

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 03-5

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:

Exemption for sales of materials to publicly funded libraries for use by the public.

APPLICABLE STATUTES:

Arizona Revised Statutes ("A.R.S.") § 42-5061 imposes transaction privilege tax on the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of retail sales or gross income derived from the business of selling at retail. All sales of tangible personal property are subject to tax unless an exemption or deduction is provided by statute.

A.R.S. § 42-5061(A) provides specific exemptions from the transaction privilege tax imposed under the retail classification for gross proceeds or gross income from sales of certain items of tangible personal property.

A.R.S. § 42-5061(A)(48) provides an exclusion from tax for sales of printed or photographic materials and electronic or digital media materials that are "purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public"

A.R.S. § 42-5155 imposes use tax on the purchase of tangible personal property that is used, stored or consumed in Arizona.

A.R.S. § 42-5159 provides specific exemptions from the use tax for certain items of tangible personal property.

A.R.S. § 42-5159(A)(12) provides an exemption from use tax for printed or photographic materials and electronic or digital media materials that are "purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public"

DISCUSSION:

Unless specifically exempted by statute, retail sales of tangible personal property to libraries are subject to the transaction privilege tax or use tax. Sales to a publicly funded library of printed, photographic, electronic media and digital media *materials* that are *for use by the public* are exempt from transaction privilege tax and use tax.

Definition of "Materials" that Qualify for Exemption

Printed and photographic materials and *electronic and digital media materials* comprise items purchased by a library to supply its users with content and are *distinct from equipment and supplies*. Printed and photographic materials and electronic and digital media materials include books, periodicals, reference material, music scores, maps, microforms, and nonprint data.

Equipment includes mechanical and electronic devices purchased by a library to supply its users with information-accessing capabilities or otherwise to facilitate patron use of its services and collections. Equipment includes photocopy machines, microform reader-printers, video and CD players, projection equipment, computers, computer peripherals, computer operating systems and programs, and security devices.

Supplies include expendable materials such as labels, book cards and pockets, date due slips, rubber stamps, mending tape, magnetic strips, plastic sleeves, laminate, and paper for printing and photocopying, which a library must order from a library supplier to prepare new items for circulation, maintain collections, and provide services.

Materials that qualify for the exemption are those items that supply any research data or other information the library patron seeks. For example, software that contains a library's catalog, supplying titles, subjects, authors, publishing dates, and other research information to library patrons, constitutes electronic media materials. Qualifying materials may also include sources containing fictional content, such as books and movies. Qualifying materials comprise library informational resources only and do not include viewing, listening, or other information-accessing devices.

Equipment the library provides for purposes of accessing or processing content is not an

exempt material. While the library patron extracts information directly from exempt materials, he or she uses non-exempt equipment to facilitate extraction and cannot obtain information directly from such equipment. An electronic media material that primarily contains information the library patron seeks (e.g., a computerized database or educational software), however, will constitute a qualifying material despite its ability to provide associated accessing capabilities.

Library supplies, like equipment, do not directly provide content and thus do not constitute qualifying materials.

Definition of the Term "Use by the Public"

An item exists for *use by the public* when a library makes the item available for any use other than the library's sole internal, administrative, or library-operation uses.

Only materials that are for use by the public will be exempt from transaction privilege tax and use tax. Public use occurs when the publicly funded library that purchases the qualifying materials directs those materials toward patron use. Patron use means not only that the qualifying materials are available to the public but also that the library does not employ the materials solely for internal or administrative operational functions.

RULING:

Gross income from sales to a publicly funded library of printed and photographic materials and electronic and digital media materials for use by the public is exempt from transaction privilege tax. Publicly funded libraries' in-state storage, use, or consumption of such materials for use by the public is exempt from use tax. To qualify for exemption, the tangible personal property must (1) constitute a qualifying "material" and (2) be directed toward "use by the public."

Both the "materials" requirement and the "for use by the public" requirement must be satisfied. Patron use of an item will not make it exempt unless such item constitutes a printed, photographic, electronic media, or digital media material. If the library purchases an item solely for internal library operational or administrative uses, the item, regardless of its qualifying material status, will not be exempt. For example, a library's desks and chairs, although used by the public, constitute equipment, not qualifying materials. Likewise, book reviews, although "materials," if subscribed to for the purpose of guiding the staff in its book selections, are not "for use by the public."

For publicly funded library purchases, the following are examples of nontaxable materials, taxable equipment, and taxable supplies. These lists are not exhaustive.

Nontaxable materials:

Sold to publicly funded library and *intended for patron use:*

Books, fictional and nonfictional

Magazines and other periodicals

Music scores

Maps

Photographs

Microfiche

Microfilm

Videos

DVDs

Cassettes

Audio CDs

Databases

CD-ROMs

Educational software

Pre-printed card catalogue index cards

Computerized catalogue software containing data at the time of sale

Taxable library equipment:

Regardless of availability to patrons:

Photocopy machines

Typewriters

Printers

Projection equipment

Microfilm and microfiche readers

Video players

DVD players

Cassette players

CD players

Computers

Computer peripherals

Computer operating software programs (including network system, Internet browser, word processing, illustrator, spreadsheet, and publishing programs)

Security devices

Checkout scanning devices

Library furnishings (including shelves, tables, chairs)

Taxable library supplies:

Regardless of availability to patrons:

Book cards and pockets

Labels

Due date slips

Rubber stamps

Mending tape

Magnetic strips

Plastic sleeves

Library membership cards

Laminate materials

Typewriter, printer and photocopier paper

Writing and printing materials (pencils, pens, ink)

J. Elliott Hibbs, Director
Signed: May 22, 2003

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.