

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 90-2

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Effective Date: August 1, 1990

ISSUE:

Taxation of transfer, i.e., sale, of items of tangible personal property by persons engaged in professional or personal service occupations or service businesses in the rendering of services to a consumer.

APPLICABLE LAW:

A.R.S. § 42-1310.01.A levies the transaction privilege tax on persons engaged in the business of selling tangible personal property at retail.

A.R.S. § 42-1316.D allows the Department to require the purchaser who utilizes a resale certificate to establish the accuracy and completeness of the information therein. If the purchaser cannot establish the accuracy and completeness of the information, a penalty shall be imposed on the purchaser equal to any tax, penalty and interest which the seller would have been required to pay if the seller had not honored the resale certificate.

A.R.S. § 42-1310.01.A.1 exempts from the tax professional or personal service occupations or service businesses which involve sales or transfers of tangible personal property only as inconsequential elements.

A.R.S. § 42-1408 provides that every person storing, using or consuming in Arizona tangible personal property is liable for the use tax. Such person's liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer who maintains a place of

business in this state or from a retailer who is authorized by the Department to collect the tax is sufficient to relieve the person from liability for the tax as indicated by payment on the receipt. If no receipt showing payment of the tax to the retailer can be tendered, purchaser is required to report use tax directly to the Department.

DISCUSSION:

For purposes of this ruling, professional and personal service occupations are those wherein the professional is able to engage in the occupation by virtue of a state sanction or state issued license to engage in that occupation.

Professional and personal services refers to the services of such persons as doctors, lawyers, accountants, real estate appraisers, cosmeticians (beautician), barbers etc. Service businesses refer to vehicle maintenance garages, pest control, lawn maintenance and other like services.

In a professional or personal service occupation or service business context, the services are geared toward the particular needs of the customer with the final product/service meeting those specific needs. The final product may or may not take a written or tangible form. A beautician or barber's services generally result in some change to the customer's hair or nails. Lawn maintenance services generally result in some change to the customer's yard. Legal or financial advice for which fees may be charged might occur verbally. Legal or financial advice, when reduced to a written product and transferred to a customer, is generally in the form of documents, reports, letters, etc., which are tailored for that customer and would generally not meet any other customer's needs. These products would not be available for what would normally be considered to be a retail sale by a merchant.

Additionally, the conduct of many professional or personal service occupations or service businesses involves sales of items of tangible personal property to customers. This may include such items as hair care products, dental care products, guidebook to tax record keeping, dog food, vitamins, windshield washer fluid, gas additive, etc. These items are not tailored specifically to a particular customer but might otherwise normally be available from a merchant in a retail transaction. These items are routinely regarded as something sold to a customer.

The question has arisen as to whether these transfers or sales of tangible personal property, in connection with the service, are subject to the Arizona transaction privilege tax under the retail classification. While the Department has always regarded inconsequential elements as being nontaxable pursuant to the exemption in A.R.S. § 42-1310.01, the need for clarification arises at this time due to questions concerning both the quantities and types of items regarded as inconsequential.

In general, items which are utilized by the person engaged in a professional or personal service occupation in the actual operation thereof or to facilitate the service are likely to be inconsequential. Examples of inconsequential items are the paper upon which the work product of a professional appears, bug spray used by an exterminator, and the shampoo products used by the beautician to wash a customer's hair. In these and similar situations, the nature of the service business calls for some items to be used by the person rendering service in order to complete the service itself. The service typically cannot be rendered without these items being used.

In the above noted examples, these items are being consumed by their end user, the person engaged in the professional and personal service occupation. Transaction privilege tax should be paid upon the service person's purchase of these items. If the transaction privilege tax is not paid, use tax applies. However, the use of resale certificates to purchase these items is not appropriate as these items are not being resold but are being consumed by the person engaged in the professional and personal service occupation or service business.

CONCLUSION:

Income from items which are being retailed to customers of the persons engaged in professional and personal service occupations or service businesses is subject to the transaction privilege tax under the retail classification. Income from items which are not deemed to be inconsequential is subject to the transaction privilege tax under the retail classification. The transfer, i.e., sale, of tangible personal property is deemed to be taxable unless the standards of inconsequential are met.

A. The transfer of items of tangible personal property upon rendering a service shall be regarded as inconsequential and, therefore, not subject to transaction privilege tax, when:

1. The purchase price of the tangible personal property to the person rendering the services represents less than fifteen percent (15%) of the charge, billing, or statement rendered to the consumer of the service in connection with the particular service transaction; and
2. The tangible personal property transferred is not itself in a form which is subject to retail sale; and
3. The charge for the tangible personal property (even if "inconsequential") is not separately stated on the invoice.

NOTE: If the transaction privilege tax has not been paid upon purchase of the tangible personal property utilized, the person engaged in the service business is

subject to the use tax.

B. The transfer of items of tangible personal property is subject to transaction privilege tax under the retail classification when:

1. A person engaged in a professional or personal service occupation or service business makes a practice of offering for sale tangible personal property in such a manner as to indicate the sales are not casual, he is a retailer of those items, and the tangible personal property transferred is, at that time, in a form which is typically subject to retail sale; or
2. The purchase price of the tangible personal property to the professional is more than 15% of the charge to the customer for the particular services, and the tangible personal property transferred is, at that time, in a form which is typically subject to retail sale; or
3. The charge for the tangible personal property is separately stated on the invoice.

The following are examples of taxable sales of items of tangible personal property along with a service being rendered:

1. A veterinarian regularly selling cans or bags of dog food or dog products would be subject to transaction privilege tax under the retail classification because the professional has a practice of making sales and the dog food is in a form which is typically subject to retail sale.
2. A beauty salon or barber shop proprietor, who regularly offers for sale bottled shampoo and hair care products to customers, would be subject to transaction privilege tax under the retail classification because the salon has a practice of making sales and the hair care product is in a form which is typically subject to retail sale.

Further examples would be an ophthalmologist regularly selling contact lens care or cleaning solutions, a vehicle maintenance service regularly selling quart containers of motor oil, and a homeopathic physician regularly selling herbal preparations.

Items of tangible personal property used by the persons engaged in professional and personal service occupations or service businesses in order to facilitate and complete the service being rendered are subject to transaction privilege tax or use tax upon their purchase by the

professional or service business. Such businesses must not use a resale certificate for the purchase of items utilized in connection with its professional or personal service occupation or service business.

Pursuant to A.R.S. § 42-1316.D if no transaction privilege tax is paid due to utilization of a resale certificate upon the purchase of those items from a retailer maintaining a place of business in this state, there shall be imposed on the purchaser (here, the person engaged in the professional or service occupation or service business) a penalty equal to any (transaction privilege) tax, penalty and interest which the seller would have been required to pay on that transaction.

Pursuant to A.R.S. § 42-1408, items purchased from an out-of-state vendor, for which a resale certificate was given, which are in fact used by the purchaser (here, the person engaged in the professional or service occupation or service business) rather than being resold, are subject to the use tax.

Paul Waddell, Director

Signed July 10, 1990 - Effective August 1, 1990