

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 96-5

(This ruling supersedes and rescinds Arizona Sales Tax Ruling No. 2-0-86)

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:

Determination of the county excise tax applicable to retail sales and prime contracting activities which involve more than one county.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) §§ 42-1482, 42-1484, 42-1497, 48-4022, and 48-4233 impose the excise taxes of Arizona's counties on "each person engaging or continuing in the county [or district] in a business [which is subject to the state's transaction privilege tax]."

A.R.S. § 42-1485 *Administration*, provides that the statutes within Title 42, Chapter 8, Article 1 govern the administration of the county tax statutes.

A.R.S. § 42-1343 *Determination of place of business in computing county share of tax monies*, provides criteria for allocating sales by county in the reporting of the state's privilege taxes. These allocations are utilized in the formula which distributes shares of transaction privilege and other tax revenues to the counties. The criteria provided by the statute are also determinative for the separate county excise taxes.

A.R.S. § 42-1310.01 *Retail classification*, imposes the state's transaction privilege tax upon persons engaged in the business of selling tangible personal property at retail, and states that the tax base is the gross proceeds of sales or gross income derived from this business.

A.R.S. § 42-1310.16 *Prime contracting classification*, imposes the state's transaction privilege tax on the business of prime contracting and the dealership of manufactured buildings. The

statute applies to a "contractor who supervises, performs or coordinates the construction, alteration, repair, addition, subtraction, improvement, movement, wreckage or demolition 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 is responsible for the completion of the contract."

LEGAL REFERENCES:

It is the privilege of engaging in business in Arizona which causes the imposition of the state's transaction privilege tax. The taxable event is where a person is *engaged in business*. The technical location of the transfer of title is not determinative of where the sale occurs. The location of the business activities surrounding the sale determines the imposition of tax. *Arizona State Tax Commission v. Southwest Kenworth, Inc.*, 114 Ariz. 433, 561 P.2d 757 (Ariz. App. 1977).

The location of the taxable event for a prime contractors is the location where the prime contracting activity takes place. *City of Phoenix v. Bentley Dille Gradall Rentals, Inc.*, 136 Ariz. 289, 665 P.2d 1011 (1983).

DISCUSSION:

A.R.S. § 42-1343 *Determination of place of business in computing county share of tax monies*, provides criteria for allocating sales by county in the reporting of the state's privilege taxes. These allocations are utilized in the formula which distributes shares of transaction privilege and other tax revenues to the counties. The criteria provided by the statute are also determinative for the separate county excise taxes.

The imposition of a county excise tax hinges upon the imposition of the state's transaction privilege tax. Questions have arisen about which county excise tax is applicable to retail sales when the transaction involves more than one county. Additionally, the taxable location for activities taxable under the prime contracting classification is not specifically addressed by A.R.S. § 42-1343.

Retailers:

A.R.S. § 42-1343(9) provides that a retailer is considered to be engaged in business in the "county where the sale is made." A retailer conducting business in one county may sell tangible personal property to a customer located in a different county and deliver the property to the customer's location. While the terms of the delivery agreement may specify that title to the property passes to the customer at the time and place of delivery, this factor alone is not determinative of where the sale is made. Just as the delivery of tangible personal property within Arizona does not subject an out-of-state retailer to the state's transaction privilege tax, a

retailer in county A is not subject to county B's excise tax merely because of a delivery made within county B. The place where the business activities surrounding the sale occur is the place where the retailer is engaging in business. *Southwest Kenworth, Inc.* Retail business activities include solicitation of the sale; acceptance of the order; maintenance of an inventory; processing of the order; and, receipt of payment.

Prime Contractors:

Business activities that are subject to the transaction privilege tax under the prime contracting classification include activities that involve the construction, alteration, repair, addition to, subtraction from, and improvement of real property. The location of the taxable event for a prime contracting activity is the county where the prime contracting takes place, rather than the business location of the prime contractor. *Bentley Dille Gradall Rentals, Inc.*

RULING:

The county in which retail business activities take place is the county in which the retailer is engaging in business for the purposes of the county excise tax. Retail business activities that surround the sale include solicitation of the sale; acceptance of the order; maintenance of an inventory; processing of the order; and, receipt of payment. For the purpose of the county excise tax applicable to the gross proceeds derived from a retail sale, delivery agreements that specify where title is transferred do not, in and of themselves, determine the location where the taxpayer is engaged in business.

The location of the taxable event for a prime contracting activity is the county where the prime contracting activity takes place.

Paul Waddell, Acting Director

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 96-1 for more detailed information regarding documents issued by the Department of Revenue.