

## PRIVATE TAXPAYER RULING LR98-008

September 2, 1998

The following private taxpayer ruling is provided in response to your letter dated August 17, 1998, in which you requested the department to rule regarding the proper city tax applicable to certain transactions.

The following is a restatement of the facts as presented in the request for a private taxpayer ruling.

### Statement of Facts:

... is located in Gilbert, Arizona. ... periodically conducts tent sales in other cities in Arizona. These sales usually last several days and are located in such places as parking lots of various businesses. ... obtains the necessary special use permits, special events licenses and off-premises zoning permits.

Customers who decide to purchase a car at the tent sale are transported back to your dealership in Gilbert. All the paperwork related to the sale such as the sales contract, financing arrangements and titling of the vehicle is completed at your Gilbert location. The receipt of earnest money also takes place at the Gilbert location. You question which city's tax applies to these sales, the city where the event takes place or the city in which the transaction is completed.

### Applicable Statutory Provisions:

The *Model City Tax Code* (MCTC) provides specific criteria in determining when a retail sale is *not* subject to a city privilege tax. MCTC Article I, Section 100 provides the following definition:

"Out-of-City Sale" means the sale of tangible personal property and job printing if all of the following occur:

(1) transference of title and possession occur without the City; and

(2) the stock from which such personal property was taken was not within the corporate limits of the City; and

(3) the order is received at a permanent business location of the seller located outside the City; which location is used for the substantial and regular conduct of such business sales activity. In no event shall the place of business of the buyer be determinative of the situs of the receipt of the order.

For the purpose of this definition it does not matter that all other indicia of business occur within the City, including, but not limited to, accounting, invoicing, payments, centralized purchasing, and supply to out-of-City storehouses and out-of-City retail branch outlets from a primary storehouse within the City.

### Discussion:

City privilege taxes are imposed and levied "upon persons on account of their business activities". MCTC Section 465(b) excludes "out-of-city sales" from a city's privilege tax on retail sales. MCTC Article I, Section 100 provides a definition for "out-of-city sales". In the case of special event sales, it may be difficult to determine which city's tax applies to the income derived from the sales, the city where the business has its permanent location or the city in which the tent sale is held.

The city privilege tax is imposed on businesses making in-city sales. The cities have established the following criteria to determine which city's privilege tax applies to special event sales. If the vendor has inventory at the location where the special event is held, completes the paperwork related to the sale at that location and accepts binder monies at that time, the sale is considered to have taken place where the special event occurs. In that case, the city privilege tax for the location of the special event applies.

However, where the vendor has inventory at the location where the special event is held, transports the buyer back to their permanent business location, completes all the paperwork and accepts binder monies at that location, the sale is considered to have taken place in the city where these actions took place.

### Conclusion and Ruling:

On the basis of the information provided, we rule that the Town of Gilbert's privilege tax applies to ... tent sales when the customer is transported back to

Gilbert, all paperwork is completed in Gilbert and monies are exchanged in Gilbert.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letter dated August 17, 1998, in the request for a private taxpayer ruling.

This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department and is valid for a period of four years from date of issuance except as set out herein. This determination is 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.