

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-40

(Note: Footnotes were added on 9/21/2020. No substantive changes were made.)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

The imposition of transaction privilege tax on out-of-state contractors for work performed in Arizona under the prime contracting classification.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1310.16¹ states:

A. The prime contracting classification is comprised of the business of prime contracting and dealership of manufactured buildings.

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B. The tax base for the prime contracting classification is sixty-five per cent of the gross proceeds of sales or gross income

¹ After this ruling was issued, the prime contracting classification was renumbered from A.R.S. § 42-1310.16 to A.R.S. § 42-5075. In addition, changes have been made to the definitions of contractor and prime contractor. None of the changes impact the outcome of this ruling.

derived from the business.

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F. For purposes of this section:

1. "Contracting" means engaging in work as a contractor.
2. "Contractor" is synonymous with the term "builder" and means a person, firm, partnership, corporation, association or other organization, or a combination of any of them, that undertakes to ... construct, alter, repair, add to, subtract from, improve, move ...any ... building, project, development or improvement.

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5. "Prime contracting" means engaging in business as a prime contractor.
6. "Prime contractor" means a contractor who supervises, performs or coordinates the construction, alteration, repair, addition, subtraction, improvement, movement, wreckage or demolition of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement including the contracting, if any, with any subcontractors or specialty contractors and is responsible for the completion of the contract.

Tucson Mechanical Contracting, Inc.; Lloyd Construction Co.; and Clyde Smith General Contractors, Inc. v. Arizona Department of Revenue, 1 CA-TX 91-0039 (Dec. 29, 1992). The court stated that the transaction privilege tax is levied on those doing business within the State of Arizona. Liability for transaction privilege tax arises automatically when a taxpayer engages

in a taxable business activity in Arizona.

RULING:

The transaction privilege tax is imposed on persons engaging in business as a prime contractor in the State of Arizona. Under the prime contracting classification the taxable event takes place at the site where the actual contracting activity is conducted. Both in-state and out-of-state prime contractors who perform work within the geographic borders of Arizona are subject to transaction privilege tax on 65 per cent of the gross proceeds of sales or gross income derived from the project.

All persons engaging in business as prime contractors are subject to transaction privilege tax on 65 per cent of the gross proceeds of sales or gross income derived from the completion of construction projects within the State of Arizona.

BONDING REQUIREMENT

It should be noted that under A.R.S. § 42-1305.02.A², out-of-state prime contractors, who enter into a prime contracting construction contract to be performed in this state, are required to furnish to the Department of Revenue a surety bond or other acceptable security in an amount equal to the transaction privilege tax to be paid on the gross receipts from the contract.

Harold Scott, Director
Signed July 6, 1993

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative**

² After this ruling was issued, A.R.S. § 42-1305.02.A was renumbered as A.R.S. § 42-5007(A).

rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.