

PRIVATE TAXPAYER RULING LR02-007

May 8, 2002

The following private taxpayer ruling is in response to your request of March 26, 2002. Your letter requests that the charge for chemicals sold to any governmental agency to quickly remove snow and ice from highways and control dust be exempt from Arizona transaction and privilege tax. In addition, you have requested the freight charges be exempt from Arizona transaction privilege tax pursuant to an exception under Arizona Revised Statutes § 42-5062; *transporting classification*.

Statement of Facts:

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

. . . is an out of state corporation that provides chemicals, which quickly remove snow and ice from highways and others, which control dust on dirt roads. . . . has bid on projects to provide these chemicals to In addition, . . . would like to provide these chemicals to local governments in Arizona for use in their street and highway maintenance.

The contract provided with your request is a contract with The contract is for work that shall consist of furnishing and delivering road stabilization products, soil stabilizers and dust palliatives. The contract goes on to say that the bid price shall include all applicable tax, freight charges, fuel, etc. and any other costs necessary to supply and deliver the product or service as outlined under the contract.

Included in this bid price are delivery and freight charges. . . . will charge fees for the transportation of the chemicals from the out of state warehouse to the governmental unit. The transportation will be made with vehicles weighing more than 12,000 lbs. and subject to motor carrier fees.

While not stated in your letter, from the documentation provided, it appears the transportation or delivery charges and fees are not itemized. Page BS-10 of the bidding schedule provides that "[a]ll prices ... include ... delivery, and freight charges." There is no itemization for the delivery.

Your Position:

It is your position that . . . is operating outside the scope of the transaction privilege tax because it is assisting in a government function.

Applicable Law:

Arizona Revised Statutes (A.R.S.) § 42-5001(16) defines "tangible personal property" as property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.

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. The tax is levied upon any person who exercises the privilege of engaging in a business activity that falls under any of the seventeen business classifications enumerated in A.R.S. § 42-5061 *et seq.*

A.R.S. § 42-5061 defines "selling at retail" as a sale for any purpose other than for resale in the regular course of business. All sales of tangible personal property are subject to tax unless specifically exempted by statute. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-5062 imposes the transaction privilege tax on the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state.

Arizona Administrative Code (A.A.C.) R15-5-133 provides that a charge by a retailer for delivery from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable. If the freight cost is incurred any time prior to the time of the retail sale, such is part of the gross sale and, therefore, subject to the tax.

A.A.C. R15-5-181(A) provides that gross receipts from the sale of tangible personal property to the state or its political subdivisions are taxable.

A.A.C. R15-5-181(B) provides that gross receipts from the sale of tangible personal property by the state or its political subdivisions, when acting in a proprietary capacity, are taxable unless otherwise exempt.

Discussion and Analysis:

Sale of tangible personal property to the government

The transaction privilege tax is imposed on various business activities as delineated by A.R.S. § 42-5010. The tax is imposed on the business of selling tangible personal property at retail in accordance with A.R.S. § 42-5061. A.R.S. § 42-5061(V)(3) defines "selling at retail" as a sale for any purpose other than for resale in the regular course of business. The tax base is the gross proceeds of sales or gross income derived from the business. All retail sales of tangible personal property are subject to tax unless specifically exempt by statute.

No general exemptions exist for sales to the state, counties, or cities. A.A.C. R15-5-181(A) provides that the gross receipts from the sale of tangible personal property to the state or its political subdivisions are taxable unless otherwise exempt. Furthermore, A.A.C. R15-5-181(B) provides that gross receipts from the sale of tangible personal property by the state or its political subdivisions, when acting in a proprietary capacity, are taxable unless otherwise exempt. (Emphasis added.) This rule does not exempt the sale of tangible personal property made to the government regardless of whether the government is engaged in a proprietary function, governmental function, public safety, or otherwise.

Charges for the delivery of the chemicals

The Arizona transaction privilege tax is imposed on the transporting classification in accordance with A.R.S. § 42-5062. The transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point in the state to another point in this state. Typically, this applies when a consumer purchases a product from one party and contracts with a third party to haul the product to the consumer. Pursuant to the facts presented in your letter . . . is selling the chemicals and delivering the chemicals for an additional charge. Accordingly, A.R.S. § 42-5062 does not apply.

Alternatively, A.R.S. § 42-5061(A)(2) provides that the tax does not apply to the gross income from services rendered in addition to selling tangible personal property at retail. Certain separately stated delivery charges are exempted under this provision. In conjunction with this provision, A.A.C. R15-5-133 states that a charge by a retailer for delivery from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable. Therefore, as long as the delivery charge is separately stated in the contract and on the sales invoice, it will not be taxable. According to the contract provided with the request, the delivery charges are not separately stated. Rather, the delivery charge is included in the contract price and is therefore not deductible. Consequently, the entire contract price is included in the tax base under the retail classification.

Ruling:

According to the facts provided in your letter of March 26, 2002, the department rules that . . . 's sale of chemicals to . . . is subject to Arizona's transaction privilege tax under the retail classification. The department also rules that because the delivery charges are not stated separately in the contract or on the invoice, they are included in . . . 's tax base under the retail 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 March 26, 2001.

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.