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ARIZONA TRANSACTION PRIVILEGE TAX RULING TPR 12-1

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ISSUE:

Taxation of persons engaged in the business of renting and servicing portable toilets.

RULING:

A person engaged in the business of renting and servicing portable toilets is subject to Arizona's transaction privilege tax under the personal property rental classification. During the rental period, the lessee has exclusive use and control of the portable toilet. This use and control constitutes a rental of personal property. The tax base for this business activity is the gross proceeds of sales or gross income derived from the business of renting portable toilets, including the servicing of the portable toilets and any other charges. Regardless of whether charges are separately stated, there is no deduction for installation, labor, maintenance, pick-up, delivery, or other services associated with the business of renting portable toilets.

The lease of portable toilets to a prime contractor or a subcontractor is subject to the transaction privilege tax under the personal property rental classification. There is no exemption or deduction under the personal property rental classification that applies to rentals of portable toilets to a prime contractor or subcontractor.

DISCUSSION:

The personal property rental classification encompasses businesses that lease or rent tangible personal property for a specified term and consideration. A business that rents portable toilets is subject to tax under the personal property rental classification. Arizona Administrative Code (A.A.C.) R15-5-1502(D) states that the gross income from the lease or 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."

In conjunction with the rental of the portable toilets, such businesses provide servicing or maintenance of the toilets on a regular basis. Whether separately stated or not,

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income derived from the servicing or maintenance of the rented toilets is subject to the transaction privilege tax under this classification.

Portable Toilets at Construction Sites:

Leases of portable toilets to a prime contractor or subcontractor for use at a construction site are subject to the transaction privilege tax under the personal property rental classification. There is no exemption or deduction under the personal property rental classification that would apply to rentals of portable toilets to a prime contractor or subcontractor.

A common expenditure for a prime contractor is the rental of personal property, including equipment and portable toilets, for use during a prime contracting project. The cost of the rental is typically passed on to the prime contractor's customer, including the amount of tax that was paid on the rental.

The prime contractor's gross income from the prime contracting contract, including his customer's reimbursement for the tax amount that was applicable to the lease, is subject to tax under the prime contracting classification. This does not constitute "double taxation," as this situation occurs only "when the same property or person is taxed twice for the same purpose for the same taxing period by the same taxing authority." *Miami Copper Company Division, Tennessee Corporation v. State Tax Commission*, 121 Ariz. 150, 589 P.2d 24 (App. 1978). For the situation of portable toilets or other equipment rented to a prime contractor, the personal property lessor is taxable on his or her income, and the prime contractor is taxable on his or her income.

The following examples illustrate the taxability of portable toilet rental and servicing businesses:

Example 1:

A portable toilet rental business rents a portable toilet to a customer, installs the toilet on the customer's premises, and provides weekly sanitation services to maintain the toilet. Regardless of whether the service charges are separately stated, the gross income derived from the rental includes the rental charge, delivery charge, installation charge, servicing or maintenance charges, and any other charges will be subject to the transaction privilege tax under the personal property rental classification.

Example 2:

A portable toilet rental business rents a portable toilet to a prime contractor or subcontractor for use at a construction site. Regardless of

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whether the charges are separately stated or not, the taxable gross income derived from the rental includes the rental charge, delivery charge, installation charge, servicing or maintenance charges, and any other charges. [A contractor cannot provide a prime contractor's certificate or any other exemption certificate to exempt the lessor's income from the transaction privilege tax under the personal property rental classification.]

LEGAL AUTHORITY:

Arizona Revised Statutes (A.R.S.) § 42-5071 *Personal property rental classification*, imposes the transaction privilege tax on the business of leasing or renting tangible personal property for a consideration. The tax base for the classification is the gross proceeds of sales or gross income derived from the business.

A.A.C. R15-5-1502 addresses the gross income derived by a lessor of tangible personal property and provides, in pertinent part:

D. Gross 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.

State Tax Commission v. Peck, 106 Ariz. 394, 476 P.2d 849 (1970) addresses the leasing or renting of tangible personal property for a consideration. The Arizona Supreme Court held that exclusive use and control of the tangible personal property for a fixed period of time for a specified consideration are the determining factors in finding a taxable lease or rental.

John A. Greene, Director

Signed: December 18, 2012

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.