

ARIZONA DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE TAX RULING

TPR 92-6

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ISSUE:

Tax treatment under the utilities classification of reimbursement of contribution compensation and related extraneous activities and services.

AUTHORITY:

Arizona Revised Statutes (A.R.S.) § 42-1310.03.B states that:

The tax base for the utilities classification is the gross proceeds of sales or gross income derived from the business, but the following shall be deducted from the tax base:

* * *

2. Revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility...

Arizona Administrative Code (A.A.C.) rule R15-5-3024.B states:

Development fees and contributions-in-aid-of-construction received for utility and utility services installation...are exempt from tax under this classification [utilities]. A "development fee" is the amount paid by developers to a city for connecting a development to existing water and sewer systems. "Contributions-in-aid-of-construction" are revenues received as reimbursement from customers for whom property and equipment was installed to provide utility access.

DISCUSSION:

A review of the statutory provision raises the question as to the items which would be exempt under A.R.S. § 42-1310.03.B. Key concepts in an analysis of this provision include the phrases "reimbursement or contribution compensation" and "to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility."

It has generally been determined that the intent of the Legislature was to exempt costs which constitute Contributions in Aid of Construction. This term is not defined in Title 42; however, the Arizona Administrative Code at rule R15-5-3024 defines the term as "revenues received as reimbursement from customers for whom property and equipment was installed to provide utility access."

The rule and statute are compatible and both require the following:

1. There must be an installation of property and equipment; and,
2. such equipment must provide utility access.

Based on these requirements, the only charges which would be exempt under A.R.S. § 42-1310.03.B.2 are those incurred when a utility is reimbursed for installation of equipment giving access to the service. Any other income derived from services performed would be taxable under the utilities classification.

RULING:

"Reimbursement or contribution compensation" indicates a "payback" for property investment rather than a revenue for services performed. The determination of whether access charges to a customer's property are subject to tax or are exempt is based on whether the utility actually installed property rather than only provided a service activity. Expenditures which represent an expansion or upgrade of utility property fall within the statutory exemption.

Following are examples of various types of extraneous activities and services and their tax treatment under the utilities classification.

"Up and Down Service" - consists of putting up and taking down temporary power poles and lines used for temporary electric service.

The portion of any income for temporary service which is a reimbursement for installation and removal of property would not be subject to the tax. Any

associated fees for other than installation and removal of the equipment would not be exempt under A.R.S. § 42-1310.03.B.2 and would therefore be part of the tax base under the utilities classification.

"Planned outages" - involves temporarily disconnecting or turning off water, gas or electric service through a particular line so that a contractor or a governmental agency can perform work without any injury which might occur if the outage did not take place.

Receipts from this activity are a miscellaneous service revenue which does not constitute reimbursement or contribution compensation. As such, receipts from these outages would be included in the tax base under the utilities classification.

"Facility or line relocation service" or "Relocation of a main or service line" - consists of relocating existing utility lines or equipment.

Income from relocation charges constitute an exempt transaction under A.R.S. § 42-1310.03.B.2.

"Phone drops" - utility employees connect wires belonging to telephone or cable TV companies onto their own and drop them into trenches that have been excavated for the utility's own underground wires.

This activity would be taxable as contracting activity pursuant to the provisions under A.R.S. § 42-1310.16.

"Armored cables" - installed to protect utility wires from environmental hazards. Cables facilitate utility access to the consumer.

This activity is classified as a contribution in aid of construction. Income from this installation of property would be exempt under A.R.S. § 42-1310.03.B.2.

"Overhead to underground conversions" - consists of converting overhead electric to underground electric.

Income derived from these conversions constitute installation of property providing access to the utility service and would therefore be exempt under the statutory provision.

Paul Waddell, Director
Signed December 8, 1992