

STATE OF ARIZONA

Department of Revenue
Office of the Director
(602) 716-6090



Janet Napolitano
Governor

Gale Garriott
Director

CERTIFIED MAIL [REDACTED]

The Director's Review of the Decision)
of the Administrative Law Judge Regarding:)
[REDACTED])
ID No. [REDACTED])

O R D E R

Case No. 200500019 - S

On October 26, 2005, the Administrative Law Judge issued a decision regarding the protest of [REDACTED] ("Taxpayer"). The Taxpayer appealed this decision on November 23, 2005. As the appeal was timely, the Director of the Department of Revenue ("Director") issued a notice of intent to review the decision.

In accordance with the notice given the parties, the Director has reviewed the Administrative Law Judge's decision and now issues this order.

STATEMENT OF CASE

The Transaction Privilege and Use Tax Section of the Audit Division ("Division") of the Department audited Taxpayer for the period of July 1, 1997 through June 30, 2001. In the audit, the Division determined that the majority of Taxpayer's prime contracting receipts for the construction of a [REDACTED] in Arizona were taxable under the prime contracting classification and did not qualify for any exemption from the tax. As a result, the Division assessed additional transaction privilege tax and interest. Taxpayer protested the disallowance of claimed exemptions. The matter went to hearing and the Administrative Law Judge ("ALJ") upheld the assessment. On appeal, Taxpayer argues that it is entitled to additional exemptions for the installation of exempt manufacturing machinery or equipment and for purchases of exempt pollution control equipment. The Division argues that, except for the changes made in a tentative modified assessment,

its assessment of transaction privilege tax under the prime contracting classification was proper under the circumstances.

FINDINGS OF FACT

The Director adopts from the findings of fact in the decision of the ALJ and makes additional findings of fact based on the record as set forth below:

1. Taxpayer is a [REDACTED] corporation that has engaged in the business of prime contracting within the meaning of Arizona Revised Statutes ("A.R.S.") § 42-5075, within the State of Arizona.
2. During the periods of July 1999 through June 2001, Taxpayer constructed a [REDACTED] plant for [REDACTED]. ("[REDACTED]") in [REDACTED], Arizona, and received \$22,993,497.16 in gross proceeds from [REDACTED].¹ The project included the construction of storm water retention areas and sewer system and the installation of machinery and equipment.
3. Taxpayer reported the proceeds received from [REDACTED] as gross income derived from the business of prime contracting under A.R.S. § 42-5075 and claimed exemptions for the purchase and installation of exempt machinery or equipment under A.R.S. §§ 42-5075(B)(9) and 42-5075(B)(7) in the amount of \$13,530,603.00.²
4. The Division audited Taxpayer for the period of July 1, 1997 through June 30, 2001. With regard to the \$13,530,603.00 in proceeds from [REDACTED], for which Taxpayer claimed machinery or equipment exemptions, the Division traced

¹ The Division's tentative original and amended assessments, submitted in part as Taxpayer's Exhibit 9, Page 16c and Exhibit 15, Page 14b, and Taxpayer's amended protest calculations submitted as Taxpayer's Exhibit 16, show \$22,993,497.16 as the amount of gross proceeds received for the [REDACTED] project during the periods of July 1999 through June 2001.

² The amount is shown in Column F of the Division's tentative original and amended assessments submitted in part as Taxpayer's Exhibit 9, Page 16c and Exhibit 15, Page 14b.

\$8,588,921.00 to specific equipment or construction phases³. The remaining claimed amount of \$4,941,682.00 was not traced to specific equipment.

5. Of the \$8,588,921.00 in claimed and specifically traced exemptions, the Division allowed \$1,771,590.71, or 20.626%, and applied that percentage to the total monthly amounts of claimed exemptions. \$6,817,330.29 of the traced exemptions, or 79.374%, was disallowed. The application of that percentage to the total monthly amounts of claimed exemptions resulted in an assessment of additional transaction privilege tax and interest for the [REDACTED] project within an assessment dated May 23, 2003, ("Assessment") that also addressed other projects for a total additional tax of \$ [REDACTED] plus interest. The parties have not specified which portion of that assessed tax related to the [REDACTED] project. The parties stipulated that Taxpayer approved of the calculation method used to determine allowable exemptions related to the [REDACTED] project.
6. On July 10, 2003, Taxpayer protested the Assessment and requested a formal hearing. Taxpayer's protest, as it related to projects other than [REDACTED], was separated from the [REDACTED] portion of the Assessment. Only the [REDACTED] portion is at issue here.
7. Taxpayer protested the disallowance of exemptions for the [REDACTED] project in the amount of \$5,842,014.00. Taxpayer later amended its protest and stated the amount of disallowed and protested exemptions as \$5,788,718.00 and the resulting amount of protested tax as \$ [REDACTED].⁴
8. Taxpayer's original and amended protests are based only on those amounts of claimed exemptions that the Division traced to specific equipment or construction phases and from which the Division calculated the percentage of allowed and disallowed claimed exemptions. The amount of protested tax, as calculated in

³ "Disallowed worksheet", Page 16d of the Division's tentative original assessment, Taxpayer's Exhibit 9.

⁴ Joint Stipulation of Facts submitted to the ALJ on March 8, 2005, Fact 17 and Exhibit 2.

Taxpayer's "revised tax exemption worksheets", does not reflect the application of the allowed and disallowed percentages to the total, originally claimed exemptions of \$13,530,603.00. As a result, Taxpayer miscalculated the amount of protested tax in its original and amended protests.

9. On January 15, 2004, the Division issued an amended assessment that did not change any determinations concerning the [REDACTED] project.
10. On August 3, 2006, the Division sent Taxpayer a tentative, second amended assessment⁵ ("Tentative") that would allow additional exemptions for gross income attributable to equipment purchases under A.R.S. § 42-5075(B)(9). The Tentative would reduce the disallowed exemptions for amounts traced to specific equipment or construction phases to \$6,122,733.47 and would increase the percentage of allowed exemptions to 28.714%.
11. The Tentative was not issued as a proposed amended assessment. Instead, it was issued as a draft calculation to reflect that the parties reached agreement on amounts allowable under A.R.S. § 42-5075(B)(9). The Tentative reflects the Division's latest position.⁶
12. On August 4, 2006, in its reply memorandum before the Director, Taxpayer further amended and reduced its protest. Taxpayer stated that the further amended protest was for claimed exemptions in the amount of \$4,943,563.39 and that the total tax in dispute was \$ [REDACTED].⁷
13. On August 8, 2006, Taxpayer submitted a supplement to its reply memorandum ("Supplement") together with a "final revised [REDACTED] tax exemption worksheet."⁸ In the Supplement, Taxpayer states that the protest relating to the [REDACTED] project is for the principal tax amount of \$ [REDACTED] plus

⁵ Taxpayer's Exhibit 15.

⁶ According to the parties' joint response of December 12, 2006 to questions presented by the Director, the Tentative reflects the Division's current position at the time of the joint response.

⁷ Taxpayer's reply memorandum, page 2, and Taxpayer's Exhibit 10.

⁸ Taxpayer's Exhibit 16.

related interest. In its calculation in the “final revised [REDACTED] tax exemption worksheet,” Taxpayer corrects its prior miscalculation of the protested tax amount and applies the percentage of equipment that Taxpayer claims as exempt to the total, originally claimed exemptions of \$13,530,603.00. As a result, Taxpayer calculates that the assessment of additional tax relating to the [REDACTED] project should be adjusted and replaced with a refund in the amount of \$ [REDACTED] tax plus interest.

14. The claimed exemptions for the [REDACTED] project that remain at issue relate to the installation of equipment and to the purchase of water retention and sewer system materials. Taxpayer claims exemptions under A.R.S. §§ 42-5075(B)(7), 42-5061(B)(1) for the installation of manufacturing or processing equipment and exemptions under A.R.S. §§ 42-5075(B)(9), 42-5061(B)(19) for gross income attributable to the purchase of pollution control equipment.
15. The Division concedes that those equipment categories, for which it allowed exemptions for purchases of exempt equipment under A.R.S. § 42-5075(B)(9), qualify as exempt manufacturing or processing equipment under A.R.S. § 42-5061(B)(1)⁹. This includes all equipment categories for which Taxpayer claims an installation exemption under A.R.S. § 42-5075(B)(7), with the exception of equipment described as “Bulk Bagging Mechanical” and “[REDACTED] Equipment” and proceeds recorded as Phase 1, “General Conditions and Profit”, and Phase 600000, “Labor Burden”.
16. The equipment described as “Bulk Bagging Mechanical” and recorded as Phase 119084 is a system of conveyors and specialized equipment for the bagging of Taxpayer’s products.¹⁰

⁹ Joint response of December 12, 2006.

¹⁰ See Exhibit 5 to the Joint Stipulation of Facts that the parties submitted to the Office of Administrative Hearings.

17. The equipment described as “[REDACTED] Equipment” is equipment furnished by [REDACTED]. Taxpayer’s proceeds from “Handling [REDACTED] Equipment” and recorded as Phase 119105 relate to costs associated with offloading, storing and moving that equipment from storage to the place of installation.¹¹
18. Taxpayer’s proceeds recorded as Phase 1, “General Conditions and Profit”, are proceeds from construction management services.
19. Taxpayer’s proceeds recorded as Phase 600000, “Labor Burden”, are proceeds that reflect overhead costs as calculated on the basis of Taxpayer’s historical labor burden costs.
20. Taxpayer installed equipment in the [REDACTED] facility for use in the facility’s manufacturing processes by bolting the equipment in place. Taxpayer bolted the modular equipment to surfaces within the facility for an easy installation and for a possible future removal of the equipment.
21. Taxpayer purchased water retention and sewer system materials for installation in the [REDACTED] project.
22. The purpose of storm water retention areas and sewer system is to channel storm water runoff and waste water from the properties.
23. The storm water retention areas and sewer system are not employed in connection with [REDACTED]’s processing operations.
24. The primary purpose of the installed water retention and sewer system materials is not pollution control.
25. On December 20, 2006, Taxpayer submitted a second supplement to its reply memorandum (“Second Supplement”) with a Form 5000 exemption certificate

¹¹ Id.

issued by [REDACTED] for the sale of machinery or equipment used directly in the [REDACTED].

CONCLUSIONS OF LAW

The Director adopts from the conclusions of law in the Decision of the ALJ and makes additional conclusions of law as follows:

1. A.R.S. § 42-5075(B)(7) provides an exemption from transaction privilege tax for “gross proceeds of sales or gross income . . . derived from . . . the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is deducted from the tax base of the retail classification . . .” under A.R.S. § 42-5061(B) . . . “and that does not become a permanent attachment to” real property.
2. A.R.S. § 42-5061(B)(1) provides an exemption from transaction privilege tax for gross proceeds of sales or gross income derived from sales of “[m]achinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations.”
3. Arizona Administrative Code (“A.A.C.”) Rule 15-5-120(A) provides that “[m]achinery or equipment used in manufacturing or processing includes machinery or equipment that constitutes the entire primary manufacturing or processing operation from the initial stage where actual processing begins through the completion of the finished end product, processing, finishing, or packaging of articles of commerce.”
4. Taxpayer installed manufacturing or processing equipment for [REDACTED] that is exempt from transaction privilege tax under A.R.S. § 42-5061(B)(1) as conceded by the Division and also including the “Bulk Bagging Mechanical” equipment recorded as Phase 119084.

5. Taxpayer's proceeds from "Handling [REDACTED] Equipment", recorded as Phase 119105, do not qualify as gross proceeds derived from equipment installation within the meaning of A.R.S. § 42-5075(B)(7).
6. Taxpayer's proceeds recorded as Phase 1, "General Conditions", and Phase 600000, "Labor Burden", do not qualify as gross proceeds derived from equipment installation within the meaning of A.R.S. § 42-5075(B)(7).
7. A.R.S. § 42-5075(B)(7) defines "permanent attachment" to real property as meaning "at least one of the following: (a) To be incorporated into real property. (b) To become so affixed to real property that it becomes a part of the real property. (c) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed."
8. The exempt manufacturing or processing equipment that Taxpayer installed for [REDACTED] became permanently attached to real property.
9. Taxpayer's proceeds from the installation of exempt manufacturing or processing equipment do not qualify for the exemption from transaction privilege tax provided in A.R.S. § 42-5075(B)(7).
10. A.R.S. § 42-5075(B)(9) provides an exemption from transaction privilege tax for "gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under: . . . (b) Section 42-5061, subsection B. . . ."
11. A.R.S. § 42-5061(B)(19) provides an exemption from transaction privilege tax for gross proceeds of sales or gross income derived from sales of "[m]achinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is

used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.”

12. Water retention and sewer system materials do not qualify for the exemption from transaction privilege tax provided in A.R.S. § 42-5061(B)(19).
13. Taxpayer’s proceeds attributable to the purchase of water retention and sewer systems materials for installation in the [REDACTED] project do not qualify for the exemption from transaction privilege tax provided in A.R.S. § 42-5075(B)(9).
14. Taxpayer is not entitled to additional exemptions from transaction privilege tax other than those that the Division allowed in the Tentative of August 3, 2006.

DISCUSSION

The parties agree that there are no material issues of fact in this matter and that the dispute is only whether certain materials and installation labor qualify for exemptions from transaction privilege tax under the prime contracting classification of A.R.S. § 42-5075. Taxpayer argues that its proceeds received for labor in construction phases of the [REDACTED] project that are numbered 055000 and 119048 through 160000 in the Assessment¹² and in Taxpayer’s worksheets¹³ should qualify as proceeds from the installation of exempt machinery or equipment and should be exempt from transaction privilege tax under A.R.S. §§ 42-5075(B)(7), 42-5061(B)(1). The installed items include miscellaneous metal fabrications, various mechanical equipment, bagging and packaging equipment, process piping, and electrical and other materials. The construction phases in question also include Phase 119105, “Handling [REDACTED] Equipment”.

¹² Tentative amended assessment of August 3, 2006, Page 14c, Taxpayer’s Exhibit 15.

¹³ “Final revised [REDACTED] Tax Exemption Worksheet”, Taxpayer’s Exhibit 16.

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Case No. 200500019 - S

Page 10

Taxpayer further argues that its proceeds recorded as Phase 1, "General Conditions", and Phase 600000, "Labor Burden", are also derived from the installation of the listed machinery or equipment and should be exempt under A.R.S. §§ 42-5075(B)(7), 42-5061(B)(1).

Finally, Taxpayer argues that its proceeds attributable to the purchase of water retention and sewer systems materials for installation in the [REDACTED] project should be exempt from tax under A.R.S. §§ 42-5075(B)(9), 42-5061(B)(19).

The Division argues that any machinery or equipment exempt under A.R.S. § 42-5061(B)(1) became permanently attached to the real property and that the installation therefore does not qualify for the exemption provided in A.R.S. § 42-5075(B)(7). Also, the Division argues that Taxpayer has not shown how the proceeds recorded as "Labor Burden" and "General Conditions" relate to the installation of specific, exempt equipment. Furthermore, the Division argues that Taxpayer has not provided information as to how the water retention and sewer systems were used directly in accordance with the exemption for pollution control equipment provided in A.R.S. § 42-5061(B)(19) and that the purchase of these materials, therefore, does not qualify for the exemption in A.R.S. § 42-5075(B)(9) of the prime contracting classification.

Exemption for Equipment Installation, A.R.S. §§ 42-5075(B)(7), 42-5061(B)(1)

A.R.S. § 42-5075(B)(7) provides an exemption from transaction privilege tax for "gross proceeds of sales or gross income . . . derived from . . . the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is deducted from the tax base of the retail classification . . ." under A.R.S. § 42-5061(B) . . . "and that does not become a permanent attachment to" real property. For Taxpayer's proceeds to be exempt under A.R.S. § 42-5075(B)(7), they must be derived from Taxpayer's installation labor for [REDACTED], the installed equipment must qualify as exempt under A.R.S. § 42-5061(B), and the equipment must not become permanently attached to the [REDACTED] real property.

Installation Labor

Taxpayer includes its proceeds recorded as Phase 1, "General Conditions and Profit", Phase 600000, "Labor Burden", and Phase 119105, "Handling [REDACTED] Equipment", within the labor proceeds for which it claims the installation exemption in A.R.S. § 42-5075(B)(7). According to Taxpayer's original "revised tax exemption worksheet", Phase 1, "General Conditions and Profit", stands for proceeds that Taxpayer itemized as construction management services in its payment applications to [REDACTED]. Taxpayer's proceeds recorded as Phase 600000, "Labor Burden", are proceeds that reflect overhead costs such as employee benefits, leave, unemployment, worker's compensation insurance, and other related labor costs. Taxpayer calculates those costs based upon its historical labor burden costs as twenty seven percent (27%) of its direct labor costs. For the [REDACTED] project, Taxpayer projects 27% of its claimed direct installation costs as related labor burden and claims that amount as exempt proceeds derived from the installation of [REDACTED] equipment. The "General Conditions and Profit" and the "Labor Burden" are not direct labor proceeds. They are not derived from the installation of specific, exempt equipment and do not qualify for the installation exemption in A.R.S. § 42-5075(B)(7).

The equipment described as "[REDACTED] Equipment" is equipment furnished by [REDACTED]. According to an affidavit by Taxpayer's project engineer, Phase 119105, "Handling [REDACTED] Equipment", relates to costs associated with offloading, storing and moving that equipment from storage to the place of installation. Thus, the installation itself is not included therein. The proceeds associated with this phase are, therefore, not derived from the installation of equipment and do not qualify for the exemption in A.R.S. § 42-5075(B)(7).

Exempt Equipment

The Division concedes that those equipment categories for which it allowed purchase exemptions under A.R.S. § 42-5075(B)(9) qualify as exempt manufacturing or processing equipment under A.R.S. § 42-5061(B)(1). This includes all remaining

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Case No. 200500019 - S

Page 12

equipment categories for which Taxpayer claims an installation exemption under A.R.S. § 42-5075(B)(7), with the exception of Phase 119084, "Bulk Bagging Mechanical". Taxpayer only claims installation labor but no equipment purchase exemption for this phase as the installed equipment was provided by [REDACTED]. The exemption certificate for the sale of machinery or equipment that Taxpayer submitted with its Second Supplement is, therefore, no longer relevant in this matter.

The "Bulk Bagging Mechanical" equipment is a system of conveyors and specialized equipment for the bagging of Taxpayer's product at the end of the manufacturing process. Pursuant to A.A.C. Rule 15-5-120(A), "machinery or equipment used in manufacturing or processing" includes equipment used to package articles of commerce at the end of a processing operation. The "Bulk Bagging Mechanical" equipment therefore qualifies as manufacturing or processing equipment. A.R.S. § 42-5075(B)(7) does not require that the installed equipment was purchased by the contractor or that it was purchased specifically for this project and for the installation that is to be exempt. The "Bulk Bagging Mechanical" equipment falls under A.R.S. § 42-5061(B)(1) for the purpose of considering its installation under A.R.S. § 42-5075(B)(7).

Attachment to Real Property

A.R.S. § 42-5075(B)(7) defines "permanent attachment" to real property as meaning at least one of the following:

- (a) To be incorporated into real property.
- (b) To become so affixed to real property that it becomes a part of the real property.
- (c) To be so attached to real property that removal would cause substantial damage to the real property from which it is removed.

Taxpayer installed the manufacturing or processing equipment by bolting it to surfaces within the [REDACTED] facility and argues that the equipment should not be considered a permanent attachment to real property because it is easily removable. Taxpayer cites Private Taxpayer Rulings, PTR LR00-007 and PTR LR01-002 in support of its argument. Both rulings were revoked on October 19, 2001. Moreover, a private

taxpayer ruling 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. A.R.S. § 42-2101(D). Taxpayer does not argue that it was the recipient of either of the cited rulings.

In a decision concerning the distinction between personal property and fixtures, the Arizona Court of Appeals applied a “reasonable person test” for determining whether an item of personal property has become a fixture. *Arizona Department of Revenue v. Arizona Outdoor Advertisers, Inc.*, 202 Ariz. 93, 41 P.3d 631 (2002). The adoption of a new fixture test in *Arizona Outdoor Advertisers* is relevant in this case because the term “fixture” is narrower than the term “permanent attachment” to real property, and the installation of an item that becomes a fixture would necessarily qualify as a permanent attachment under A.R.S. § 42-5075(B)(7)(b). The Court of Appeals stated the new test as follows:

Would a reasonable person, after considering all the relevant circumstances, assume that the item in question belongs to and is a part of the real estate on which it is located?

Id., 202 Ariz. at 99, 100, 41 P.3d at 637, 638. The court discussed several factors as relevant to the question whether a reasonable person would assume that an item is part of the real estate, such as an expression of intent contained in installation agreements, the easy assembly and disassembly, the actual removal of the items, and their physical annexation. The court in *Arizona Outdoor Advertisers* considered it important that ownership to the items in question did not pass to the landowner and that the non-landowning party was to have the right to remove the items without any significant event occurring. *Id.*, 202 Ariz. at 101, 41 P.3d at 639. The careful weighing of various factors by the Court of Appeals shows that the simple possibility of future removal of an item is not sufficient as evidence when there are other factors supporting the position that the item has become a part of realty.

Although the [REDACTED] equipment is designed for easy removal, there is no evidence that all the equipment was actually removed at a later time or that it was

intended to remain in place only for a specific, limited time. The statement by [REDACTED]'s Senior International Engineer for Planning and Development, that "some equipment" in the [REDACTED] plant was in fact later exchanged, is too unspecific to support the actual removal of certain equipment and also indicates that all other equipment remained in place. [REDACTED] had ownership of some of the equipment and acquired ownership of the rest. Taxpayer did not retain ownership of the equipment or have the right to remove it. The large pieces of machinery and equipment were installed for an unspecified period of time. They do not appear as furnishings but are integrated into the structure of the facility. In sum, a reasonable person would conclude that Taxpayer installed equipment that became fixtures and that therefore also became a permanent attachment to real property under A.R.S. § 42-5075(B)(7)(b). As a result, Taxpayer's installation proceeds do not qualify as exempt under A.R.S. § 42-5075(B)(7).

Exemption for Proceeds Attributable to the Purchase of Pollution Control Equipment, A.R.S. §§ 42-5075(B)(9), 42-5061(B)(19)

A.R.S. § 42-5075(B)(9) provides an exemption from transaction privilege tax for:

The gross proceeds of sales or gross income attributable to the purchase of machinery, equipment or other tangible personal property that is exempt from or deductible from transaction privilege and use tax under: . . . (b) Section 42-5061, subsection B. . . .

A.R.S. § 42-5061(B)(19) exempts gross proceeds of sales or gross income derived from sales of:

Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory

commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

Taxpayer seeks to exempt its purchases of water retention and sewer system materials under these provisions. To qualify, those materials must be employed in connection with [REDACTED]'s processing operations, and they must be used directly to meet or exceed rules or regulations intended to prevent, monitor, control or reduce pollution.

Taxpayer has not shown how storm water retention and sewer systems play any role in [REDACTED]'s processing operations. The water retention and sewer systems serve to channel storm water runoff and waste water from [REDACTED]'s property. They are not employed in connection with processing. They are also not used directly as required by the statute. "Used directly" for purposes of this exemption implies that the primary purpose of the equipment is to meet or exceed applicable environmental rules or regulations. Taxpayer has not shown that this is the primary purpose of water retention and sewer system materials. The proceeds attributable to the purchase of these materials do not qualify as exempt under A.R.S. §§ 42-5075(B)(9), 42-5061(B)(19).

Taxpayer is not entitled to any additional exemptions from transaction privilege tax for the [REDACTED] project other than those exemptions that the Division allowed in the Tentative.

Amount Protested

The parties did not present discussion on the amount protested by Taxpayer. Even the smallest amount stated by Taxpayer in its protest documents is greater than the amount allowed by the Tentative; therefore, it is not necessary to address whether Taxpayer is limited by the statements made in error.

ORDER

The Administrative Law Judge's decision is affirmed, with the exception that the Division shall finalize all changes to the [REDACTED] portion of the Assessment as made in the tentative second amended assessment of August 3, 2006.

This decision is the final order of the Department of Revenue. Taxpayer may contest the final order of the Department in one of two manners. Taxpayer may file an appeal to the State Board of Tax Appeals, 100 North 15th Avenue, Suite 140, Phoenix, AZ 85007 or may bring an action in Tax Court (125 West Washington, Phoenix, Arizona 85003) within sixty (60) days of the receipt of this order. For appeal forms and other information from the Board of Tax Appeals, call (602) 364-1102. For information from the Tax Court, call (602) 506-3763.

Dated this day of March, 2007.

ARIZONA DEPARTMENT OF REVENUE

Gale Garriott
Director

Certified original of the foregoing
mailed to:

[REDACTED]

Copy of the foregoing mailed to:

[REDACTED]

cc: Transaction Privilege and Use Tax Section
 Office of Administrative Hearings
 Transaction Privilege Tax Appeals