

PRIVATE TAXPAYER RULING LR02-003

February 21, 2002

The following private taxpayer ruling, regarding the construction of a residential apartment facility for low income persons, is in response to your request of October 15, 2001, and the additional information that was furnished by a second letter dated October 15th, which was received by this office on December 12th, and your letter of December 21st.

Statement of Facts:

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

. . . has a contract with . . . to build a senior housing facility. . . is classified as a section 501(c)(3) nonprofit charitable organization under the internal revenue code. The facility is a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over 62 years of age.

. . . reports transaction privilege tax on the cash basis and has received income from this project both prior to and after July 1, 2001. . . has remitted tax on the income from this project since the inception of the contract.

A.R.S. § 42-5075(B)(13) states that a prime contractor's "income" from a construction project that qualifies for federal housing subsidy for low income persons over 62 years by an I.R.C. 501(c)(3) is exempt.

Issues:

A ruling is requested on the following issues:

- Does this statute exempt the income for Arizona income tax or does it exempt the receipts from transaction privilege tax?
- If the receipts are exempt from transaction privilege tax, what portion is exempted? Is it just the state portion or is it the state and county portion?
- The project for . . . was underway on the effective date of July 1, 2001. Can . . . begin taking the exemption for this contract or is the exemption only valid on contracts begun after the effective date?

- Can . . . amend its transaction privilege tax returns back to the effective date of July 1, 2001?
- Is . . . required to have a qualifying letter from the department of revenue for the 501(c) (3) organization or can it simply rely on their statement that they qualify?

Applicable Statutory Provisions:

Arizona Revised Statutes (A.R.S.) § 42-1118 states, in part:

- A. If the department determines that any amount of tax, penalty or interest has been paid in excess of the amount actually due, the department shall credit the excess amount against any tax administered pursuant to this article, including any penalty or interest owed by the taxpayer. If it is determined that the amount cannot be credited against a tax or installment of taxes due from the taxpayer, the department may:
1. Refund the entire amount of tax, interest and penalty, in a lump sum or in not more than five annual installments, to the taxpayer from whom it was collected.
 2. Issue to the taxpayer a credit voucher for the entire amount of tax, interest and penalty collected, to be carried forward and applied against future tax liabilities until exhausted.
 3. Refund part, and issue a credit voucher for the balance, of the tax, interest and penalties as provided in paragraphs 1 and 2 of this subsection.

* * *

A.R.S. § 42-5009 states, in part:

- A. A person who conducts any business classified under article 2 of this chapter may establish entitlement to the allowable deductions from the tax base of that business by both:
1. Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the tax base.
 2. Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the appropriate deduction and the tax license number of the purchaser to the extent the deduction depends on the purchaser conducting business classified under

article 2 of this chapter and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete.

- A. A person who does not comply with subsection A of this section may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.
- B. The department may prescribe a form for the certificate described in subsection A of this section. Under such rules as it may prescribe, the department may also describe transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided for in subsection A of this section but must instead obtain such additional information as required by the rules in order to be entitled to the deduction.

* * *

A.R.S. § 42-5008 levies a transaction privilege tax measured by the amount or volume of business transacted by persons on account of their business activities.

A.R.S. § 42-5075 states, in part:

- A. The prime contracting classification is comprised of the business of prime contracting and dealership of manufactured buildings. The sale of a used manufactured building is not taxable under this chapter.
- B. The tax base for the prime contracting classification is sixty-five per cent of the gross proceeds of sales or gross income derived from the business. The following amounts shall be deducted from the gross proceeds of sales or gross income before computing the tax base:

* * *

1. For taxable periods beginning from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over sixty-two years of age and that is owned by a nonprofit charitable organization that has qualified under § 501(c)(3) of the internal revenue code.

* * *

A.R.S. § 42-6102 provides that the state transaction privilege tax statutes govern the

administration of the county excise taxes. The county taxes due shall be included, reported and paid with the transaction privilege tax.

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 prime contracting. The tax base for the prime contracting classification is 65% of the gross proceeds of sales or gross income derived from the business. However, from and after June 30, 2001, the gross proceeds of sales or gross income derived from a contract entered into for the construction of a residential apartment housing facility that qualifies for a federal housing subsidy for low income persons over 62 years of age and that is owned by a nonprofit charitable organization that has qualified under § 501(c)(3) of the internal revenue code, shall be deducted from the gross proceeds of sales or gross income before computing the tax base. [A.R.S. § 42-5075]

The income received after June 30, 2001 from such a construction contract is not subject to tax regardless of when the contract was originally entered into.

County excise taxes "piggyback" the state transaction privilege tax. If the income from a transaction is not subject to the state tax, the county tax does not apply. [A.R.S. § 42-6102]

A person may establish entitlement to a deduction from the tax base by marking the invoice to indicate that the gross proceeds of sales or gross income derived from the transaction were deducted from the tax base and by obtaining an exemption certificate from the purchaser. [A.R.S. § 42-5009(A)]

Pursuant to A.R.S. § 42-5009(C), the department has prescribed a transaction privilege tax exemption certificate (*Arizona Form 5000*). Other documentation is allowed, however, the burden of proof will remain with the taxpayer/seller. [A.R.S. § 42-5009(B)]

A person that has erroneously paid transaction privilege tax on transactions that are not subject to tax, may file *Amended Transaction Privilege, Use And Severance Tax Return (TPT-1X)* accompanied by a letter requesting a refund of the tax that was paid in error.

The amended returns and the request for refund should be sent to:

Transaction

Privilege & Use
Tax Audit
Arizona
Department of
Revenue
1600 West
Monroe
Phoenix, Arizona
85007

Phone: (602)
542-4656

Conclusion and Ruling:

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

The department rules that . . . is not subject to Arizona transaction privilege tax or county excise tax on the income received after June 30, 2001, that is attributable to the contract entered into with . . . for the construction of a senior housing facility.

. . . may file amended transaction privilege tax returns and request a refund of the state and county tax that was remitted on the gross income from this contract received after June 30, 2001.

. . . is not required to have a qualifying letter from the department of revenue to establish entitlement to the deduction from the tax base.

The conclusions in this private taxpayer ruling do not extend beyond the facts as presented in the request for a private taxpayer ruling dated October 15, 2001, and supplemented by your letters of October 15th and December 21st.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations are 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.

The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.