. This equipment is not installed in or on, nor attached to the buses.

34. Wireless LAN PC's and WAN equipment - Vital for the download and upload of the daily bus information. The parts used are: Wireless LAN PC's CPU, Wireless LAN PC monitors, Network equipment, Wireless LAN Access Points, Wireless LAN AP cables and miscellaneous hardware. This equipment is not installed in or on, nor attached to the buses.

35. Miscellaneous Software - Software that is vital to operate the vehicle management system. This software includes: Windows 2000 - Workstation, Windows 2000 - Workstation resource kit, Windows 2000 - Advanced Server, Windows 2000 - Advanced Server resource kit, Windows 2000 - Advanced Server client access license, Information Retrieval Database, Real-Time Database - SQL ODBC Drivers, Real-Time Database - SQL Server 7, SQL Server and client access license, GIS Map Database, ESRI ArcView GIS 3.2a for Windows, Software Maintenance Tools, CA ARCserveIT Advanced Ed. V6.61, CA ARCserveIT Disaster Recovery Option, TFTP Server, Symantec PC Anywhere, Access Security, Inoculate IT, Computer Aided Dispatch, CAD Software, Gold Elite license, AVL software, System Management User Functions, Clear Case, System Management Server. This software is not installed in or on, not attached to the buses.

Your Position:

The purchase of the Equipment (Items 1-35) used in the transit system is exempt from use tax.

It is your position that the provision of public transportation is a continuous process. An item need not be in direct contact with the bus or other transit vehicle in order to be used in the rendering of public transportation. It is your position that a bus is part of a transit system and in order for the bus system to provide effective transportation, all elements of that system must be furnished including, but not limited to the items listed above in the facts. It is your contention that the legislature's intent was to encourage the development of public transportation by the grant of exemptions. All of the items you listed are necessary parts of the public transportation system which the legislature decreed to exempt. The buses which are part of the public transit system for *** cannot be operated without the items listed above.

Applicable Statutory Authority:

Arizona Revised Statutes (A.R.S.) § 42-5155 imposes the use tax on the storage, use or consumption of tangible personal property purchased from a retailer.

A.R.S. § 42-5159(B)(11) provides an exemption under the use tax for purchases of buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

Discussion:

Arizona's *transaction privilege tax* is a tax on the privilege of conducting business in the State of Arizona. It is a tax on the seller, not on the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax. The Arizona transaction privilege tax is imposed under 17 separate business classifications, including *retail* sales of tangible personal property. Additionally, county excise taxes "piggyback" the imposition of the state's transaction privilege tax. All sales that are subject to the transaction privilege tax are also subject to applicable county excise taxes.

If a company does not have an Arizona business presence or nexus for transaction privilege tax purposes, Arizona's *use tax* applies. The use tax usually applies to purchases from an out-of-state retailer or job printer. A.R.S. § 42-5155(A) imposes Arizona's use tax on purchases of tangible personal property from out-of-state retailers that are used, stored, or consumed in Arizona. A.R.S. § 42-5159 provides specific exemptions from the use tax for certain purchases of tangible personal property.

A.R.S. § 42-5159(B)(11) provides an exemption under the use tax for purchases of buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

Exemptions from tax are to be narrowly construed. The exemption under the use tax is limited to buses and other urban mass transit vehicles. "Buses and other urban mass transit vehicles" is not defined in statute. Where words or terms are not specifically defined in statute, they may be given their plain and ordinary meaning, as found in a widely used dictionary. "Bus" is defined as a large motor-driven vehicle designed to carry passengers usually along a fixed route according to a schedule but sometimes under charter for a special trip. Though there is no specific dictionary definition of "Urban mass transit vehicle", a review of definitions of the individual words that make up the term lead to an understanding that the term is a means of carrying or transporting goods or passengers throughout a city. The common understanding of these terms and definitions do not include ancillary items that are not a part of the bus or mass transit vehicle. Therefore, items that are installed in or on, or attached to the bus or urban mass transit vehicles, as referenced in the additional information you provided, must be so installed or attached prior to completion of the sale and be part of the bus or urban mass transit vehicles at the time of completion of the sale/purchase.

Conclusion and Ruling:

The department rules that items numbered 1-12 listed under the heading "Vehicle equipment" that are purchased under one contract and that are installed in or on, or attached to the bus or urban mass transit vehicles prior to completion of the sale and are part of the bus at the time of sale qualify for the exemption under A.R.S. § 42-5159(B)(11) and may be purchased by the *** exempt from use tax. To the extent these items are not attached or are purchased under separate contracts from the contract to purchase the bus, they do not qualify for the exemption under A.R.S. § 42-5159(B)(11).

The department also rules that items numbered 13-35 listed under the headings "Radio Site Equipment" and "Central Dispatch Equipment" and that are not installed in or on, or attached to the bus or urban mass transit vehicles do not qualify for the exemption under A.R.S. § 42-5159(B)(11) and may not be purchased for use by the *** exempt from use tax.

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.