

# PRIVATE TAXPAYER RULING LR96-013

December 16, 1996

The following private taxpayer ruling is in response to your letter dated November 19, 1996. Your letter requests a determination of the application of Arizona's transaction privilege tax to the construction of the ... on the ... Reservation.

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

Statement of facts:

... has been awarded a contract to build the ... for the ... School Board ... on the ...Reservation. The construction contract is funded by the Bureau of Indian Affairs (*BIA*). The ... is a local school board of elected ...tribal officials of the ...Chapter funded by the *BIA*. The ... has requested the construction of a new boarding school.

... has entered into a contract with the *BIA* for the construction of the ...

Your position:

It is your position that construction of a school by a non-Indian contractor for use by a tribal entity on the ...Reservation that is funded by the *BIA* is not subject to Arizona transaction privilege tax.

It is your belief that this project should be exempt because the U.S. Supreme Court has held that in projects of this nature the State is precluded from the imposition of the state gross receipts tax.

Applicable statutory provision:

Arizona Revised Statutes (A.R.S.) § 42-1310.16 levies the transaction privilege tax on the business of prime contracting.

Discussion:

Arizona imposes a transaction privilege tax which differs from the sales tax imposed by most states. The Arizona transaction privilege tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the vendor is ultimately

liable to Arizona for the tax.

Generally, persons engaged in the business of constructing, improving or altering real property are subject to the transaction privilege tax under the prime contracting classification. (A.R.S. § 42-1310.16) However, with regard to contracting activities occurring on Indian reservations, the law in this area has been developed through case law, rather than statute. This can make determinations of the tax status of construction projects on Indian reservations difficult.

In *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, the U.S. Supreme Court addressed the construction of a school by a non-Indian contractor on the ...Reservation in New Mexico. The project was funded by the *BIA*. The tribal organization was the design and building contractor but could subcontract out the actual construction work to third parties. The Court held that "the comprehensive regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax in this case."

Therefore, due to the decision in *Ramah* and other court decisions, the department has taken the position that construction contractors performing improvements to real property on Indian reservations are not subject to the imposition of Arizona transaction privilege tax under the following conditions:

1. The construction work is performed for the tribe or a tribal entity for which the reservation was established.
2. The construction work is performed for an individual Indian, who is a member of the tribe for which the reservation was established.

The facts presented in your ruling request and the accompanying documentation describing the construction of the ... have limited similarity to the facts presented in *Ramah*. ...is a tribal organization established by the ... that has requested the construction of a new boarding school. However, unlike in *Ramah* where the tribal organization was the design and building contractor that could subcontract out the actual construction work to third parties, ... is named as prime contractor in the construction contract for the .... The contract between ... and the *BIA* is to be administered by the *BIA* directly.

Generally, the department has taken the position that a prime contractor who is a non-affiliated Indian and who performs contracting activity on a reservation is subject to tax unless the contracting work is performed for the tribe, a tribal entity or an individual member of the tribe for which the reservation was established. This includes prime contractors performing work on an Indian reservation for a federal agency such as the Bureau of Indian Affairs. The department has taken the position that a prime contractor who performs improvements to real property for an entity totally funded and regulated by the federal government, rather than by a

tribal entity or a member of the tribe, is subject to tax.

Conclusion and ruling:

The following ruling is given based on the facts presented in your request.

The department rules that the construction contract between ... and the *BIA* does not meet the requirement that construction work on a reservation be performed for the tribe or a tribal entity for which the reservation was established. Therefore, the construction of the ... on the ... Reservation is subject to tax.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letter and related documents dated November 19, 1996, in this request for a private taxpayer ruling.

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 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.