

PRIVATE TAXPAYER RULING LR97-004

November 5, 1997

The following private taxpayer ruling is in response to your letter dated September 10, 1997. Your letter requests a determination of the application of Arizona's transaction privilege tax to a business that solicits and sells advertising and coupons.

The following is a restatement of the facts as presented in your letter.

Statement of facts:

... sole business is promotional coupon advertising. Initial customer contacts emanate from four sources' referrals from existing clients, response from Yellow Page advertising, inquiries from businesses that have heard about your product and cold calls by your sales people.

Once the initial contact is made you perform two functions, the creative design of the coupon, and the collection of the fees associated with the execution of your service. Your internal design department does all design work. Once the coupon has been designed it is transferred to another company which is responsible for all other aspects of the execution of our product.

The other company is responsible for securing the printing of the envelopes and the coupons. When they receive the printed coupons, this company cuts, sorts and inserts the coupons into envelopes and applies address labels. The finished envelopes are shrink-wrapped on pallets and delivered by the U.S. Post Office to residences.

Applicable statutory provisions:

Arizona Revised Statutes (A.R.S.) § 42-1310.01 imposes the transaction privilege tax on the business of selling tangible personal property at retail. A.R.S. § 42-1310.01(Q)(3) defines "selling at retail" as a sale for any purpose other than for resale in the regular course of business. All sales of tangible personal property are subject to tax unless specifically exempted by statute.

A.R.S. § 42-1310.06 levies the transaction privilege tax on the business of job printing.

A.R.S. § 42-1408 imposes the use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer, as a percentage of the sales price. Every person storing, using or consuming in this state tangible personal property purchased from a retailer is liable for the tax. The person's liability is not extinguished until the tax has been paid to this state.

A.R.S. § 42-1410 provides that any person who uses, stores or consumes any tangible personal property upon which a tax is imposed by this article and upon which the tax has not been collected by a registered retailer shall pay the tax as provided by this article, but every retailer maintaining a place of business in this state and making sales of tangible personal property for storage, use or other consumption in this state, unless exempt by the provisions of this article, shall at the time of making the sales collect the tax from the purchaser or user.

Discussion:

Arizona imposes a transaction privilege tax which differs from the sales tax imposed by most states. The Arizona transaction privilege (sales) tax is a tax imposed on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax.

The use tax is imposed on purchases of tangible personal property from out-of-state retailers who do not have a business nexus with the state. Arizona's use tax rate is five percent.

... is in the business of promotional coupon advertising. The State of Arizona does not impose a transaction privilege tax on the business of advertising. Laws 1985, Chapter 298, § 40 repealed the state's transaction privilege tax on the business of advertising, effective January 1, 1986.

However, several cities in Arizona do impose privilege taxes upon proceeds derived from the sale of local advertising. "Local advertising" is defined in the Model City Tax Code as advertising by billboards, direct mail, radio, television, or by any other means. Local advertising does not include the advertising of a product or service which is sold

or provided both within and without the state by more than one commonly designated business entity.

In *Service Merchandise Co., Inc. v. Arizona Dept. of Revenue* (App. Div. 1, 1996), 937 P. 2d 336, *review denied*. 832, the Arizona Court of Appeals held that the taxpayer was subject to the use tax on catalogs and fliers that were used in the state, though the catalogs and fliers were printed out-of-state.

Conclusion and ruling:

The following ruling is given based on the facts presented in your request.

The department rules that ... is not subject to Arizona's transaction privilege tax on its gross

income derived from advertising. A job printer who prints the advertising materials is subject to transaction privilege tax on the gross income derived from sales of printing to is subject to Arizona use tax on the purchase of printed materials from an out-of-state printer.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letters dated June 3, 1997; July 16, 1997; and September 10, 1997, regarding this request for a private taxpayer ruling.

This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department and is valid for a period of four years from date of issuance except as set out herein. This determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.