

PROCEDURE FOR TAXATION OF PURCHASES AND SALES OF TANGIBLE PERSONAL PROPERTY BY A SCHOOL DISTRICT

TPP 94-1

This procedure gives general information concerning the applicability of the transaction privilege tax to sales of tangible personal property to a school district and to use tax on purchases of tangible personal property by a school district as well as the taxability of subsequent resales or use of the property.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1306 levies the transaction privilege tax upon **persons** conducting business in Arizona.

A.R.S. § 42-1301.8 specifically excludes a school district from the definition of "person," allowing a school district to sell tangible personal property at retail without being subject to the transaction privilege tax.

A.R.S. § 42-1310.01.P.3 excludes sales "for resale in the regular course of business" from the transaction privilege tax under the retail classification.

A.R.S. § 42-1316 provides requirements to establish entitlement to deductions from the tax base of a business.

A.R.S. § 42-1328 provides requirements for documenting exempt sales for resale.

A.R.S. § 42-1408 imposes the use tax upon the **purchaser** of tangible personal property purchased from a retailer which is used, stored or consumed within Arizona. The use tax also applies to purchases of property originally bought for resale, but subsequently used or consumed within Arizona.

A.R.S. § 42-1410 requires any **person** who uses, stores, or consumes any tangible personal property within Arizona to pay the use tax to the department unless the tax has been paid to a registered retailer who has provided the purchaser with a receipt showing the tax paid.

A.R.S. § 42-1401.2 does **not** exclude a school district from its definition of a "person" subject to the use tax.

PROCEDURE:

TRANSACTION PRIVILEGE TAX

The transaction privilege tax is levied upon **sellers** for the privilege of conducting business in the State of Arizona which differs from the sales tax imposed by most states. The seller may pass the burden of the tax on to the purchaser, but the seller is ultimately liable to Arizona for the tax. There is no general exemption for sales to school districts; therefore, vendors who sell to school districts are subject to the transaction privilege tax.

A school district as with any other purchaser may take advantage of any exemptions in statute which apply to any given purchase or status. A specific exemption for sales of food, drink, condiments and accessory tangible personal property is provided in A.R.S. § 42-1310.01.A.19 under the retail classification:

Articles of food, drink or condiment and accessory tangible personal property to a school district if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district during school hours.

Therefore, sales to school districts may be tax exempt if they fall under the statutory qualifications. An exemption certificate, discussed later, should be used to establish a school district's entitlement to these exemptions.

Sales for Resale:

Since A.R.S. § 42-1301.8 specifically excludes a school district from the definition of a "person," school districts may **sell** tangible personal property without being subject to the transaction privilege tax.

The Arizona courts have held that a sale may be a sale for resale, regardless of the taxability of the subsequent transaction. *Swift and Company v. State Tax Commission*, 105 Ariz. 226, 462 P.2d 775 (1969). This principle is echoed by later decisions, which have held that sales to school districts for resale are "sales for resale," even though the transaction privilege tax is not imposed upon the subsequent sales. *Shamrock Foods Company v. City of Phoenix*, 157 Ariz. 276, 757 P.2d 80 (App. 1988), *aff'd* 157 Ariz. 286, 757 P.2d 90; *Romney Produce Company v.*

City of Phoenix, 1 CA-CIV 7342 (App. Oct. 29, 1985).

Sales to a school district may therefore be tax exempt sales for resale if the items are purchased to be sold in the normal course of business and are not in fact used by the school district. This exemption may be established by providing the vendor with an exemption certificate. A.R.S. § 42-1316 stipulates the requirements for an exemption certificate, and also authorizes the department to prescribe a form for use as such a certificate. The department has adopted **ADOR Form 5000** for this purpose. Copies of this form are acceptable for use. Regarding the required information, A.R.S. § 42-1316.A states that a valid exemption certificate must provide the following:

- 1) The name and address of the purchaser (school district).
- 2) The precise nature of the activity or sale.
- 3) The purpose for which the purchase was made.
- 4) A description of property purchased and its use.
- 5) The tax license number of the purchaser (school district), if the deduction depends on the purchaser being licensed pursuant to statutory provisions.

NOTE: If a school district has a tax license number, it should be noted; however, if it does not have a license number, it should note "school district."

- 6) The signature of a person authorized to sign on behalf of or as representative of the purchaser (school district).

In the case of a school district purchasing tangible personal property to be resold, the certificate should also contain a statement that the property was purchased for resale in the ordinary course of business.

Tangible personal property which is purchased for resale, **but** is subsequently used or consumed by the school district, is subject to the use tax as specified by A.R.S. § 42-1408.B.

USE TAX

A school district is subject to Arizona's use tax on purchases of tangible personal property bought from a retailer which is used, stored, or consumed within Arizona. Unlike the transaction privilege tax which is levied upon the vendor, the use tax is levied upon the purchaser as a percentage of the purchase price. Although the use tax usually applies to purchases from out-of-state vendors, it may apply to purchases from in-state vendors, if the

original purchase was not included in the measure of the transaction privilege (sales) tax and the property is used, stored or consumed contrary to the exemption under which it was purchased. For example, if a school district purchases T-Shirts as a sale for resale and subsequently provides its teachers with the shirts instead of selling them, the use tax is imposed upon the purchase price of the shirts that were used and not resold.

Unlike the definition provided by A.R.S. § 42-1301.8, which precludes a school district from being subject to the transaction privilege tax upon its sales of tangible personal property, a school district is not excluded from the definition of a "person" subject to the use tax provided by A.R.S. § 42-1401.2.

Exemptions from the Use Tax:

Exemptions from the use tax are provided by A.R.S. § 42-1409. Although other exemptions may be applicable to certain purchases, one exemption is quite relevant to school districts. A.R.S. § 42-1409.11 provides an exemption from the use tax for:

Printed materials for use in libraries funded with public monies in this state, which are unavailable for purchase in this state.

ADOR Form 5000, or a similar certificate which fulfills the requirements of A.R.S. § 42-1316, may be used to establish an exemption from the use tax.

Payment of Use Tax:

For a period prior to March 1, 1988, a departmental policy required school districts to register with the department and pay Arizona use tax **directly** to the Arizona Department of Revenue on purchases from out-of-state vendors which were subject to the use tax. This policy was repealed as of March 1, 1988. Under A.R.S. § 42-1410, if a vendor is registered with the state to collect the use tax, the purchaser must remit the tax to the vendor unless the purchaser provides the vendor with documentation establishing an exemption from the tax.

However, the school district is liable for and must remit the use tax directly to the department if:

- 1) The vendor does not provide the school district with a receipt which shows the tax collected.

A.R.S. § 42-1411 requires vendors making sales subject to the use tax, to collect the tax and provide the purchaser with a receipt.

- 2) The vendor is not registered to collect the use tax.

3) The tangible personal property was purchased either for resale or as otherwise exempt, but is subsequently used or consumed by the school district in a taxable manner.

Harold Scott, Director
Date Signed January 3, 1994

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to department personnel. A tax procedure is a written statement issued by the department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. **Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.