

PRIVATE TAXPAYER RULING LR96-001

February 7, 1996

The following private taxpayer ruling is in response to your undated letter which was postmarked on September 5, 1995 and the additional information provided by your letters of November 6 and December 19, 1995. Your letter requests a determination regarding the application of transaction privilege tax to income derived from receiving concrete and asphalt debris from construction contractors.

The following is a restatement of the facts presented in your letters.

Statement of Facts:

... is engaged in business under the prime contracting classification. The primary activities involve site preparation, road construction and utility line construction.

... is also involved in income producing activities at its construction yard. Contractors involved in projects that require concrete or asphalt removal have a need to dispose of this construction debris. As an alternative to hauling this debris to a county landfill, they may dispose of it at ... construction yard and pay a fee to ... that is lower than the fee they would pay at a landfill.

... recycles this material by crushing it and either uses it in future contracting projects or sells it to other contractors, resellers or the general public. The crushed concrete can be used as ABC material. The crushed asphalt can be used for patchwork, compacted as is, or, with the addition of tar, used as a cold mix. Income derived from sales of this material is not at issue here.

Your Position:

The transaction privilege tax applies to transactions in which an exchange of tangible personal property is made for money. The revenue flow in the transactions at issue is the reverse of a normal sales transaction. ... is charging a fee for receiving the materials and is not selling tangible personal property. Therefore, ... is not subject to tax on the income derived from these transactions.

Applicable Statutory Provision:

Arizona Revised Statutes (A.R.S.) § 42-1301 provides that "sale" means any transfer of title or possession, or both, of tangible personal property for a consideration.

A.R.S. § 42-1310.01 provides that the business of selling tangible personal property at retail is subject to tax under the retail classification.

A.R.S. § 42-1310.16 provides that a person that constructs, alters, repairs, adds to, subtracts from, improves, wrecks or demolishes any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement, or to do any part thereof, is subject to tax under the prime contracting classification.

A.R.S. § 42-1317 delineates the business classifications under which the transaction privilege tax is levied.

Discussion:

The business of selling tangible personal property at retail is subject to tax under the retail classification. Selling means transferring title or possession of tangible personal property for a consideration.

Title and possession of the concrete and asphalt are transferred by the contractors that dispose of the material by depositing it at ... yard. Therefore, ... is not selling tangible personal property.

The business of altering or improving any real property is subject to tax under the prime contracting classification. When construction debris, consisting of concrete and asphalt materials, is deposited at ... yard, no alteration or improvement has been made to the real property.

Conclusion and Ruling:

Receiving concrete and asphalt construction debris which is furnished by others is not a contracting activity, nor is it selling tangible personal property at retail, nor is it any activity upon which the transaction privilege tax is levied.

The income derived by ... from transactions whereby contractors, for a fee, are allowed to deposit concrete and asphalt construction debris at ... yard, is not subject to transaction privilege tax.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the request for a private taxpayer ruling which was postmarked on September 5, 1995, and as supplemented by information provided by letters of November 6 and December 19, 1995.

This response is a private taxpayer ruling and the determination herein is based solely on the

facts provided in your request. The determination in this taxpayer ruling is the present position of the department and is valid for a period of four years from the date of issuance except as set out herein. This determination is 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.