

PRIVATE TAXPAYER RULING LR02-019

September 30, 2002

The following private taxpayer ruling is provided in response to your letter dated July 3, 2002, in which you requested the department to rule regarding whether the purchases of material and equipment to construct a sewerage system by the . . . ("District") from out-of-state vendors, who do not have a business nexus with the State of Arizona and who are not subject to an excise tax under the laws of another state, are immune from the levy of the Arizona use tax.

In addition, your request referred to activities that were not specifically addressed in the question of the ruling request. These activities will be addressed separately in an information letter.

Statement of Facts:

The following is a restatement of the facts as presented in your request for a private taxpayer ruling dated July 3, 2002.

The District was formed pursuant to A.R.S. § 48-2001(B)(1) for purposes of constructing and operating a sewerage system within the territory of the District. The District constitutes both a political subdivision and a municipal corporation.

The District will be constructing and operating a sewerage system within the territory of the District. All purchases of materials and equipment to construct and operate the sewerage system will be made directly by the District from out-of-state vendors who do not have a business nexus with the State of Arizona. The construction of the sewerage system and installation of the equipment will be performed by a contractor.

Your Position:

The District, as a political subdivision of the state, is not subject to the levy of the Arizona use tax on District's purchases of material and equipment to construct a sewerage system from out-of-state vendors who do not have a business nexus with the State of Arizona and who are not subject to an excise tax under the laws of another state.

Applicable Statutory Provisions:

Arizona Constitution

Article XIII, Section 7 of the Arizona Constitution provides that a tax levying public improvement district is a political subdivision of the State and is entitled to the immunities and exemptions granted to municipalities and political subdivisions.

Arizona Revised Statutes

Arizona Revised Statutes ("A.R.S.") § 42-5001(1) defines "business" to include activities or acts which produce a direct or indirect gain, benefit or advantage.

A.R.S. § 42-5151(12) defines "person" as an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver or syndicate, this state or a county, city, municipality, district or other political subdivision or agency thereof.

A.R.S. § 42-5155 imposes a use tax on the storage, use or consumption of tangible personal property in Arizona that was purchased from a retailer who does not have a business nexus with Arizona.

A.R.S. § 42-5155(E) provides that every person storing, using, or consuming in this state tangible personal property purchased from a retailer or utility business is liable for the tax.

A.R.S. § 42-5159 provides specific deductions from the tax for certain purchases of tangible personal property.

A.R.S. § 42-5159(A)(2) provides that the use tax is due when an item is purchased outside Arizona and no tax, of equal or greater value, was paid to another state of the United States.

A.R.S. § 42-5159(B)(1) exempts from the use tax the storage, use or consumption of machinery and equipment used directly in manufacturing or processing.

A.R.S. § 48-2001(B)(1) provides that a sanitary district may be formed only for the purposes of regulating, purchasing, establishing, constructing and operating a sewerage system for a sewage sludge or by-product processing and disposal system which is owned by the district or any person and which provides for sewage collection, treatment and disposal in the district. The system may include the collection, transportation, pumping, treatment and disposal of sewage, processing, treating and disposing of sewage sludge and other by-products of sewage treatment.

Arizona Administrative Code

Arizona Administrative Code ("A.A.C.") R15-5-2302(A) states that a use tax is levied upon the purchaser of tangible personal property from an out-of-state vendor.

A.A.C. R15-5-2320 defines "manufacturing".

A.A.C. R15-5-2360(A) provides that the out-of-state purchases of tangible personal property by any state or its political subdivisions are taxable.

Discussion:

The Arizona transaction privilege tax ("transaction privilege tax") applies to sales by retailers ("vendors") located within the state, while Arizona use tax ("use tax") predominantly applies to purchases from vendors located outside of Arizona. The transaction privilege tax and the use tax are complimentary taxes; therefore, only one tax applies at a time. If a company does not have an Arizona business presence or nexus for transaction privilege tax purposes, Arizona's use tax may apply. A.R.S. § 42-5155(A) imposes Arizona's use tax on purchases of tangible personal property from out-of-state vendors that are used, stored, or consumed in Arizona.

Every person storing, using or consuming tangible personal property in Arizona that was purchased from a retailer who does not have a business nexus with Arizona is liable for use tax unless statutorily exempt. A.R.S. § 42-5155. "Person" is defined under the use tax to include this state, a county city, municipality, district, or other political subdivision. A.R.S. § 42-5151(12) (emphasis added). As such, political subdivisions and municipal corporations are subject to use tax on purchases of tangible personal property stored, used, or consumed in Arizona when purchased from an out-of-state vendor unless statutorily exempt.

The purchase of tangible personal property by a political subdivision is subject to use tax unless statutorily exempt

In your request for a private taxpayer ruling you base your advocated position on Article XIII, Section 7 of the Arizona Constitution. This section of the Constitution grants tax levying districts only "immunities and exemptions granted municipalities and political subdivisions under this Constitution or any law of the State or of the United States." No general exemptions exist for purchases by the state, counties, or cities. To the contrary, A.A.C. R15-5-2360(A) provides that the purchases of tangible personal property by the state or its political subdivisions are taxable unless otherwise exempt.

As mentioned above, every person storing, using or consuming in this state tangible personal property purchased from an out-of-state vendor is liable for use tax unless statutorily exempt. There is no specific exemption from use tax on purchases from an out-of-state vendor for political subdivisions or municipal corporations. In fact, the Legislature specifically includes municipalities, districts and political subdivisions in the statutory definition of persons liable for

use tax. See A.R.S. § 42-5151(12). Therefore, the District is liable for use tax.

Whether the District is acting in a governmental or proprietary function is extraneous for purposes of use tax

The cases you cite in your request address transaction privilege tax. These cases are dependent on a determination that an entity is engaged in business and thereby subject to transaction privilege tax. However for purposes of use tax, the determination involves a different analysis.

As a political subdivision and municipality the District is subject to the use tax upon purchases of tangible personal property from out-of-state vendors; there is no statutory exemption. Whether the District uses or consumes the tangible personal property for a governmental or proprietary purpose is not relevant for purposes of imposing the use tax. Therefore, the District is liable for use tax regardless of its activity.

Conclusion:

The District's purchases of tangible personal property from out-of-state vendors are subject to use tax unless statutorily exempt. The fact that the District is a political subdivision engaged in a governmental function is not relevant for purposes of use tax. Use tax applies to all persons and the definition of "person" specifically includes municipalities and political subdivisions.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the request for a private taxpayer ruling dated July 3, 2002.

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.