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Director

PRIVATE TAXPAYER RULING LR08-007

October 10, 2008

This private taxpayer ruling is in response to your client's letter dated December 15, 2006, as supplemented by correspondence dated February 23, 2007, March 30, 2007, June 27, 2007, February 14, 2008 and June 23, 2008 in which your client requests the Arizona Department of Revenue, ("Department"), to rule on behalf of . . . , on the applicability of Arizona transaction privilege tax to the gross proceeds or income from its . . . school replacement construction contract with . . . Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request. In accordance with A.R.S. § 42-2101(G), the Department may issue a private taxpayer ruling addressing a taxpayer's ongoing business activities, except that the ruling applies only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.

Statement of Facts

Your correspondence provides in part the following information:

. . . is a tribal entity, defined under Navajo Nation Code 10, as falling under the Diné Department of Education, the Navajo Nation Legislative Council Education Committee, and is also a 297 Grant School authorized by the Navajo Nation. . . is the Navajo tribal entity acting on behalf of and for the benefit of the Navajo Nation as explained in 25 U.S.C. § 2501 et seq.; The *Tribally Controlled Schools Grant Act* (1988). . . is a registered non-profit entity under the laws of the Navajo Nation.

* * *

. . . is the contracting party and the party receiving the benefit of the contract with . . . The contract between . . . and . . . is subject to comprehensive and pervasive regulation by the BIA; however, the contract remains between . . . and is listed as the owner of the building and has likewise entered into a contract for the actual design of the project with a design professional. . . contracts out the actual construction of the facilities, in this case to . . . , just as in *Ramah*. . . is authorized to enter into contracts for the actual construction work to third parties and has done so through . . .'s contract with . . . , all subject to BIA regulations. Funds are provided to . . . by the BIA pursuant to a P.L. 100-297 "Tribally Controlled Schools Grant Act" grant.

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Issues

Issues stated by . . . in its December 15, 2006 ruling request:

[W]hether the Arizona and any Apache County Transaction privilege tax . . . [apply] to the construction activities—either to . . . as general contractor or to any of its subcontractors and material providers.

Your Position

. . .'s position stated in its December 15, 2006 ruling request:

It is . . . and . . .'s position that this question is controlled by the decision of the United States Supreme Court in *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, (1982).

Discussion

Arizona's transaction privilege tax differs from the sales tax imposed by most states. Arizona transaction privilege 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 Arizona transaction privilege tax is imposed under 16 separate business classifications, including for example, the prime contracting classification.

County excise taxes "piggyback" the imposition of the state's transaction privilege tax. Transactions subject to the Arizona transaction privilege tax are therefore subject to applicable county excise taxes.

The business of altering or improving any real property, structure, project, development or improvement is subject to Arizona transaction privilege tax under the prime contracting classification. A.R.S. § 42-5075(A).

In *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832 (1982), the U.S. Supreme Court addressed the construction of a school by a non-Indian contractor on the Navajo Reservation in New Mexico. The project was funded by the BIA. The tribal organization was the design and building contractor but could subcontract out the actual construction work to third parties. The Court held that "the comprehensive regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax in this case."

The Department has issued Transaction Privilege Tax Ruling TPR 95-11 regarding the imposition of transaction privilege tax on activities performed on Indian reservations located within Arizona. TPR 95-11 provides in part that:

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The gross proceeds derived from construction projects performed on Indian reservations by non-affiliated Indian or non-Indian prime contractors are not subject to the imposition of Arizona transaction privilege tax under the following conditions:

1. The activity is performed for the tribe or a tribal entity for which the reservation was established; or
2. The activity is performed for an individual Indian who is a member of the tribe for which the reservation was established.

Conclusion and Ruling

The Department rules that the . . . school replacement construction contract between . . . and . . . meets the requirement that construction work on a reservation be performed for the tribe or a tribal entity for which the reservation was established. Therefore, the construction of the . . . replacement school in . . . Arizona on the Navajo Indian Reservation is not subject to transaction privilege tax and applicable county excise tax.

Because the Department may issue private taxpayer rulings to *taxpayers* only, the Department is unable to give a ruling on the transaction privilege tax obligations of subcontractors and vendors regarding the . . . school replacement construction project. However, a contractor may purchase materials to be incorporated into a project exempt from tax pursuant to A.R.S. § 42-5061(A)(27)(a) with proper documentation pursuant to Arizona Transaction Privilege Tax Procedure TPP 00-3.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in the correspondence dated December 15, 2006, February 23, 2007, March 30, 2007, June 27, 2007, February 14, 2008 and June 23, 2008, respectively.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations are 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.

The determinations in this private taxpayer ruling are applicable only to the taxpayer requesting the ruling and may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.