



Douglas A. Ducey
Governor

David Briant
Director

TAXPAYER INFORMATION RULING LR17-006

January 31, 2017

Thank you for your letter requesting a taxpayer information ruling on behalf of your unnamed client ("Taxpayer"). Specifically, you requested a ruling regarding the applicability of Arizona's transaction privilege tax to Taxpayer's "Propane Delivery Service" and "Refill Sales." Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Arizona Department of Revenue ("Department") may issue taxpayer information rulings to taxpayers and potential taxpayers on request.

ISSUES:

1. Are Taxpayer's gross receipts derived from its Propane Delivery Service subject to tax under the utilities classification for state and county transaction privilege tax purposes pursuant to Arizona Revised Statutes ("A.R.S.") § 42-5063, irrespective of whether the inventory was pulled from storage tanks within City A or tanks located in unincorporated areas of County A (bearing in mind that Taxpayer has multiple storage containers, some of which are mobile)?
2. Are Taxpayer's gross receipts derived from its Refill Sales at its business location subject to tax under the retail classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5061?
3. Are Taxpayer's gross receipts derived from its Propane Delivery Service subject to tax as utilities for city privilege tax purposes pursuant to Model City Tax Code (MCTC) §_-480, again irrespective of whether the inventory was pulled from storage tanks within City A or tanks located within unincorporated areas of County A (bearing in mind that Taxpayer has multiple storage containers, some of which are mobile)?
4. Are Taxpayer's gross receipts derived from its Refill Sales at its business location subject to tax as retail sales for city privilege tax purposes pursuant to MCTC § __-460?
5. Under the MCTC, how should the sales described in Issues 3 and 4 above be sourced for privilege tax purposes?

RULING:

Based on the facts and documentation provided, the Department rules as follows:

Taxpayer's gross receipts derived from its Propane Delivery Service and refilling a customer's empty cylinder at either the Taxpayer's business location or the customer's location are subject to tax under the utilities classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5063 and as utilities for city privilege tax purposes pursuant to M.C.T.C. § __-480.

Taxpayer's gross receipts derived from sales of propane filled cylinders to a customer are subject to tax under the retail classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5061 and as retail sales for city privilege tax purposes pursuant to M.C.T.C. § __-460.

If a customer exchanges an empty cylinder for a propane filled cylinder and the cost, after any reduction in price for the empty cylinder, is equivalent to the cost of merely refilling a customer's cylinder at the Taxpayer's location, such gross receipts are subject to tax under the utilities classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5063 and as utilities for city privilege tax purposes pursuant to M.C.T.C. § __-480. If, on the other hand, the customer receives only a nominal reduction in price for exchanging an empty cylinder, such gross receipts are subject to tax under the retail classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5061 and as retail sales for city privilege tax purposes pursuant to M.C.T.C. § __-460.

Sales of propane filled cylinders to a customer are sourced to the Taxpayer's location. Propane Delivery Service, refilling a customer's empty cylinder at either the Taxpayer's business location or the customer's location, and an exchange of an empty cylinder for a propane filled cylinder subject to tax under the utilities classification are sourced to the location where the propane is delivered to the customer.

FACTS ASSERTED BY TAXPAYER:

The following are facts excerpted from your letter.

Propane may be used for a variety of household uses, including central home heating, water heating and cooking. It is used in many rural parts of the country in place of or in addition to heating oil, electricity, natural gas, or other energy sources.

Taxpayer is a provider of propane gas, with its primary business office located within an unincorporated part of County A, Arizona. Taxpayer maintains inventories of propane in large holding tanks, some of which are located within City A and others which are located within an unincorporated part of County A, Arizona. Some of the holding tanks are mobile. The Taxpayer's storage tanks include bulk plants (greater than 4,000 gallons), portable

storage containers (greater than 1,000 gallons), and portable skid tanks (greater than 1,000 gallons and attached to permanently mounted skids or runners to allow it to be moved).

Taxpayer's primary business activity involves the sale and delivery of propane to the location of its customers. Approximately **% of its deliveries are to customers located in incorporated cities and towns within various Arizona counties. The other **% of the deliveries are to customers located in unincorporated parts within various Arizona counties. Such deliveries, along with the provision of other related services, are collectively referred to herein as the "Propane Delivery Service." Aside from its Propane Delivery Service, a minor portion (1% or less) of Taxpayer's business involves sales of propane to individuals who come to Taxpayer's business location to refill cylinders, to buy filled cylinders or to exchange empty cylinders for full cylinders ("Refill Sales").

Taxpayer's Propane Delivery Service requires on-road transport of propane to customers because, unlike natural gas service in urbanized areas, there are no pipeline connections between the Taxpayer's storage sites and customers' locations that would allow customers to directly "tap in" to Taxpayer's propane supply. Upon arrival at customer's property, Taxpayer fills the customer's propane storage tank. In some instances Taxpayer delivers propane to a central tank at a customer location, such as a mobile home park, and then the propane is split out to individual residents through a fixed pipe system.

DISCUSSION & LEGAL ANALYSIS:

Arizona imposes a transaction privilege tax on the privilege of conducting business in the State of Arizona. The authority to levy the transaction privilege tax is found in Arizona Revised Statutes (A.R.S.) § 42-5008. The tax is levied on the seller, rather than the purchaser.

A.R.S. § 42-5063 imposes the transaction privilege tax under the utilities classification. The utilities classification is comprised of the business of producing and furnishing or furnishing to consumers electricity, natural or artificial gas, or water. The tax base is the gross proceeds of sales or gross income derived from the business.

Pursuant to A.R.S. § 42-5063, Taxpayer's gross receipts derived from its Propane Delivery Service are subject to tax under the utilities classification for state and county tax purposes. Moreover, refilling a customer's empty cylinder at either the Taxpayer's business location or the customer's location is subject to tax under the utilities classification.

The imposition of city privilege tax is separate from the imposition of the state's transaction privilege tax and accompanying county excise taxes. The League of Arizona Cities and Towns created the Model City Tax Code ("MCTC") for purposes of the imposition and administration of city privilege taxes. All Arizona cities utilize the MCTC in the imposition of their privilege taxes and use taxes, based upon their local ordinances. Certain options exist, allowing each city to alter or qualify the imposition of its privilege tax or use tax.

M.C.T.C. § ___-480 states that the tax rate shall be at an amount equal to ____ percent (___%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers who reside within the city. Pursuant to M.C.T.C. § ___-480, Taxpayer's gross receipts derived from its Propane Delivery Service and refilling a customer's empty cylinder at either the Taxpayer's business location or the customer's location, are subject to tax as utilities for city privilege tax purposes.

A.R.S. § 42-5061 imposes the transaction privilege tax under the retail classification. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. All sales of tangible personal property are subject to the transaction privilege tax under the retail classification unless specifically exempted or excluded by statute. Arizona Administrative Code ("A.A.C.") R15-5-2106 further states that "[t]he gross receipts from sales of bottled gases and bottled water are subject to tax under the retail classification unless otherwise exempt."

Pursuant to A.R.S. § 42-5061, Taxpayer's gross receipts derived from sales of propane filled cylinders to a customer are subject to tax under the retail classification for state and county tax purposes.

M.C.T.C. § ___-460 states that the tax rate shall be an amount equal to ____ percent (___%) of the gross income from the business activity upon every person engaging in or continuing in the business of selling tangible personal property at retail. Pursuant to M.C.T.C. § ___-460, Taxpayer's gross receipts derived from sales of propane filled cylinders are subject to tax as retail sales for city privilege tax purposes.

If a customer exchanges an empty cylinder for a propane filled cylinder and the cost, after any reduction in price for the empty cylinder, is equivalent to the cost of merely refilling a customer's cylinder at the Taxpayer's location, such gross receipts are subject to tax under the utilities classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5063 and as utilities for city privilege tax purposes pursuant to M.C.T.C. § ___-480. If, on the other hand, the customer receives only a nominal reduction in price for exchanging an empty cylinder, such gross receipts are subject to tax under the retail classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5061 and as retail sales for city privilege tax purposes pursuant to M.C.T.C. § ___-460.

A.R.S. § 42-5040 states that retail sales of tangible personal property shall be sourced as follows:

1. To the seller's business location if the seller receives the order at a business location in this state.

2. Except as provided in section 42-5008.01, to the purchasers location in this state if the seller receives the order at a business location outside this state.

Therefore, for state and city purposes, sales of propane filled cylinders to a customer are sourced to the Taxpayer's location. However, A.R.S. § 42-5040 only applies to retail sales and leases of tangible personal property. A.R.S. § 42-5034(A)(3) states that for the purpose of determining the location of a business for transaction privilege tax purposes, a taxpayer shall be deemed to be engaged in business as classified under the utilities classification at the location where the electricity, gas or water is delivered to the consumer.

This response is a taxpayer information ruling (TIR) and the determination herein is 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 information 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.

If the Department is provided with required taxpayer identifying information and taxpayer representative authorization before the proposed publication date (for a published TIR) or date specified by the Department (for an unpublished TIR), the TIR will be binding on the Department with respect to the taxpayer that requested the ruling. In addition, the ruling will apply only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The ruling may not be relied upon, cited, or introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the taxpayer information ruling. If the required information is not provided by the specified date, the taxpayer information ruling is non-binding for the purpose of abating interest, penalty or tax.