

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 01-3

(This ruling supersedes Arizona Transaction Privilege Tax Procedure TPP 97-3)

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:

The deduction from the tax base under the prime contracting classification and the retail classification for soil remediation activities and materials.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5075(B)(6) provides a deduction from the tax base under the prime contracting classification for the gross proceeds of sales or gross income from a contract to provide certain actions in response to a release or suspected release of a hazardous substance, pollutant, or contaminant from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority. This exemption does not include asbestos removal or the construction or use of pollution control equipment, facilities, or other control items.

Laws 1995, Chapter 276, Section 4 provides that this provision applies retroactively to taxable periods beginning from and after December 31, 1986.

Laws 1997, Chapter 287, Section 38, effective April 29, 1997, added A.R.S. § 49-290(H) which provides that the state shall not impose a tax on the sale or purchase of tangible personal property incorporated or fabricated into any real property, structure, project, development, or improvement under a contract specified in A.R.S. § 42-5075(B)(6).

A.R.S. §§ 42-5061(A)(27), 42-5075 and 42-5159(A)(13)(g) provide deductions from transaction privilege and use tax on the sale of tangible personal property sold to a person engaged in business under the prime contracting classification if the property so sold is to be used in environmental response or remediation activities under A.R.S. § 42-5075(B)(6).

Laws 1999, Chapter 246, provides deductions under A.R.S. §§ 42-5061(A)(53) and 42-5159(A)(47) for sales and purchases of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under A.R.S. § 42-5075(B)(6). These provisions apply retroactively to taxable periods beginning from and after December 31, 1996.

DISCUSSION:

A deduction from the tax base under the prime contracting classification is allowed for the gross proceeds of sales or gross income from contracts to perform the following actions in response to releases or suspected releases of hazardous substances, pollutants, or contaminants from a facility to the environment, unless the release was authorized by a permit issued by a governmental authority:

- Monitoring, assessing, and evaluating the release or suspected release;
- The excavation, removal, and transportation of contaminated soil;
- Treatment of contaminated soil to reduce the concentration, toxicity, or mobility of a contaminant;
- Pumping and treatment, either on-site or off-site, of contaminated groundwater to reduce the concentration or toxicity of a contaminant;
- Installation of structures to contain contaminants present in groundwater or soil and prevent them from threatening human health or welfare or the environment.

The deduction does not include asbestos removal or the construction or use of ancillary structures such as maintenance sheds, offices or storage facilities for unattached equipment, pollution control equipment, facilities, or other control items required to be used by a person to prevent or control contamination before it reaches the environment.

Occasionally a contract may include both taxable and nontaxable activities. When a contract includes both taxable and nontaxable activities, the gross proceeds of sales or gross income derived from performing the nontaxable activities may be deducted from the tax base if the nontaxable activities are separately stated or can be determined from the contract. However, if the gross proceeds of sales or gross income from the otherwise nontaxable activities are not

separately stated or cannot be determined from the contract, the gross proceeds of sales or gross income derived from the project is subject to tax under the prime contracting classification.

EXAMPLES

1) A prime contractor enters into a contract for \$10,000 to remove an underground storage tank that the landowner suspects is releasing pollutants into the ground and contaminating the soil. The contract includes removal of the overburden, removal of the storage tank, testing of the soil to determine whether it is contaminated, and returning the land to its prior condition if the land is not contaminated. The entire contract is subject to tax under the prime contracting classification unless the amount attributable to testing the soil is separately stated or can be determined from the contract.

2) A prime contractor enters into a contract for \$10,000 to remove an underground storage tank that is releasing pollutants into the ground and contaminating the soil and to remove the contaminated soil and/or provide necessary treatment of the soil. If the contract separately itemizes the soil testing, treatment and removal from the storage tank removal, the testing, treatment and removal are exempt and the storage tank removal is taxable under the prime contracting classification. If the cost of the testing, removal and treatment of the soil are not separately stated and cannot be determined from the contract, the entire amount is taxable under the prime contracting classification.

3) A contractor enters into a contract to remove an underground storage tank so the landowner can install a swimming pool. The landowner has no reason to believe the storage tank is contaminating the ground. The entire contract is subject to tax under the prime contracting classification.

Materials Purchased for Use in the Exempt Activity

A retailer's sale of certain materials to a prime contractor is exempt under A.R.S. § 42-5061(A) (27). However, until April 29, 1997, this exemption was not available for materials used in performing activities exempt from tax under Laws 1995, Chapter 276.

Prior to April 29, 1997, all materials purchased for use in the treatment of contaminated soil were subject to transaction privilege tax. A prime contractor or subcontractor purchasing materials to be used in these activities should not have given the vendor an exemption certificate in order to purchase materials exempt from transaction privilege tax. If transaction privilege tax was not paid on the materials when they were purchased (for example, if a contractor used materials out of its construction business inventory), the prime contractor or subcontractor is subject to use tax on the cost of the materials. If a contractor purchased these materials with an exemption certificate, the contractor is subject to an amount equal to tax, penalties, and interest under A.R.S. § 42-5009(E).

Effective April 29, 1997, an exemption was provided for materials used in environmental response or remediation activities under A.R.S. § 42-5075(B)(6). Therefore, sales of materials that are used in environmental response or remediation activities under A.R.S. § 42-5075(B)(6) on or after April 29, 1997 are not subject to the transaction privilege or use tax. This exemption does not include materials used or consumed by the contractor that are not incorporated or fabricated into the real property.

Effective January 1, 1997, tangible personal property to be incorporated or installed as part of environmental response or remediation activities is exempt when sold to or purchased by persons not subject to tax under the prime contracting classification pursuant to A.R.S. §§ 42-5061(A)(53) and 42-5159(A)(47). Similar to the exemption for sales to and purchases by prime contractors, this exemption does not apply to materials used or consumed by the person that are not incorporated or installed into the real property.

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RULING:

1) Gross proceeds from contracts entered into exclusively for the monitoring, assessing, or evaluating a release or suspected release of contaminants into the soil or groundwater, as described above in the discussion section of this ruling, is exempt from taxation under the prime contracting classification unless the release was authorized by a permit issued by a governmental authority.

2) Gross proceeds from contracts entered into exclusively for the removal, transportation, and treatment of contaminated soil or groundwater as described above in the discussion section of this ruling, is exempt from taxation under the prime contracting classification unless the release was authorized by a permit issued by a governmental authority.

3) When a contract contains both the nontaxable activities described in 1) and 2) above, and other activities, the gross proceeds from the activities described in 1) and 2) are exempt from tax under the prime contracting classification only if the proceeds attributable to this work are separately itemized within the contract or are identifiable from the contract.

This ruling does not address asbestos removal or the construction or use of pollution control equipment, facilities, or other control items.

Mark W. Killian, Director

Signed: November 26, 2001

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 that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning 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 96-1 for more detailed information regarding documents issued by the Department of Revenue.