

## PRIVATE TAXPAYER RULING LR98-005

April 16, 1998

The following private taxpayer ruling is in response to your letter of February 20, 1998. Your letter requests a determination regarding the application of transaction privilege tax on the income derived by ... from rentals of ... with operators.

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

### Statement of Facts:

Taxpayer operates a vehicle leasing company in ..., Arizona. Taxpayer's fleet of vehicles includes licensed ..., which have a gross vehicle weight in excess of 12,000 pounds. Accordingly, Taxpayer remits motor carrier tax to the Arizona Department of Transportation (ADOT) pursuant to A.R.S. Title 28, Chapter 16, Article 4.

As an additional service to the rental of the ..., Taxpayer will provide customers with an operator. However, pursuant to the lease agreement, all ... operators are under the direct supervision of the customer who is solely responsible for their actions.

### Your Position:

The gross income derived from the business of leasing or renting motor vehicles is not subject to transaction privilege tax if such vehicles are subject to motor carrier tax and such tax is paid.

Taxpayer is engaged in the business of leasing motor vehicles, as defined in A.R.S. § 42-1310.11(B)(4). Taxpayer's over the road fleet of ... are subject to motor carrier tax, which is properly remitted to ADOT under A.R.S. Title 28, Chapter 16, Article 4. (Formerly Title 28, Chapter 9, Article 6) Accordingly, Taxpayer's gross income, to the extent that the income is derived from the business of leasing such vehicles, is not subject to transaction privilege tax.

### Applicable Statutory Provisions:

Arizona Revised Statutes (A.R.S.) § 42-1310.11 levies the transaction privilege tax on the business of leasing or renting tangible personal property for a consideration. The tax base is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-1310.11(B)(4) provides a deduction from the tax base for income derived from leasing or renting a motor vehicle subject to and upon which the fee has been paid under Title

## 28, Chapter 16, Article 4.

Under Title 28, Chapter 16, Article 4, A.R.S. § 28-5852 imposes against each motor vehicle a motor carrier fee. The annual motor carrier fee is imposed on each motor vehicle registered in this state with a gross vehicle weight of 12,001 pounds or greater, in accordance with A.R.S. § 28-5854. The fee is payable at the time the motor vehicle is registered.

A.R.S. § 28-5851 defines the term "motor vehicle" as a self-propelled motor driven vehicle that has a declared gross vehicle weight of more than 12,000 pounds and that is subject to vehicle registration before lawful operation on the public highways in this state.

Arizona Administrative Code (A.A.C.) R15-5-612 states that the income from crane and concrete pumping activities, provided with or without operators, is taxable as rental of personal property.

### Discussion:

Arizona's transaction privilege tax is a tax on the privilege of conducting business in the State of Arizona. It is a tax on the seller, not on the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax.

The transaction privilege tax is imposed on the business of leasing or renting tangible personal property for a consideration. Rentals of ..., with or without operators, are subject to tax as rentals of personal property. However, the transaction privilege tax does not apply to the gross income derived from leasing or renting a motor vehicle subject to and upon which the motor carrier fee has been paid. (A.R.S. § 42-1310.11)

The motor carrier fee is based on the declared gross vehicle weight and is payable annually at the time the motor vehicle is registered. The term "motor vehicle" includes every self-propelled motor driven vehicle that has a declared gross vehicle weight of more than 12,000 pounds and which is required to be registered before it can be lawfully operated on the public highways.

Effective October 1, 1997, Title 28 statutes are recodified and amended. The former statutes impose a motor carrier tax on motor vehicles with a gross weight of 26,001 pounds or greater and on lightweight motor vehicles with a gross weight between 12,001 and 26,000 pounds.

A ..., with a gross vehicle weight in excess of 12,000 pounds, which is self-propelled and licensed for use on the highway, is subject to the motor carrier fee. Payment of the motor carrier fee, or the former motor carrier tax, is a prerequisite for the transaction privilege tax exemption.

### Conclusion and Ruling:

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

The department rules that the gross income derived by ..., from rentals of ..., with or without operators, on which the motor carrier fee or the former motor carrier tax has been paid, is not subject to transaction privilege tax under the personal property rental classification.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the request for a private taxpayer ruling dated February 20, 1998.

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.