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Governor

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Director

PRIVATE TAXPAYER RULING LR10-004

March 4, 2010

This private taxpayer ruling is in response to your August 25, 2009 letter requesting a private taxpayer ruling, as updated by your October 20, 2009 correspondence, in which you request the Arizona Department of Revenue ("Department"), to rule on behalf of . . . on the application of Arizona transaction privilege tax "with respect to the "call center" services we provide to our customers and the services provided to us by businesses that are registered in the State of Arizona."

Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

Statement of Facts

Your request for a private taxpayer ruling provides in part the following information:

. . . does not fall into the . . . definition or any definition of a contractor. We act as "call center" for our retail customers who . . . have no knowledge as to which repairman to call upon for a particular service. The businesses we call upon are on a time and material basis to make repairs to plumbing, plumbing fixtures, electrical fixtures, and any other items in need of repair which have been previously installed.

* * *

The materials are not for our own use nor do we claim ownership. We do not have any control over the job and it is the responsibility of the repairman to complete the repair. The prime contractor submits an invoice to us, as a convenience to our customer, for materials and labor separately stated along with a completed work order sign-off sheet approved by the store manager. It is the store manager's responsibility to ensure the completion of the job, not The store manager is employed by our customer, not by us. We in turn add an upcharge for the services of the "call center" to the repairman's invoice and send our invoice to our customer who may or may not be located in Arizona.

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* * *

. . . is not engaged in prime contracting. We merely act as a “call center” to facilitate the repair at the customer’s location via telephone communication. At no time are we physically involved in the control of the job with respect to supervision, performance, coordination and management. The businesses we use to make the repairs are completely responsible for the completion of the job.

* * *

It is very important to understand that . . . has no employees, agents, inventory or physical location in Arizona. The prime contractors are not our employees and we bear no responsibility as to their methods of operation.

* * *

. . . does not have any call centers within Arizona. Our only call center location is in New

* * *

It is the responsibility of the customer’s employee, usually the store manager, to approve the work performed. In that we have no knowledge or control as to how the repair was to be accomplished all we can do is contact the vendor to see if they can correct the situation. If this is not possible then we contact another vendor to finish the repair properly. Our obligation is to our customer and their complete satisfaction is our responsibility.

* * *

Master Service Agreement, Services and Payment Section, Section 1, provides in part:

Vendor shall provide the services set forth in Exhibit A (the “Services”). Subject to the terms and conditions of this Agreement, . . . shall pay (i) fees for the Services in accordance with Exhibit A and (ii) for out-of-pocket expenses which are pre-approved in writing by . . . , in accordance with Exhibit A.

* * *

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Master Service Agreement, Warranty Section, Section 4, provides in part:

Vendor will perform warranty work within seven (7) days' of receipt of notice of any defect or error. After seven days . . . may, at its discretion, contact another Vendor to complete the work needed. Vendor agrees that . . . has the right to withhold and to set-off against any amounts to be paid to Vendor under this Agreement or any other agreement between the parties to offset the damages incurred or possibly incurred by . . . or its clients as a result of the Vendor's failure to comply with this Section.

* * *

Master Service Agreement, Independent Vendor Section, Section 7, provides in part:

Vendor is acting in performance of this Agreement as an independent Vendor.

* * *

Master Service Agreement, No Liens Section, Section 9, provides in part:

The Vendor shall execute and submit the Final Release of Liens and Waiver upon submission of its request for payment from

* * *

Master Service Agreement, Exhibit A, provides in part:

Please note that for Time & Material work, . . . will only pay for one technician unless pre-approved, and any charges in excess of cap or NTE amount without approval from an . . . CSR is considered unauthorized, and Vendor is not entitled to receive payment for such unauthorized work and/or materials. An . . . employee is available via telephone 24/7 @

* * *

Master Service Agreement, Exhibit A, Fees and Expenses, provides:

. . . receives a marketing fee of three percent (3%) of all amounts billed by Vendor for the Services. For example, if Vendor bills \$100 for Services, then Vendor shall receive \$97.00 and . . . retains \$3.00. . . . shall pay the Vendor within forty-five (45) days from receipt of the complete and accurate invoice and sign off from . . . , provided that the Client has accepted the services as having been completed satisfactorily.

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Master Maintenance Agreement, Exhibit B, Buyer's Standard Terms and Conditions, Supplier's Warranties Section, Section 8, provides in part:

Supplier [. . . , "supplier of Products or provider of Services"] warrants that all Products delivered to Buyer [person who "desires to enter into an agreement with Supplier to provide handyman services"] will (i) comply with any specifications delivered by Buyer to Supplier ("Specifications"), (ii) be merchantable, (iii) be free from defects, (iv) be of good material and workmanship, and (v) be fit and sufficient for the purposes intended. Supplier warrants that all Services rendered to Buyer will be performed in a good and workmanlike manner by qualified personnel and in accordance with any Specifications and all applicable laws and regulations. Professional Services will be performed in accordance with all applicable professional standards for the field of expertise.

* * *

Master Maintenance Agreement, Exhibit B, Buyer's Standard Terms and Conditions, No Assignment Section, Section 17, provides in part:

If Buyer consents to any subcontract, Supplier shall be solely responsible for the subcontractor's performance, and the subcontractor shall be subject to all of the terms and conditions set forth herein.

Issue

Is . . . subject to Arizona transaction privilege tax when . . . , through a call center located outside of Arizona and a third-party contractor, facilitates the repair of real property at a customer's location within Arizona?

Your Position

. . .'s position as stated in its August 25, 2009 ruling request:

. . . is not engaged in prime contracting. We merely act as a "call center" to facilitate the repair at the customer's location via telephone communication. At no time are we physically involved in the control of the job with respect to supervision, performance, coordination and management. The businesses we use to make the repairs are completely responsible for the completion of the job.

Discussion

Arizona's transaction privilege tax differs from the sales tax imposed by most states. Transaction privilege tax is a tax imposed on the privilege of conducting business in the

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State of Arizona. This tax is levied on the vendor, not the purchaser. That is, the tax is imposed on the vendor, not its customers, and although the vendor may elect to pass the burden of the tax onto the customer, the vendor is ultimately liable. Please see Arizona Administrative Code R15-5-2002. The Arizona transaction privilege tax is imposed under 16 separate business classifications including for example the prime contracting classification.

County excise taxes “piggyback” the imposition of the state’s transaction privilege tax. Transactions subject to the Arizona transaction privilege tax are therefore subject to applicable county excise taxes.

The business of altering, modifying or improving any real property, structure, project, development or improvement is subject to Arizona transaction privilege tax under the prime contracting classification. A.R.S. § 42-5075(A). The prime contracting classification provides that the tax base is 65% of the gross proceeds of sales or gross income derived from the business. A.R.S. § 42-5075(B). Certain amounts are deducted from the gross proceeds of sales or gross income before computing the tax base. A.R.S. § 42-5075(B).

The tax base is the total value proceeding or accruing without any deduction for the cost of property sold, expense of any kind or losses. A.R.S. § 42-5001(4), (5) and (7).

A prime contractor is defined as “a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement including the contracting, if any, with any subcontractors or specialty contractors and who is responsible for the completion of the contract.” A.R.S. § 42-5075(O)(8). “Modification” is defined as “construction, alteration, repair, addition, subtraction, improvement, movement, wreckage or demolition.” A.R.S. § 42-5075(O)(5).

Arizona Transaction Privilege Tax Ruling TPR 96-5 provides guidance regarding the determination of the county excise tax applicable to retail sales and prime contracting activities that involve more than one county. TPR 96-5 states that the location of the taxable event for a prime contracting activity is the county where the prime contracting takes place.

Conclusion and Ruling

. . . is a prime contractor subject to Arizona transaction privilege tax under the prime contracting classification. A.R.S. § 42-5075(A). All of . . .’s gross proceeds or gross income are derived from the business of prime contracting and are included in the tax base under the prime contracting classification, unless otherwise provided. . .’s gross proceeds or gross income also includes the “upcharge” marketing fees.

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The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated August 25, 2009 and October 20, 2009, respectively.

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 applicable only 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.

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