

ARIZONA DEPARTMENT OF REVENUE

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GOVERNOR



HAROLD SCOTT
DIRECTOR

ARIZONA CORPORATE TAX RULING CTR 94-9

(On November 23, 2012 the references to to the Arizona Administrative Code rules were updated to use the new numbers. See the footnotes for details. No substantive changes were made.)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

Is income from the sale of real property by a taxpayer who is not a "dealer in real estate" for federal tax purposes considered business income and includable in the receipts factor of the apportionment ratio?

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 43-1131.1 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's business operation.

A.R.S. § 43-1131.5 defines sales as all gross receipts of the taxpayer not allocated under the Uniform Division of Income for Tax Purposes Act.

A.R.S. § 43-1145 provides that the sales factor of the apportionment ratio includes the total sales of the taxpayer.

Arizona Administrative Code (A.A.C.) rule R15-2D-503¹ provides that gain or loss on the sale of real property constitutes business income if the property was used in the taxpayer's trade or business.

A.A.C. R15-2D-806.1 and R15-2D-806.3² define "income producing activity" and provide specific rules for determining when receipts from the sale of real property are included in the Arizona numerator of the sales factor.

¹ When the ruling was issued the citation was to A.A.C. R15-2-1131.B.1.b which has since been renumbered as R15-2D-503. No substantive change was made.

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DISCUSSION:

A dealer in real estate who holds property primarily for sale to customers in the ordinary course of business would have business income from such sales and they would be included in the sales factor. However, business income includes not only income from the sale of inventory or property held for sale in the ordinary course of business, but also income from the sale of property used in the business or from transactions or activity in the regular course of business. Therefore, the sale of real property used in the business or regularly sold in the course of the taxpayer's business is considered business income even if a taxpayer is not a dealer in real estate.

The sales factor of the apportionment ratio includes all gross receipts of the taxpayer not allocated as nonbusiness income. This includes gross receipts from all transactions in the regular course of the taxpayer's trade or business, not just sales of inventory or property held for sale as the taxpayer's primary business activity. (See A.A.C. R15-2D-902³ for exceptions in unusual situations.)

RULING:

Gain on the sale of real property is considered business income if the property was used in the business or if the sale was a transaction in the regular course of the taxpayer's trade or business. Receipts from such sales are includable in the sales factor of the apportionment ratio.

Harold Scott, Director

Signed: May 25, 1994

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 which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which 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 92-1 for more detailed information regarding documents issued by the Department of Revenue.

² When the ruling was issued the citations were to A.A.C. R15-2-1147.1 and R15-2-1147.4 which have since been renumbered as R15-2D-806.1 and R15-2D-806.3. No substantive change was made.

³ When the ruling was issued the citation was to A.A.C. R15-2-1148.D.1 which has since been renumbered to R15-2D-902. No substantive change was made.