



Janice K. Brewer
Governor

Gale Garrriott
Director

PRIVATE TAXPAYER RULING LR09-003

July 8, 2009

This private taxpayer ruling is in response to your September 26, 2008 letter requesting a private taxpayer ruling, as updated by your March 4, 2009 correspondence, in which you request the Arizona Department of Revenue ("Department"), to rule on behalf of . . . on the application of Arizona transaction privilege tax to . . . lease or rental of returnable plastic containers or crates to farmers and growers within Arizona.

Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Department may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

Statement of Facts

Your request for a private taxpayer ruling provides in part the following information:

. . . rents plastic reusable and returnable containers (RPC's or crates) to farmers/growers in the State of Arizona. The farmer/grower will load produce (fruits and vegetables) into RPCs/crates and ship the produce to their customer/retailer . . . The produce can be displayed for sale in the same crate or displayed in other media. When the crate is emptied, either by the consumer or the retailer, the retailer will move the empty crate to the back of the store where they are accumulated for shipment to a distribution center (DC). Once the crates have arrived at a distribution center, . . . will pick them up and take them to one of our wash depots. Each crate is then washed, sanitized and put back in our inventory for re-rental. The rental cycle or "trip" will typically take 50-60 days. (September 26, 2008 ruling request, page 1.)

* * *

A rental transaction is defined as the one-time use of an RPC for the sole purpose of transporting approved products from the Lessee's shipping location to an . . . approved location, as defined in (Exhibit #1). (September 26, 2008 ruling request, Master Rental Agreement, ("MRA"), Paragraph 2.)

* * *

Lessee acknowledges that the rented RPCs are owned by and are the property of . . . (September 26, 2008 ruling request, MRA, Paragraph 3.)

PRIVATE TAXPAYER RULING LR09-003

July 8, 2009

Page 2

* * *

All . . . RPCs are leased to customers; we do not sell our containers. Currently in the State of Arizona, all . . . RPCs are leased to growers and packers of fresh fruit and vegetables for their distribution to authorized retail grocery customers. . . . designates authorized retail grocers following their commitment to recollect the containers for return to . . . at the end of their retail use. In brief, the typical complete loop of a rental cycle of an . . . RPC follows these steps: (1) . . . service center; (2) grower/packer (i.e. farmer); (3) retail distribution center; (4) retail supermarket or grocery store; (5) recollection center; (6) . . . service center. (March 4, 2009 correspondence, pages 2 - 3.)

* * *

It is important to distinguish that . . . RPCs are for the transport packaging of retail-ready fresh produce from farm to retail. . . . RPCs are not used in the same manner as common plastic bins or crates in which field-picked product is placed and moved for inspection and re-packing into another container. Once packed into an . . . RPC, the product is destined to the retail customer without further re-packing, since any additional handling adds cost and compromises product quality. All produce grading, cleaning and processing by the grower/shipper occurs before the product is packed into an . . . RPC. (March 4, 2009 correspondence, page 3.)

* * *

Any lost or unaccounted for inventory will be charged at full replacement cost of the leased asset. By signing the MRA and agreeing to its terms, a lessee acknowledges the deposit system in which replacement value of the crates is charged as a result of unaccounted for inventory. (March 4, 2009 correspondence, page 5.)

* * *

A broken crate, whether damaged by the lessee or its retail customer, is not subject to charge by . . . provided that the broken crate is returned to . . . (March 4, 2009 correspondence, page 7.)

* * *

. . . does not sell its crates to lessees, and purchase options are not available. (March 4, 2009 correspondence, page 7.)

PRIVATE TAXPAYER RULING LR09-003

July 8, 2009

Page 3

Issue

Are the gross proceeds from . . . lease of returnable plastic containers to farmers or other persons located within Arizona subject to transaction privilege tax under the personal property rental classification?

Your Position

. . . position as stated in its September 26, 2008 ruling request:

It is our opinion that the crate rentals and miscellaneous charges associated with each rental are exempt from sales tax when rented to farmers/growers in Arizona based upon Arizona Statute §42-5103 & §42-5106. We respectfully request a binding tax determination for each line item listed below that we will invoice to our customers (farmers/growers) in Arizona:

- 1) **Crate Rental** – Charge per crate per cycle/trip.
- 2) **Crate Deposit** – \$4.85 charge if crate is not recorded in log book by farmer when shipped to retailer.
- 3) **Pallet Charge** – [C]harge per pallet to ship crates to customer.
- 4) **Fuel Surcharge** – [D]elivery charge.

Discussion

Arizona's transaction privilege tax differs from the sales tax imposed by most states. 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. That is, the tax is imposed on the vendor, not its customers, and although the vendor may elect to pass the burden of the tax onto the customer, the vendor is ultimately liable. Please see Arizona Administrative Code (A.A.C.) R15-5-2002. The Arizona transaction privilege tax is imposed under 16 separate business classifications including for example the personal property rental 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 personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration. A.R.S. § 42-5071(A). The tax base

PRIVATE TAXPAYER RULING LR09-003

July 8, 2009

Page 4

for this classification is the gross proceeds of sales or gross income derived from the business. A.R.S. §§ 42-5071(B), 42-5001(4), (5) and (7).

A.A.C. R15-5-1502(D) provides that the “[g]ross income from the rental of tangible personal property includes charges for installation, labor, insurance, maintenance, repairs, pick-up, delivery, assembly, set-up, personal property taxes, and penalty fees even if these charges are billed as separate items, unless a specific statutory exemption, exclusion, or deduction applies.”

Conclusion and Ruling

. . . is subject to transaction privilege tax under the personal property rental classification for the lease or rental of the returnable plastic containers to farmers and growers within Arizona.

The following are included in the tax base and subject to tax under the personal property rental classification:

1. Crate rental;
2. Crate deposit,
3. Pallet charge; and
4. Fuel surcharge.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated September 26, 2008 and March 4, 2009, 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.