

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 99-1

(This ruling supersedes and rescinds Arizona Transaction Privilege Tax Ruling TPR 95-16)

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:

Application of the transaction privilege and use tax statutes to transactions with the United States Government.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5061 imposes the transaction privilege tax on the business of selling tangible personal property at retail.

A.R.S. § 42-5061(K)(1) provides a deduction from the tax base under the retail classification for:

Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.

A.R.S. § 42-5061(L) provides that:

There shall be deducted from the tax base fifty per cent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies, which is not deducted under subsection K of this section.

A.R.S. § 42-5071 imposes the transaction privilege tax on the business of leasing or renting

tangible personal property for a consideration.

A.R.S. § 42-5071(B)(2) provides a deduction from the tax base under the personal property rental classification for:

Leases or rentals of tangible personal property which, if it had been purchased instead of leased or rented by the lessee, would have been exempt under § 42-5061 ... subsection K, paragraph 1, ...

A.R.S. § 42-5155 imposes a use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer.

A.R.S. § 42-5161 requires the seller to collect the use tax from the purchaser.

Arizona Administrative Code (A.A.C.) R15-5-181(A) provides that:

Gross receipts from the sale of tangible personal property to the Federal Government or its departments and agencies are taxable at the rate prescribed by statute, unless otherwise exempt.

A.A.C. R15-5-2360(B) pertains to use tax and provides that, "[p]urchases by the Federal Government are not taxable."

In *Arizona State Tax Commission v. Garrett Corporation*, 79 Ariz. 389, 291 P.2d 208 (1955), the Arizona Supreme Court held that the transaction privilege tax is not a sales tax and it applies to sales to the federal government. The court emphasized that it had repeatedly held that the transaction privilege tax is a tax on the privilege or the right to engage in business. The legal incidence of the tax is upon the person engaging in the business of selling tangible personal property.

A United States Comptroller General decision, September 7, 1990, advised that the Arizona transaction privilege tax is a tax imposed on the vendor, not the purchaser. As such, there is no general exemption applicable to the federal government or its departments or agencies.

DISCUSSION:

Transaction Privilege Tax

The transaction privilege tax is a tax on the privilege of conducting business in the State of

Arizona. It is a tax on the seller, not on the purchaser. Since the tax is not imposed on the United States, the constitutional immunity of the United States does not apply.

Therefore, sales to the United States Government are subject to transaction privilege tax. However, the transaction privilege tax statutes provide deductions from the tax base under the retail classification for:

1. Sales made directly to the United States Government or its departments or agencies by a manufacturer, modifier, assembler or repairer; and,
2. Fifty percent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States Government or its departments or agencies by persons other than a manufacturer, modifier, assembler or repairer.

A deduction is also allowed under the personal property rental classification for leases or rentals of tangible personal property directly to the United States Government or its departments or agencies by a manufacturer, modifier, assembler or repairer.

The transaction privilege tax is imposed on various business activities. The deductions for sales of tangible personal property and for rentals of tangible personal property to the federal government are the only deductions provided for transactions with the federal government. Transactions with the United States Government under other business classifications, such as utilities, telecommunications, job printing, commercial lease, transient lodging, restaurant, and prime contracting, are subject to transaction privilege tax.

Credit Card Sales

Agencies of the United States Government may make purchases using credit cards issued by a variety of card-issuing banks under a new program named GSA SmartPay. Each federal agency will choose among the options available.

The cards are used by federal employees for their travel-related business use. The government has two types of accounts. One is billed directly to the employee/cardholder and the other is billed directly to the federal government, i.e., centrally billed. These accounts are distinguished by their account numbering scheme.

Cards that are always centrally billed are identified by one of two four-digit prefixes, 8699 or 5568. A second set of prefixes is used for cards that are both centrally billed and individually billed. To know the difference a person must look to the 6th digit. These prefixes are 4486, 4716, and 5568. Sales charged to credit card account numbers with 0, 6, 7, 8, or 9, as the 6th digit are centrally billed to the federal government. These sales constitute "sales made directly

to the United States government." Thus, the statutory exemptions and deductions outlined above apply to any such transaction billed directly to the federal government.

Sales charged to credit card account numbers with 1, 2, 3, or 4, are individually billed to the cardholder rather than to the federal government. These sales do not constitute "sales made directly to the United States Government." Consequently, the income from these transactions is subject to transaction privilege tax.

Use Tax

The use tax is imposed on purchases of tangible personal property from out-of-state retailers. A.R.S. § 42-5161 requires retailers selling to Arizona consumers to collect the tax from the purchaser.

The U.S. Constitution prohibits a state from imposing a tax if the legal incidence of the tax falls directly on the federal government. Arizona's use tax is imposed on the purchaser. Therefore, purchases by departments or agencies of the federal government are not subject to use tax.

RULING:

Sales made directly to the United States Government or its departments or agencies by a manufacturer, modifier, assembler or repairer are exempt from transaction privilege tax under the retail classification. Additionally, the tax base is 50 percent of the gross income or gross proceeds of sales for all other sales under the retail classification to the United States Government.

Leases or rentals of tangible personal property directly to the United States Government by a manufacturer, modifier, assembler, or repairer are not subject to transaction privilege tax under the personal property rental classification.

A transaction charged to a credit card account and billed directly to the federal government is deemed to be a sale or lease made directly to the United States. These transactions are subject to transaction privilege tax unless a deduction that is outlined above applies to the transaction.

A transaction charged to a government credit card account that is billed directly to an employee/cardholder is not a sale made directly to the federal government; consequently, these transactions are subject to transaction privilege tax.

Other than the above exemptions for sales and leases of tangible personal property under the

retail and personal property rental classifications, no other exemptions are available for sales to the federal government. Thus, businesses operating under any other classification are subject to the full rate of transaction privilege tax for sales made to the federal government.

Use tax does not apply to purchases made by the United States Government or its departments or agencies.

Mark W. Killian, 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 that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning 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.