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PRIVATE TAXPAYER RULING LR07-005

October 12, 2007

The Department issues this private taxpayer ruling in response to your letter of September 27, 2006 requesting a ruling on behalf of your client . . . ("Purchasing Intermediary"), on the applicability of Arizona transaction privilege tax to Purchasing Intermediary's activities as a public procurement cooperative, created and operating pursuant to Arizona Revised Statutes ("A.R.S.") § 41-2632. On November 17, 2006, you also submitted supplemental information at the Department's request.

Statement of Facts:

The following facts are excerpted from your September 27 letter:

[Purchasing Intermediary] was established pursuant to A.R.S. § 41-2631 et seq. after it had been started . . . as a cooperative purchasing program between . . . County school districts. . . .

In January 2005, [Purchasing Intermediary] began operating as a nonprofit corporation. . . . The sole purpose of the corporation is to administer a cooperative purchasing program for a variety of materials, equipment, services and construction. Membership in the corporation is now limited to school districts, political subdivisions, and nonprofit entities that meet the requirements of Section 115 of the Internal Revenue Code. . . .

. . . .

[Purchasing Intermediary]'s members receive the benefits of the contracts without having to invest resources in the procurement process and take advantage of favorable pricing and contract terms that might not otherwise be available. Vendors obtain the opportunity to compete for [Purchasing Intermediary] contracts by registering as potential bidders. Once registered, a vendor receives notice of any procurement solicitation issued for any category for which the vendor registered. Receipt of the notice provides the vendor with an opportunity to submit a bid or proposal for consideration of award. This system benefits [Purchasing Intermediary] members because it lowers the costs associated with seeking requests for proposals by consolidating and streamlining the RFP process.

. . . .

. . . [A]ll vendors responding to a solicitation for bids compete on an equal basis and contracts are awarded solely in accordance with the evaluation criteria in the solicitation. [Purchasing Intermediary] contracts in response to member requirements. The members determine which commodities, services or construction items for which [Purchasing Intermediary] contracts.

[Purchasing Intermediary] contracts are available for member use as awarded only. A member cannot negotiate terms specific to one agency. Thus, the contracts are used in their

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competitively awarded form. Members may only use the contracts [Purchasing Intermediary] awarded through competitive procurement. There are no “add-ons” once a solicitation has been awarded. This prevents members from shopping for a preferred vendor or otherwise abusing the public procurement process as such shopping would be contrary to the Procurement Code and Rules.

Once [Purchasing Intermediary] enters into purchasing contracts with vendors, they are made available to members without recommendation. Members use the contracts based upon the contracts’ ability to effectively meet a requirement, and compliance with the Code and Rules. This is identical to the use of contracts awarded by in-house purchasing departments. [Purchasing Intermediary] has no preferred vendors and members are free to choose from any of the vendors with which [Purchasing Intermediary] has a contract.

....

[Purchasing Intermediary]’s primary service to members is to provide their procurement needs at more cost effective rates than they might otherwise be able to obtain on their own. Additionally, [Purchasing Intermediary] assists its members with contract compliance. In order to fulfill the duties required by this type of public service, [Purchasing Intermediary] requires members to issue purchase orders to [Purchasing Intermediary] for all purchases made with [Purchasing Intermediary] vendors. This provides [Purchasing Intermediary] with an opportunity to review the purchase prior to the vendor providing materials, equipment, services or construction. This also helps prevent unauthorized or inappropriate use of the contracts.

Once [Purchasing Intermediary]’s review is complete, [Purchasing Intermediary] issues its purchase order to the vendor. This document serves the same function as a notice to proceed. It authorizes the vendor to perform the work or provide the goods or service directly to the member in accordance with the requirements of the contract. Those requirements include provisions that the member is the purchaser and ultimately responsible for the purchase. This is very similar to the role played by a member’s internal purchasing department.

After the vendor performs, it sends [Purchasing Intermediary] an invoice for goods or services so that [Purchasing Intermediary] can review it to ensure the purchase complies with the Procurement Code and Rules. [Purchasing Intermediary] then forwards the vendor invoice to the member. The member issues a check to [Purchasing Intermediary] and after ensuring compliance, [Purchasing Intermediary] forwards the payment on to the vendor. Here, [Purchasing Intermediary] serves in the capacity of an extended member accounts payable department to ensure compliance with applicable rules, regulations and statutes.

Pursuant to state public procurement regulation, buying members remain responsible for all rights and obligations for purchases made under [Purchasing Intermediary] contracts. . . . [Purchasing Intermediary] has no authority to issue an order without prior member authorization. [Purchasing Intermediary] cannot revise a purchase, issue a change order, or cancel an order without prior member authorization. [Purchasing Intermediary] never receives, inspects, tests, accepts, or takes title to the goods, services or construction purchased by a member. Additionally, [Purchasing Intermediary] has no authority, or obligation, to pay for member purchases.

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The service [Purchasing Intermediary] provides is supported by an administration fee. There are no membership or subscription fees. Instead, members pay an administrative fee of one-percent of the cost of all goods, services and construction purchased under [Purchasing Intermediary] contract.

This administrative fee is required by statute, A.R.S. § 41-2632(5), to obtain reimbursement of the "reasonable and necessary costs" of providing services or software that assist the member improve the efficiency or economy of procurement. Moreover, A.R.S. § 41-2633 states that payments made by a public procurement unit to [Purchasing Intermediary] "shall be available" to defray the cost of the cooperative program.

The following provisions are excerpted from the "General Terms and Conditions" of a representative agreement between a vendor and Purchasing Intermediary that you submitted in your September 17 correspondence:

FORM OF CONTRACT

Contract type: The contract shall be a percent of discount off manufacturer's price list or fixed price, with indefinite quantities.

....

ORDERING CYCLE

Acceptance of orders by contractor: All quotations provided to [Purchasing Intermediary] members must be based on prices in this contract. [Purchasing Intermediary] must issue all orders accepted by the contractor under this RFP. Member agencies will submit signed purchase orders to [Purchasing Intermediary]. [Purchasing Intermediary] will then issue a purchase order to the contractor. When necessary, one or more orders may be combined. The contractor must agree never to accept a purchase order based on this contract unless the purchase order is issued by [Purchasing Intermediary]. Members may not issue purchase orders based upon [Purchasing Intermediary] contracts directly to contractors.

Acceptance of orders by [Purchasing Intermediary]: This contract is for the sole use of [Purchasing Intermediary] members. However, [Purchasing Intermediary] reserves the right to reject any purchase authorizations it receives from member agencies, without cause[.]

....

PAYMENT

Billing: All invoices shall list the applicable [Purchasing Intermediary] purchase order number(s). Unless otherwise directed by [Purchasing Intermediary], the contractor will not invoice members directly. Late fees are not permitted. All transactions are payable in U.S. currency only.

Contacting member about payment: Contractor agrees not to contact the accounts payable department, business manager, or superintendent of a member that owes [Purchasing Intermediary] payment for a product or service delivered to the member, unless [Purchasing Intermediary] has specifically requested assistance in collecting a past due payment.

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Payment discounts: Any payment discount offered must be made directly to [Purchasing Intermediary] and not to the member or affiliate member receiving the materials or services. Because [Purchasing Intermediary] must process a voucher through the . . . County School Superintendent's Office, after receiving payment from the member or affiliate member, [Purchasing Intermediary] has limited control of the timeliness of payment. Quick-payment discounts of 10 days are normally impossible; 20 and 30 days are more reasonable.

Payment time: [Purchasing Intermediary] will make every effort to collect payment from members within thirty (30) days after receipt of construction, goods or services and a correct invoice for the amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. Any offer that requires payment from [Purchasing Intermediary] in less than forty-five (45) days shall not be considered. Any vendor whose business would be in jeopardy due to a 45-day payment cycle is encouraged not to respond.

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SHIPPING

Shipping terms/transfer of title: Shipments shall be F.O.B. destination. F.O.B. origin, vessel, car or other vehicle terms will not be accepted. Title and risk of loss of material or service shall not pass to the purchasing member until it actually receives the material or service at the point of delivery, unless otherwise provided in this document. Title to an undivided share or quantity of an identified mass of fungible goods will not pass to a buyer until a separation of the purchased share has been made, delivered and received.

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TAXES

Federal excise tax: Most, if not all, Arizona public school districts are exempt from paying Federal Excise Tax. Most [Purchasing Intermediary] members do pay sales or use tax.

Indian reservation or tribal tax: If goods or services are subject to Indian reservation or tribal tax, it is the responsibility of the offeror to include such taxes as a separate item on the original invoice to [Purchasing Intermediary].

Payment of taxes: [Purchasing Intermediary] will collect and send payment for all taxes listed on the invoice. It is the contractor's responsibility to forward all taxes to the proper revenue office. Installation of equipment which becomes permanently attached to a structure is taxable as a contracting activity. (R-15-5-708(A))

Pre-tax prices: Prices offered shall not include applicable state and local taxes. All applicable taxes must be listed as a separate item on all invoices and will be paid by the member issuing the purchase order to [Purchasing Intermediary].

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Taxes on construction: Contractors for construction-related projects must follow the latest Arizona Administrative Code, Department of Revenue, sales tax procedure as described in R-15-5-602. Since the work is performed for and payments will be received from [Purchasing

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Intermediary]'s members, the offeror is considered a prime contractor by R-15-602 (C,1,a). Sales taxes on contracting shall be separately stated on invoices.

General Terms and Conditions, pp. 6-8, 11, 13, 14, 18.

In a Sample Request for Proposals attached to your September 27 request, there is a page of responses geared toward new vendors with legal questions that “may help them understand the contracting authority of [Purchasing Intermediary] and how Arizona law establishes cooperative purchasing for procurement”:

1. [Purchasing Intermediary] is a school service agency established by the authority of **Arizona Revised Statute § 15-365** through the . . . County School Superintendent's office. As such, we are required to follow the Arizona procurement code since we are a “local procurement unit.”
2. Under **ARS § 41-2631 et seq.**, we have established a cooperative purchasing program with all the public schools (and many charter schools, colleges, county and local agencies) in Arizona. When [Purchasing Intermediary] issues an IFB or RFP in compliance with the procurement code, then all our members using our contracts are deemed to be in compliance.
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4. A purchase order is a legal contract between a vendor and the procurement unit for goods and services. When [Purchasing Intermediary] sends a purchase order, it is based on a purchase order [] we have received from a school district. If a district issues a purchase order to us (or anyone else) it must have funds to pay for that order. . . .
5. Our County Attorney has approved a procedure that allows companies to sign a multi-term contract directly with the school district, as long as the agreement is based on a purchase order from [Purchasing Intermediary] for that district. For example, monthly rental and lease payments must be made directly to the lender, not to [Purchasing Intermediary]. Leases beyond five years require special treatment, but are possible for some members. Progress payments are also possible. If, as an example, a company and a district agree to a 50% on delivery and balance on completion payment plan, [Purchasing Intermediary] will request payment from the school upon receipt of the necessary invoices from the company. Progress payments for procurement of construction have a special set of rules to protect the contractor.
6. [Purchasing Intermediary] operates on a 1% administration fee (\$10 minimum) paid by the member, not by the vendor. In the event of a trade-in or multi-term contract, our administration fee to the district will be based on the cash price of the product or service sold.
7. Protection for a company from a school that refuses to pay is substantial. [Purchasing Intermediary] has a signed Cooperative Purchase Agreement (CPA) between our agency and the school/agency that requests payment to us within 25 days. This CPA has been established under the Arizona procurement code (**ARS § 41-2631** through **2635**). Public officials are very careful to follow this code

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because it also protects them as public servants. Since a sale to a school is based on purchase orders issued by [Purchasing Intermediary], we have a special responsibility to see that payment is made in a timely fashion. We can not pay until our member pays us. This RFP (see Terms & Conditions) says that [Purchasing Intermediary] will make every effort to collect and pay within 45 days.

Sample Request for Proposals, p.24.

The following terms are taken from the sample Cooperative Purchase Agreement you also submitted in your September 17 correspondence:

In consideration of the mutual promises contained in this Agreement, and the mutual benefits to result there from, the parties agree as follows:

1. [Purchasing Intermediary] shall:
 - a. [Purchasing Intermediary] shall provide the Member with information on contracts, products and services via [Purchasing Intermediary]'s website and/or other means as [Purchasing Intermediary] determines appropriate.
 - b. The specifications, terms and conditions for products, materials, services, and construction will be determined by [Purchasing Intermediary].
 - c. [Purchasing Intermediary] shall conduct the procurement in compliance with the Arizona State Procurement Code and the Arizona State Board of Education School District Procurement Rules (A.R.S. Title 41, Chapter 23 and A.A.C. R7-2-1001 et seq). [Purchasing Intermediary] will seek contracts for a variety of materials, services, equipment, and/or construction to enable Members to be/remain in compliance with local, State, or Federal laws or rules, and that promote the overall efficiency, effectiveness and economy of public procurement.
 - d. [Purchasing Intermediary] will indicate that all Members will be eligible participants in any solicitation intended for general use by [Purchasing Intermediary]'s Members. In addition, [Purchasing Intermediary] may invite Members to participate in specific solicitations. Members indicating an interest in participating in such specific solicitations will be eligible to participate in the resulting contracts.
 - e. [Purchasing Intermediary] will hold the Member harmless from any liability, which may arise from [Purchasing Intermediary]'s action or inaction relating to this Agreement.
2. The Member shall:
 - a. Insure that purchase orders issued against [Purchasing Intermediary] contracts are processed in accordance with the processes and procedures established by [Purchasing Intermediary], and the terms and prices established in said contracts.
 - b. Unless special conditions are approved by the vendor, pay [Purchasing Intermediary] invoice within 25 calendar days of receipt of materials, services or construction. Payment for, and inspection and acceptance of materials, services or construction ordered by the Member shall be the exclusive obligation of the ordering Member.
 - c. Not use a [Purchasing Intermediary] contract as a method for obtaining additional concessions or reduced prices for similar materials or services.

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- d. Be responsible for ordering of materials, services or construction under this Agreement. [Purchasing Intermediary] shall not be liable in any fashion for any violation by the Member of this Agreement, and the Member shall hold [Purchasing Intermediary] harmless from any liability, which may arise from action or inaction of the member relating to the Agreement or its subject matter.
- e. Pay to [Purchasing Intermediary] an administration fee based upon the cost of ordered materials, services and/or construction (excluding shipping, taxes, bonds, and other ancillary costs specified by [Purchasing Intermediary]), as provided A.R.S. § 41-2632(5). The amount of the administration fee shall be determined by the [Purchasing Intermediary] Board of Trustees, and shall be remitted to [Purchasing Intermediary] as specified by [Purchasing Intermediary].

.....

- 4. The exercise of any rights or remedies by the Member shall be the exclusive obligation of the Member. However, [Purchasing Intermediary] as the contract administrator, and without subjecting itself to any liability, may join in the resolution of any controversy should it so desire.
- 5. [Purchasing Intermediary] assists Members with purchase verification. However, it is the Member's responsibility to independently verify that quotations and purchase orders comply with the terms of the award of a contract or procurement.

.....

- 9. Termination of this Agreement shall not relieve the Member from Member's exclusive obligation to comply with the terms of any Member purchase order processed by [Purchasing Intermediary] prior to termination and payment for materials, services and/or construction so ordered and received.

.....

- 11. Failure of a Member to secure performance from a vendor in accordance with the terms and conditions of its purchase order does not mean [Purchasing Intermediary] will be required to exercise its own rights or remedies.

Your Issues:

Based on the arguments presented in your request, you raise the following issues:

- 1. Does Purchasing Intermediary, a public procurement cooperative created and operating pursuant to A.R.S. § 41-2632, et seq., constitute a business subject to transaction privilege tax under the retail classification?
- 2. If Purchasing Intermediary is a retail business, are Purchasing Intermediary's gross receipts derived from administration fees subject to transaction privilege tax?

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Your Positions:

Your positions for the above-stated arguments are as follows:

1. Purchasing Intermediary is not engaged in a business that is subject to transaction privilege tax under the retail classification.
2. Purchasing Intermediary's gross receipts derived from administration fees are not subject to transaction privilege tax.

Conclusions and Ruling:

A.R.S. § 42-5061(A) imposes transaction privilege tax under the retail classification on “the business of selling tangible personal property at retail,” with the tax base being the gross proceeds of sale or gross income derived from the business. A.R.S. § 42-5061(V)(3) defines “selling at retail” as “a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property.” A.R.S. § 42-5001(1) provides that a “business” includes “all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales.” Under A.R.S. § 42-5001(13), a “sale” is “any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration.”

There are numerous exemptions from retail transaction privilege tax. One exemption, found at A.R.S. § 42-5061(A)(1), is for gross proceeds of sales or gross income derived from “[p]rofessional or personal service occupations or businesses which involve sales or transfers of tangible personal property only as inconsequential elements.” The Department discusses the nature of professional and personal service occupations and businesses in *Arizona Transaction Privilege Tax Ruling* TPR 90-2 (Aug. 1, 1990), available at <http://www.azdor.gov/ResearchStats/rulings/tp90-2.htm>. Professional and personal service occupations “are those wherein the professional is able to engage in the occupation by virtue of a state sanctioned or state issued license to engage in that occupation” (e.g., lawyers, doctors, cosmeticians, barbers). A service business is one whose dominant purpose is to provide a service rather than to fabricate and sell the goods fabricated. Examples of service businesses include “vehicle maintenance garages, pest control, lawn maintenance and other like services.”

Arizona has no blanket transaction privilege tax exemptions for sales of tangible personal property to the state, its political subdivisions, or nonprofit organizations. See, e.g., Arizona Administrative Code (“A.A.C.”) R15-5-181 and R-15-5-182. Sales of tangible personal property by a state or local government are taxable if the government is acting in a

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proprietary capacity, *i.e.*, when it is conducting an activity in competition with private industry, as opposed to performing activities solely within the capacity of governments. A.A.C. R15-5-181(B); Arizona Transaction Privilege Tax Ruling TPR 90-3 (Oct. 15, 1990); see *also* Ariz. Att'y Gen. Op. 182-051 (Apr. 9, 1982) (gross receipts of sales and rentals made by the state's Surplus Property Division to persons other than other state agencies were taxable despite the agency's purpose to efficiently deal with surplus state property rather than simply make profit because the activities had the required taxable object of "gain, benefit or advantage").

In referencing the specific state statutes under which Purchasing Intermediary was formed, A.R.S. § 41-2631(4) defines "public procurement unit" as "either a local public procurement unit, the department, any other state or an agency of the United States." A.R.S. § 41-2631(2) defines "local public procurement unit" as "any political subdivision, any agency, board, department or other instrumentality of such political subdivision and any nonprofit corporation created solely for the purpose of administering a cooperative purchase under this article." A "cooperative purchaser" is defined under A.R.S. § 41-2631(1) as "procurement conducted by, or on behalf of, more than one public procurement unit." A.R.S. § 41-2633 provides, "All payments received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit to defray the cost of the cooperative program."

A general rule of statutory construction is that, when there is no explicit definition for a statutory term, courts will assume, unless otherwise stated, that the legislative intent is to give the word its "natural and obvious meaning," which can be determined from its dictionary definition. See, *e.g.*, *Lee v. State*, 161 P.3d 583, 587 (Ariz. Ct. App. 2007).

To determine the natural and obvious meaning of the term "procurement," which is undefined in the relevant A.R.S. Title 41 statutes, reference to the dictionary definition is helpful:

2. a. The action of obtaining something; acquisition; an instance of this.

. . . **1985** P. COOKE in D. Gregory & J. Urry *Social Relations & Spatial Structures* x. 215 The procurement by the state of a climate of responsibility outside work, in the family and community. **2002** *Art Q.* Spring 13/2 Both were means towards a single, unwavering end: the procurement of objects for the British Museum.

. . . .

3. Originally *Mil.*: the action or process of obtaining equipment and supplies. Subsequently (esp. in *Business*): the acquisition of goods or services at the best possible price, in appropriate quantity, at the right time and place, etc.; this as a practice. Freq. *attrib.*

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1918 *Washington Post* 5 Jan. 6/3 The procurement division will have charge of the contracts for ordinance and supplies. **1939** *Times* 15 May 38/5 The gravest problem has been procurement. **1945** *Sun* (Baltimore) 30 Mar. 7-0/5 The committee will review the food procurement and stockpiling policies of war agencies. **1957** *Economist* 7 Sept. 838/3 Soldiers who can, without any lessening of their primal martial qualities, handle their logistical and procurement problems. **1966** *Amer. Speech* **41** 300 It receives the plans and decisions of the Secretary of Defense and Secretary of the Air Force, and its own Chief of Staff, and translates them into training, logistic, and procurement programs. **1977** *R.A.F. News* 30 Mar.-12 Apr. 10/4 It is then the task of the operational requirements staff to define the parameters in a detailed operational requirement which..is passed to the Procurement Executive who put it to industry to see how it can best be met. **1988** *ICL Techn. Jrnl.* **6** 117 The IT user community will naturally wish to embrace Open Systems Interconnection as a means of gaining greater independence through multi-vendor procurement. **1994** *Canad. Defence Q.* Mar. 16/1 We should not be surprised that time and again defence policy seems inchoate and vulnerable, buffeted by politicians, treasury board officials, procurement officers, critics, or other self-interested parties. **2003** *Electronics World* Jan. 16/1 The growing pattern of procurement in Taiwan and offshore distribution indicates that Taiwan—or ‘Silicon Island’ as it likes to be called—is slowly achieving that goal.

Oxford English Dictionary (June 2007 rev.), <http://dictionary.oed.com> (last visited July 30, 2007).

In reviewing the public procurement statutes of A.R.S. Title 41 and the definition of “procurement,” it is not apparent that Purchasing Intermediary is performing an activity that is solely within the capacity of a government entity. The act of procurement, as indicated in its definition, is essential to many types of organizations, and involves obtaining or acquiring tangible personal property and services. Neither statute nor dictionary definition eliminate the possibilities that an entity procuring on behalf of another would engage in the procurement for gain, benefit or advantage, thus making it a “business” as defined in A.R.S. § 42-5001(1) or that the entity is procuring goods and services on behalf of end users (*i.e.*, not for resale) for a consideration, such that it is making a “sale” as defined in A.R.S. § 42-5001(13). The usual rubric for assessing the applicability of transaction privilege tax would then apply: that is, a person making sales of tangible personal property that is not for resale would be subject to tax under the A.R.S. § 42-5061 retail classification, and a person making sales of contracting activities as a prime contractor would be subject to tax under the A.R.S. § 42-5075 prime contracting classification.

Purchasing Intermediary is a “business” under A.R.S. § 42-5001(1), in that it operates for the gain, benefit, or advantage realized through cooperative purchasing by its members; an indirect, resulting benefit as described is sufficient to meet the statutory definition. Nevertheless, based on the facts provided, Purchasing Intermediary does not appear to be engaged in a taxable business of making sales of tangible personal property. That is, Purchasing Intermediary is neither a retail business nor an agent of a retail business in that:

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- Purchasing Intermediary never holds title or possession over the tangible personal property that it sells, as would be the case for consignment sales, sales by auctioneers, or sales by trustees, receivers, and assignees that are subject to tax as provided in A.A.C. R15-5-111 to R15-5-113. While Purchasing Intermediary manages the contract terms, payments, and purchase orders through which a member obtains the services or tangible personal property it seeks through vendors to whom it awards contracts, the actual transfers of title and possession over tangible personal property occurs solely between vendors and members. Consequently, Purchasing Intermediary does not make “sales” as defined in A.R.S. § 42-5001(13), such that it could be characterized as a business that makes retail sales.
- Although Purchasing Intermediary facilitates sales to its members by the vendors to whom it awards contracts, it does not appear to bear any liability to guarantee the performance of the vendor to a purchasing member. Purchasing Intermediary describes a 25-day payment term that it generally requires of its members and makes some efforts to assist vendors with obtaining payment from delinquent members, but does not guarantee payment to the vendor in any fashion.

Purchasing Intermediary does, however, have a relationship resembling that of a purchasing agent for its members. The relationship is limited (*e.g.*, it does not guarantee the performance of vendors for members; it makes no assertions, warranties, or guarantees to its members on the compliance of vendors with general or special terms and conditions of awarded contracts), but Purchasing Intermediary still provides support services, including procurement, contract administration, and accounts receivable functions on behalf of its purchasing members, thereby acting as an agent of the purchasers.

Based on the facts provided, Purchasing Intermediary is a service business, the gross income from which is generally exempt from transaction privilege tax under A.R.S. § 42-5061(A)(1). The fact that Purchasing Intermediary requires that both members and vendors to abide by certain payment and administrative requirements to complete their transactions does not transform the status of Purchasing Intermediary to that of a business making retail sales. As a nontaxable service business, the percentage-based administration fees that Purchasing Intermediary derives from procurement on behalf of its

* Although Purchasing Intermediary did not directly raise the issue in its private taxpayer ruling request, had the Department determined that Purchasing Intermediary did make “sales” of contracting activities, it would have raised the potential that Purchasing Intermediary would constitute a prime contractor subject to tax under the A.R.S. § 42-5075 prime contracting classification. In the case of contracting activities or other services, however, the prime contractor or service provider is performing its activities directly on behalf of Purchasing Intermediary’s member and not on behalf of Cooperative. Consequently, the possibility that Purchasing Intermediary would be subject to tax under A.R.S. § 42-5075 does not arise under the facts provided.

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members would not be considered membership dues or similar fees that are part of the taxable gross receipts of a retail business, as discussed in A.A.C. R15-5-157.

Based on the facts provided by Purchasing Intermediary, the Department rules as follows:

1. Purchasing Intermediary constitutes a personal service business that is not subject to transaction privilege tax under the retail classification.
2. Because gross receipts derived from Purchasing Intermediary's business activities are not subject transaction privilege tax, the gross receipts it derives from administration fees are not subject to transaction privilege tax.

The liability of a vendor for Arizona transaction privilege tax or of Purchasing Intermediary's member for Arizona use tax is not impacted by the finding that Purchasing Intermediary is not subject to transaction privilege tax. The determination of which tax would apply in a given transaction is made on a case-by-case basis and depends on the nexus that particular vendor has with the State of Arizona.

Consequently, for situations in which Purchasing Intermediary is assisting in a transaction between a member and remote vendor (*i.e.*, a vendor that is located outside the state) and the vendor's invoice does not indicate that it is passing on or collecting Arizona tax from the member, the Department recommends that Purchasing Intermediary notify its member on the invoice it issues that the member may be subject to Arizona use tax on the purchase price.

This private taxpayer ruling does not extend beyond the facts presented in your letters of September 27 and November 17, 2006.

This response is a private taxpayer ruling 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 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 only applicable 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.