

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-2

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(This ruling supersedes the Arizona Transaction Privilege Tax Ruling TPR 93-2 dated January 15, 1993)

Note: footnotes were added May 11, 2021. No substantive changes were made to the ruling.

ISSUE:

Taxation of the sale of road material to the State, County and other consumers under the retail classification and the prime contracting classification.

APPLICABLE LAW:

A.R.S. § 42-1310.01.A¹ states:

The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income

¹ Since this ruling was issued, A.R.S. § 42-1310.01(A) was renumbered to A.R.S. § 42-5061(A).

derived from the business. The tax imposed on the retail classification pursuant to this section does not apply to the gross proceeds of sales or gross income from:

27. Tangible personal property sold to a person engaged in business classified under the prime contracting classification if the person is subject to tax under this article by reason of being engaged in such business, or to a subcontractor working under the control of a prime contractor that is subject to tax under this article, if the property so sold is to be incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business. No deduction is available for the sale of tangible personal property which is not to be so incorporated or fabricated.

A.R.S. § 42-1310.16.F² states in part that:

1. "Contracting" means engaging in business as a contractor.
2. "Contractor" ... means a person ... that undertakes to ... or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part thereof, ... and includes subcontractors and specialty contractors.

DISCUSSION:

The contract for the sale of road materials such as dirt, rock, gravel or asphalt may call for delivery to the job site. The materials may be dumped in mass or the purchaser may require that the materials be spread or otherwise put in place by the vendor or by a third party contractor.

² Since this ruling was issued, A.R.S. § 42-1310.16(F) was renumbered to A.R.S. § 42-5075(R). In addition, the definition of contractor has changed substantially since the ruling was written but the change does not impact the outcome of this ruling.

When materials are sold to a consumer, and the materials are not incorporated into any real property by the vendor, it is a sale of tangible personal property which is subject to the transaction privilege tax under the retail classification.

When materials are sold and either the vendor or a third party incorporates the materials into real property, it is a contracting activity which is subject to the transaction privilege tax under the prime contracting classification.

RULING:

The sale of road materials that are delivered by the vendor or the vendor's agent and dumped in mass, is a sale of tangible personal property which is subject to the transaction privilege tax under the retail classification.

A vendor who spreads or otherwise puts road materials in place is incorporating the materials into real property and is subject to the transaction privilege tax under the prime contracting classification unless it can be shown that the vendor is a subcontractor on the job and that the prime contractor is liable for the tax on the gross income attributable to the job and from which the subcontractor is paid. (See A.R.S. § 42-1310.16.D³)

If road materials are sold by a vendor to a contractor, the sale of the materials is exempt from tax if the materials are to be incorporated into a contracting job. However, the contractor is subject to tax under the prime contracting classification unless it can be shown that another party is the prime contractor on the job and that the prime contractor is liable for the tax on the gross income attributable to the job and from which the subcontractor is paid. (See A.R.S. § 42- 1310.16.D⁴).

Paul Waddell, Director
Signed March 2, 1993

³ Since this ruling was issued, A.R.S. § 42-1310.16(D) was renumbered to A.R.S. § 42-5075(D).

⁴ See footnote number 3.