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Governor

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ARIZONA TRANSACTION PRIVILEGE TAX RULING TPR 21-1

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ISSUE:

Scope of the state transaction privilege tax ("TPT") deduction for qualified smelting or manufacturing businesses found at Arizona Revised Statutes ("A.R.S.") § 42-5063(C)(6) for state and county privilege taxes ("TPT") levied under the utilities classification.¹

APPLICABLE LAW:

A.R.S. § 42-5061(B)(1) explicitly specifies that "[t]he terms 'manufacturing', 'processing', 'fabricating', 'job printing', 'refining' and 'metallurgical' as used in this paragraph [the machinery-or-equipment deduction] refer to and include those operations commonly understood within their ordinary meaning."

A.R.S. § 42-5063(C)(6)(b) defines "manufacturing" as "the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use." Currently excluded from the definition are the activities of "job printing, publishing, packaging, mining, generating electricity or operating a restaurant."

A.R.S. § 42-5001(1) defines "business," for purposes of all TPT statutes, to include "all activities or acts, personal or corporate, that are engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly." The definition specifically excludes "[c]asual activities or sales" and the "transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system."

DISCUSSION:

Pursuant to A.R.S. § 42-5063, state TPT is levied under the utilities classification on businesses for the gross receipts derived from, *inter alia*, furnishing natural gas to consumers and providing electricity to retail electric customers.² Among the various deductions available to utility businesses is A.R.S. § 42-5063(C)(6), which provides a deduction for a utility's sales of electricity or natural gas to a qualified manufacturing or smelting business.

¹ Local Option PP provides the corresponding deduction from municipal privilege tax for utility businesses in those Arizona cities and towns that have adopted the option.

² See A.R.S. § 42-5063(A), (C).

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From its inception in 2014, the A.R.S. 42-5063(C)(6) deduction has had a uniquely distinct definition of manufacturing.³ While smelting operations are expressly exempted by the deduction and “mining” activities are explicitly excluded from consideration as “manufacturing,” the definition differs from the oft-utilized definition of manufacturing for purposes of exempting machinery or equipment from retail TPT and use tax. For purposes of retail TPT and use tax, manufacturing “refer[s] to and include[s] those operations *commonly understood* within their ordinary meaning.”⁴ For the utilities deduction, however, manufacturing means

the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include job printing, publishing, packaging, mining, generating electricity or operating a restaurant.⁵

As a matter of statutory interpretation, courts will “first look to the language of the statute, and give the words of the statute their ordinary meaning unless it appears that a different meaning is intended.”⁶ Although statutes that are clear and unambiguous are given effect based on their “plain language” without relying upon additional judicial rules of statutory construction, an exception to this result is when “the legislature has offered its own definition of the words or it appears from the context that a special meaning was intended.”⁷ In these circumstances, when specific terms are defined for purposes of particular statutes, Arizona courts “are bound by those definitions in construing a statute within that scheme.”⁸

When considering what constitutes manufacturing for purposes of the retail TPT and use tax deductions, the common and ordinary understanding matters. It is a central reason for why the Court of Appeals held that a pizzeria was not engaged in “manufacturing” or “processing” activity with equipment it used to make pizza dough.⁹ However, the definition of manufacturing for the A.R.S. § 42-5063(C)(6) utilities deduction does *not* contain this restriction. Rather, it simply requires that the business perform “an integrated series of operations” that changes the form, composition or character of the input or raw material to turn it into “a different product with a distinctive name, character or use.”

Metallurgical operations take metalliferous ores and, through series of physical (*e.g.*, crushing, concentrating, smelting, refining) or electrochemical (*e.g.*, leaching, extraction, electrowinning) processes, changes such ores into marketable products such as anodes, cathodes, rods, or cakes with a different form, composition, and character of precious metal with distinctive names and characteristics. Although A.R.S. § 42-5063(C)(6) specifically provides for qualifying smelting businesses to be availed of the deduction for sales of natural gas

³ See Laws 2014, Ch. 7, § 1 (eff. Aug. 1, 2014). Several legislative acts amended the deduction in the following years: in 2015, the scope of the deduction was expanded to include certified international operations centers; in 2016, the objects of the deduction were increased to include gas transportation services and sales of liquefied petroleum gas; and finally, also in 2016, changes were made to clarify filing and qualifications for the deduction and change what would be explicitly included or excluded as manufacturing (*i.e.*, “processing” and “fabricating” were removed from the exclusion while “publishing” and “packaging” were added). Laws 2015, Ch. 6, § 2 (eff. Aug. 1, 2015); Laws 2016, Ch. 357, § 1; Laws 2016, Ch. 359, § 1; Laws 2016, Ch. 374, § 2.

⁴ A.R.S. §§ 42-5061(B)(1), 42-5159(B)(1).

⁵ A.R.S. § 42-5063(C)(6)(b).

⁶ *Ariz. Elec. Power Coop., Inc. v. State ex rel. Dep’t of Revenue*, 243 Ariz. 264, 266 (App. 2017).

⁷ *Ariz. Dep’t of Revenue v. Salt River Project Agric. Improvement & Power Dist.*, 212 Ariz. 35, 39 (App. 2006).

⁸ *Zumar Indus. v. Caymus Corp.*, 244 Ariz. 163, 167 (App. 2017).

⁹ See *Ariz. Dep’t of Revenue v. Blue Line Distrib.*, 202 Ariz. 266 (App. 2002).

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and electricity to them, other non-smelting metallurgical operations fall instead within the scope of a manufacturing business as defined for purposes of the deduction. Although these activities are unlikely to be commonly understood as manufacturing for purposes of the retail TPT and use tax deductions, they nevertheless qualify for A.R.S. § 42-5063(C)(6) due to the legislature's specific definition for use in that provision.

A.R.S. § 42-5063(C)(6)(b)'s definition of "manufacturing" explicitly excludes "mining" activities. Because mining is left undefined, the common and ordinary meaning of *this* term should be used as a matter of statutory interpretation. In making a determination of a word's ordinary meaning, courts "refer to established and widely used dictionaries."¹⁰ Mining is defined as "the process of getting coal and other minerals from under the ground."¹¹ Nevertheless, a business that engages in the extractive (and excluded) activity of mining might also engage in other *separate* and additional metallurgical activities. In fact, both the distinct nature of mining versus metallurgical activities and the existence of both activities at one location or business site were acknowledged in 1977 by the Court of Appeals for the purposes of TPT.¹²

RULING:

For the purposes of determining a business's qualification for the A.R.S. § 42-5063(C)(6) deduction, metallurgical activities that encompass the physical (*e.g.*, crushing, concentrating, smelting, refining) or electrochemical (*e.g.*, leaching, extracting, electrowinning) processing of metal ores fall within the scope of the A.R.S. § 42-5063(C)(6)(b) deduction as either smelting or manufacturing. The definition of manufacturing used for purposes of the utilities TPT deduction in A.R.S. § 42-5063(C)(6)(b) is broader than and distinguishable from the definitions of manufacturing used for Arizona retail TPT and use tax in A.R.S. §§ 42-5061(B)(1) and 42-5159(B)(1) respectively. Thus, although mining activities are excluded from the scope of qualified manufacturing activity for the purposes of the deduction, a mining operation that also engages in metallurgical activities may nevertheless qualify for the A.R.S. § 42-5063(C)(6) deduction.

Once a smelting or manufacturing business has established that it satisfies the criteria set forth under A.R.S. § 42-5063(C)(6) and explained in *Arizona Transaction Privilege Tax Procedure* TPP 18-1 (Nov. 8, 2018),¹³ the deduction applies to all of the locations used in calculating the business's qualification. In addition to providing its utility service providers with a copy of its completed Arizona Form 5000 (Arizona Transaction Privilege Tax Exemption Certificate),¹⁴ completed as specified in TPP 18-1, the business must also provide a list to the utility service provider and ADOR with the following information for *each* location used in determining the business's qualification for the deduction:

- The facility name,
- The street address (or location description, if a street address is not available), and
- The applicable TPT license number.

The list can be sent electronically to tptrefunds@azdor.gov or by mail to:

¹⁰ *Stout v. Taylor*, 233 Ariz. 275, 278 (App. 2013).

¹¹ *Mining*, OXFORD ADVANCED AMERICAN DICTIONARY, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/mining (last visited May 25, 2021).

¹² See *Duval Sierrita Corp. v. Ariz. Dep't of Revenue*, 116 Ariz. 200.

¹³ Available at https://azdor.gov/sites/default/files/PROCEDURES_TPT_2018_tpp18-1.pdf.

¹⁴ Available at <https://azdor.gov/forms/tpt-forms/tpt-exemption-certificate-general>.

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Arizona Department of Revenue
Attn: QSM Utility Deduction
1600 W. Monroe St., Div. Code 16
Phoenix, AZ 85007

Before submitting a list, qualifying businesses are advised to first confirm that the contact person and corresponding contact information provided on its TPT license(s) is current and accurate, as ADOR will verify the submission of the list or any subsequent updates solely using this information. A business can check and update its information using AZTaxes.gov. Alternatively, the business can provide corrected or updated contact information by submitting an Arizona Form 10193 (Business Account Update).¹⁵

From and after the date of this Ruling, a qualifying business that experiences any material change in its business necessitating the recalculation, redetermination, and reissuance of an updated list of locations to ADOR must provide an updated list to the agency within thirty days of such change. ADOR will consider the date of the notice as dispositive in any future audit of or consideration of a refund request submitted by the business.

Applicability of Ruling:

Due to the lack of published guidance by ADOR on the scope and operation of the A.R.S. § 42-5063(C)(6) deduction for qualified smelting and manufacturing businesses discussed herein, ADOR may apply—and taxpayers are authorized to utilize—the provisions of this Ruling retroactively to adjust a billing or assessment relating to application of the deduction as against a manufacturing or smelting business for periods from and after August 1, 2014, if such adjustment inures to the benefit of the business and the applicable limitation period has not expired. Taxpayers may learn of additional filing requirements by contacting tptrefunds@azdor.gov.

Robert M. Woods

Robert M. Woods (Aug 13, 2021 14:32 PDT)

Signed: Robert Woods, Director

Date: August 13, 2021

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 not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, details or supplementary information concerning the 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.

¹⁵ Available at <https://azdor.gov/forms/tpt-forms/business-account-update>.