

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 95-1

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

(Note: On 10/14/2020 footnotes were added. No substantive changes were made.)

ISSUE:

Taxation of personal property liquidation transactions, including transactions conducted as estate sales or auctions.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1301.1¹ defines "business" to include "all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales." (Emphasis added).

A.R.S. § 42-1301.13² defines "sale" as "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration,"

¹ After this ruling was issued A.R.S. § 42-1301.1 was renumbered to A.R.S. § 42-5001(1).

² After this ruling was issued A.R.S. § 42-1301.13 was renumbered to A.R.S. § 42-5001(18).

A.R.S. § 42-1305³ requires every person engaged in a business subject to transaction privilege tax to obtain a transaction privilege tax license.

A.R.S. § 42-1310.01⁴ levies the transaction privilege tax on the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or the gross income derived from the business.

A.R.S. § 42-1310.01.A.42⁵ provides, in part, that from and after January 1, 1995, personal property liquidation transactions are taxable under the retail classification unless they qualify as casual activities.

A.R.S. § 42-1310.01.P.3⁶ defines "selling at retail" as "a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property,....."

Arizona Administrative Code (A.A.C.) R15-5-2001⁷ defines a "casual sale" as "an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold."

DISCUSSION:

A.R.S. § 42-1301.13⁸ includes in the definition of "sale" any transfer of title or possession, or both, of tangible personal property for a consideration. The definition of sale is broad in the sense that any transfer of title or possession of tangible personal property by any means for consideration falls within the definition. See *State Tax Commission of Arizona v. Consumers Market, Inc.*, 87 Ariz. 376, 351 P.2d 654 (1960).

A "retail sale" is defined as a sale for any purpose other than for resale. A

³ After this ruling was issued A.R.S. § 42-1305 was renumbered to A.R.S. § 42-5005.

⁴ After this ruling was issued A.R.S. § 42-1310.01 was renumbered to A.R.S. § 42-5061.

⁵ After this ruling was issued A.R.S. § 42-1310.01.A.42 was renumbered to A.R.S. § 42-5061(A)(39).

⁶ After this ruling was issued A.R.S. § 42-1310.01.P.3 was renumbered to A.R.S. § 42-5061(V)(4).

⁷ After this ruling was issued A.A.C. R15-5-2001 was renumbered to A.A.C. R15-5-101.

⁸ See footnote 2.

person who sells tangible personal property at retail is subject to tax under the retail classification.

Therefore, a person who makes sales of tangible personal property, other than for resale, on a regular basis or who anticipates sales will occur with regularity is considered to be engaged in business under the retail classification and is not engaged in a casual activity.

Beginning from and after January 1, 1995, the gross proceeds or gross income derived from the business of engaging in personal property liquidation transactions are subject to tax under the retail classification. Personal property liquidation transactions include estate sales and auctions which occur at the dwelling of the owner.

An estate sale conducted by an individual or entity which does not own the property held for sale, is a taxable transaction if the activities surrounding the transaction are of a scope or degree to indicate that the party is engaging in a personal property liquidation transaction and; therefore, is taxable under the retail classification.

If an estate sale business only acts as a consultant to the owner or authorized party or merely advertises the sale on behalf of the owner or authorized party, the activity would be considered a service and would not be taxable under the retail classification as a personal property liquidation transaction.

If an estate sale business conducts an estate sale on behalf of the owner or authorized party whereby the business engages in more than consulting or merely advertising the sale, the sale is a personal property liquidation transaction and is subject to tax under the retail classification.

RULING:

Beginning January 1, 1995, personal property liquidation transactions, including estate sales and auctions conducted at the dwelling of the owner of the property are subject to tax under the retail classification if the activities of the person conducting the sale indicate that the person is a personal property liquidator conducting a sale in a personal property

liquidation transaction.

An activity associated with an estate sale on behalf of the owner or an authorized party would be considered to be a service activity if the activity only consisted of either or both of the following activities:

Advertising the sale; or,

Consultation on the organization and methodology for conducting an estate sale. "Consultation" does not include any activity on the part of the estate sale business or the auctioneer which places them at the location of the sale on the day of the sale.

The taxable status of a personal property liquidation transaction, including an estate sale, conducted in a manner not delineated in this ruling will be determined based on the facts and circumstances of the sale activities.

EXAMPLES:

The determination of taxability is not restricted to the facts and determinations of the following examples. These examples are provided solely as a guide for application of the above concepts regarding taxation or exemption for personal property liquidation transactions, including estate sales.

The following are examples of an estate sale subject to tax under the retail classification as a personal property liquidation transaction:

1. ABC Estate Sales (ABC) is hired by an owner to conduct an estate sale of the owner's tangible personal property. ABC appraises and determines the price for each item. On the day of the sale ABC conducts the sale and receives payments on behalf of the owner. ABC is subject to tax on the gross proceeds received from the sale.
2. Jon Doe Estate Sales (Jon Doe) is contacted by an owner of

tangible personal property to sell tangible personal property at an estate sale. The owner of the property was not engaged in the business of selling tangible personal property. The tangible personal property is delivered to Jon Doe's business location and is left in the possession of Jon Doe. Jon Doe is subject to tax on the gross proceeds received from the sale.

The following are examples of a nontaxable estate sale:

1. XYZ Company is hired by an owner of tangible personal property to assist in the organization of the sale of the tangible personal property at an estate sale. XYZ discusses the concept of an estate sale and the various ways an estate sale may be conducted. The owner of the property sells the property. XYZ does not attend the sale, nor does XYZ actually participate in the sale. XYZ has completed its portion of the agreement once the consultation is completed. XYZ has simply performed a service. The owner of the property was not in the business of selling tangible personal property at retail. The gross proceeds from the sale are not subject to transaction privilege tax.
2. XYZ Company engages in the business of conducting estate sales; however, the company will also provide nontaxable consulting or advertising services on behalf of the owner. The company is hired by an owner of tangible personal property for the purpose of advertising the sale of the property at an estate sale. The owner of the property conducts the sale. The gross receipts from the advertising activity are not subject to the tax under the retail classification if XYZ keeps its books and records in such a manner as to show separately the gross receipts from retail sales and the gross receipts from service.

Note: For information on personal property liquidation transactions occurring prior to January 1, 1995 and the procedure on how to apply for a refund of taxes paid on those personal property liquidation transactions, see Arizona Transaction Privilege Tax Procedure TPP 95-1⁹.

⁹ TPP 95-1 was rescinded as obsolete in 2012.

Harold Scott, Director

Signed: April 11, 1995

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.