

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 95-14

(This ruling supersedes and rescinds TPR 94-3)

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.

ISSUE:

Motor vehicles removed from dealer inventory.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1408.A levies an excise tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer as a percentage of the sales price.

A.R.S. § 42-1408.B states that the use tax applies to any purchaser which purchased tangible personal property for resale but subsequently uses or consumes the property.

A.R.S. § 42-1409.A.33 provides that the use tax does not apply to:

Motor vehicles that are removed from inventory by a motor vehicle dealer as defined in section 28-1301 and that are provided to:

(a) Charitable or educational institutions that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(b) Public educational institutions.

(c) State universities or affiliated organizations of a state university if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

A.R.S. § 42-1408.02 states that the use tax imposed on:

[M]otor vehicles that are removed from inventory by a motor vehicle dealer as defined in section 28-1301, that are used directly in the conduct of the motor vehicle dealer's primary business and that are returned to the dealer's active sales inventory within one year after the date of the initial removal from inventory shall be levied and imposed on a monthly basis and shall be applied to one thirty-ninth of the value of each new motor vehicle as determined by the manufacturer's suggested retail price and to one thirty-ninth of the value of each used motor vehicle as determined by any industry-wide publication in common use and devoted to listing used car values.

A.R.S. § 28-1301.22 states that "motor vehicle dealer" means:

[A] new motor vehicle dealer, a used motor vehicle dealer, a broker or a wholesale motor vehicle auction dealer, except that motor vehicle dealer does not mean a person who comes into possession of a motor vehicle as an incident to his regular business and who sells or exchanges the motor vehicle.

DISCUSSION:

In accordance with A.R.S. § 42-1408, the Arizona use tax is imposed on the use, storage or consumption in this state of tangible personal property purchased from a retailer as a percentage of the sales price. In addition, tangible personal property which was purchased for resale but subsequently used or consumed by the purchaser is also subject to the use tax.

The exemption under A.R.S. § 42-1409.A.33, for motor vehicles which are provided to an Internal Revenue Code (I.R.C.) § 501(c)(3) charitable or educational institution, was enacted in 1993. In 1994 this exemption was broadened to include public educational institutions, state universities, or affiliated organizations of a state university if no part of the organization's net earnings inures to the benefit of any private shareholder or individual. These exemptions apply retroactively to taxable periods beginning from and after December 31, 1986.

For purposes of this ruling, an "affiliated organization" is an organization which is associated with a state university and has a working relationship with the university for the purpose of advancement of the objectives of the university and fulfillment of the university's programs. An example of such an organization is a booster club which is associated with a state university for the purpose of supporting its athletic program.

In 1993, the Arizona Legislature passed a separate statutory provision addressing the taxation of motor vehicles removed from active sales inventory by a motor vehicle dealer and used directly in the conduct of the motor vehicle dealer's primary business. Under A.R.S. § 42-1408.02, if such vehicles are returned to the dealer's active sales inventory within one year

after the date of the initial removal from inventory, the use tax is levied and imposed on a monthly basis, and is applied to one thirty-ninth of the vehicle's value. The value of a new motor vehicle is determined by the manufacturer's suggested retail price. The value of a used motor vehicle is determined by any industry-wide publication in common use and devoted to listing used car values, such as the Kelly Blue Book.

Motor vehicle dealers regularly use vehicles from active sales inventory in their daily business operations. Whether such vehicles are subject to use tax depends on the dealer's particular use of each vehicle.

"Hard plated" vehicles which must be registered and titled in the dealer's name pursuant to A.R.S. §§ 28-302 and 28-303 are subject to the use tax. Such vehicles are used directly in the dealer's business as work or service vehicles. Additionally, if a vehicle is "hard plated" but not used in the dealer's business then the cost of the vehicle is subject to the full amount of the applicable use tax.

However, transaction privilege or use tax is not due on a vehicle provided to an I.R.C. § 501(c)(3) charitable or educational institution, public educational institution, state university, or a nonprofit affiliated organization of a state university. This exemption is applicable regardless of whether the vehicle is "hard plated," or, in those instances where the vehicle is only provided for temporary use, operated under a temporary registration permit pursuant to A.R.S. § 28-1314.01.

The cost of a vehicle is not subject to the use tax during applicable periods during which a vehicle qualifies for "dealer plates" under A.R.S. § 28-1311. These vehicles are considered to be subject to sale and are therefore part of inventory. As such, these vehicles may be furnished for use by the dealer's employees or for use as demonstrators for potential buyers.

The provisions under A.R.S. § 42-1408.02 apply to "hard plated" vehicles removed from a dealer's active sales inventory. A.R.S. § 42-1408.02 does not apply to vehicles qualifying for "dealer plates" because such vehicles are not subject to use tax.

In order for A.R.S. § 42-1408.02 to apply, a dealer's use of a "hard plated" vehicle must be in the conduct of the dealer's business for a period of one year or less. A dealer's use of a "hard plated" vehicle for more than one year is subject to tax under the general use tax statute, A.R.S. § 42-1408. In this case, the tax is levied at the time of initial use and applied to 100 percent of the dealer's cost of the vehicle.

If a dealer paying tax monthly on its use of a vehicle under A.R.S. § 42-1408.02 continues such use beyond one year, the provisions of A.R.S. § 42-1408 are applicable. The use tax is levied from the time of initial use and applied to 100 percent of the dealer's cost of the vehicle. At the point in which the dealer realizes it will exceed a 12 month period, the cost of the vehicle

becomes subject to the full amount of the use tax. Since the dealer has been reporting on a monthly basis, the dealer will be allowed to report the net difference between the total amount paid to date and the amount still owing on the full cost. Appropriate documentation should be retained in the books and records of the dealership to substantiate this method of reporting the use tax liability.

RULING:

Under A.R.S. § 42-1408.02, a motor vehicle from a dealer's active sales inventory which is "hard plated" for direct use in the conduct of the dealer's business is subject to use tax imposed monthly on one thirty-ninth of the vehicle's value if returned to the dealer's active sales inventory within one year after the date of initial use.

A dealer's use of a "hard plated" motor vehicle from the dealer's active sales inventory for more than one year is subject to use tax under A.R.S. § 42-1408. The tax is levied at the time of initial use and imposed on 100 percent of the dealer's cost of the motor vehicle.

The use tax does not apply to a motor vehicle which a dealer provides to a charitable or educational institution which is exempt from taxation under I.R.C. § 501(c)(3), a public educational institution, a state university, or an affiliated organization of a state university if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

EXAMPLES:

1. A vehicle from active sales inventory is "hard plated" by a dealer for use as a service vehicle in the dealer's business. The dealer returns the vehicle to its active sales inventory within one year from the date of initial use. In this situation, the use tax is levied under A.R.S. § 42-1408.02. The tax is imposed each month the vehicle is so used on one thirty-ninth of the vehicle's value.
2. Same facts as example 1, except the dealer plans to use the vehicle for more than one year. In this case the use tax is levied under A.R.S. § 42-1408. The tax is levied from the date of initial use and imposed on 100 percent of the dealer's cost of the vehicle.
3. Same facts as example 1, except the dealer continues to use the vehicle in service for more than one year. Although the dealer had paid tax monthly under A.R.S. § 42-1408.02, this provision no longer applies. In this situation, the use tax is levied under A.R.S. § 42-1408 from the time of initial use and applied to 100 percent of the dealer's cost of the vehicle. The dealer files Form TPT-1 to reflect the net difference between the tax paid on the vehicle under A.R.S. § 42-

1408.02 and the total amount due.

4. A motor vehicle is removed from a dealer's inventory and provided to an athletic booster club which is affiliated with a state university. No part of the booster club's net earnings inure to the benefit of any private shareholder or individual. The use tax does not apply to such a vehicle.

Harold Scott, Director
Signed May 19, 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.