

PRIVATE TAXPAYER RULING LR94-013

October 7, 1994

The following private taxpayer ruling is in response to your letter dated August 4, 1994 and the receipt of the requested additional information dated September 9, 1994. Your letter requests a determination of the application of Arizona's transaction privilege tax to the extraction, smelting and sale of metals found in electronic industry circuit boards. The following is a restatement of the facts in your letter.

Statement of facts:

... is an Arizona Limited Liability Company which began operations in May 1993. ... is in the business of chemically extracting metals from electronic industry circuit boards which are no longer serviceable. ... smelts the metal into bullion and sells the metals to precious metals refiners. ... conducts business under two different scenarios. The first scenario is that a company, which has a considerable volume of electronic salvage, contracts with The contract stipulates that ... will take possession, but not ownership, of the electronic salvage and extract any metals with value. ... then sends the metals to a precious metal refiner. ... will receive a small percentage of the proceeds as fees for the service of extracting the metals. The balance goes to the company ... has contracted with. The second scenario is that ... buys electronic salvage outright. Once the extraction process is complete, ... sells the extracted metals to a precious metal refiner.

Your position:

The sales are sales for resale under Title 15, Chapter 5 R15-5-101.A of the Arizona Administrative Code.

Applicable statutory provision:

Arizona Revised Statutes (A.R.S.) 42-1310.01 levies the transaction privilege tax on the business of selling tangible personal property at retail.

A.R.S. 42-1310.01.P.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. 42-1310.01.A.1 exempts from the retail classification professional or personal service occupations or businesses which involve sales or transfers of tangible personal property only as inconsequential elements.

A.R.S. 42-1310.01.H requires that a person who makes retail sales of tangible personal property as well as sales of services shall keep their books so as to show separately the gross proceeds of sales of tangible

personal property and the gross income from sales of services. If the books are not so kept, the tax is imposed on the total of the gross proceeds of sales and gross income from services.

A.R.S. 42-1328 provides the criteria for proving that a sale is for resale. The burden of proving a sale of tangible personal property was not a sale at retail remains with the vendor unless the vendor accepts an exemption certificate containing specific information from the purchaser. Discussion: Arizona imposes a transaction privilege tax which differs from the sales tax imposed by most states. The Arizona transaction privilege (sales) tax is a tax imposed on the privilege of conducting business in the state of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax. Activities subject to tax are divided into 18 different business classifications.

A.R.S. 42-1310.01 levies the transaction privilege tax on the business of selling tangible personal property at retail.

A.R.S. 42-1310.01.P.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. All sales of tangible personal property are subject to tax unless specifically exempted by statute. A.R.S.

42-1310.01.A.1 provides an exemption from transaction privilege tax for the gross proceeds of sales or the gross income from professional or personal service occupations or businesses which involve sales or transfers of personal property as inconsequential elements.

Additional information concerning the imposition of transaction privilege tax on service businesses is provided in A.A.C. R15-5-104. The rule states that gross receipts from the sale of tangible personal property by a person engaged in a professional or personal service occupation or business shall not be taxable if the property is sold only as an inconsequential element of the nontaxable service provided. Sales of tangible personal property shall be considered inconsequential elements of the service if:

1. The purchase price of the tangible personal property to the person rendering the services represents less than 15 percent of the charge, billing, or statement rendered to the purchaser in connection with the transaction;
2. At the time of the sale, the tangible personal property transferred is not in a form which is subject to retail sale; and,
3. The charge for the tangible personal property is not separately stated on the invoice.

The process of extracting metals from electronic industry circuit boards which ... does not own, is considered to be a service activity rather than a retail sale of tangible personal property. Therefore, the gross income derived from the extracting process is not subject to Arizona's transaction privilege tax under the retail classification. A.R.S. 42-1310.01.H requires that a person who makes retail sales of

tangible personal property as well as sales of services shall keep their books so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services. If the books are not kept in this manner the tax is imposed on the total of the gross proceeds of sales and gross income from services. The sale of tangible personal property for the purpose of resale in the regular course of business is not subject to tax under the retail classification. A.R.S. 42-1328 provides the criteria for proving that a sale is for resale.

The burden of proving a sale of tangible personal property was not a sale at retail remains with the vendor unless the vendor accepts an exemption certificate which must contain the following information from the purchaser.

1. Name and address of the purchaser;
2. Statement that the property was purchased for resale in the ordinary course of business;
3. Indication that the purchaser has a valid transaction privilege tax license (with the number) to sell the kind of property purchased; and,
4. Signature of a person authorized to sign on behalf of or as representative for the purchaser. Sales of metal extracted from electronic salvage owned by ... to precious metal refiners are exempt as sales for resale if proper documentation is provided. However, the burden of proving that the sales are sales for resale remains with ... as the vendor unless there is a valid exemption certificate on file.

Conclusion and ruling:

The following ruling is given based on the facts presented in your request. The department rules that income received from the process of extracting metal from electronic industry circuit boards which ... does not own is a service activity and is not subject to transaction privilege tax. The department also rules that sales of metal extracted from electronic salvage owned by ... to precious metal refiners are exempt as sales for resale if proper documentation is provided. The burden of proving the sale is not a sale at retail remains with ... unless it accepts an exemption certificate from the precious metal refiner pursuant to the provisions in A.R.S. 42-1328.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letters dated August 4 and September 9, 1994 in this request for a private taxpayer ruling. If you have been reporting and paying transaction privilege tax on gross receipts not subject to tax, you may wish to file amended ST-1X's for any applicable periods. However, A.R.S. 42-1302.A.1 provides that taxpayers are required to remit all transaction privilege taxes to the Department of Revenue when an additional charge has been made to cover the tax or when an additional charge is identified as being imposed to cover the tax. In the event that the tax was passed on to your customer through an additional charge being made to cover the tax or which was identified to cover the tax, the refund must be returned to the customers from

whom it was collected. For further information regarding refund procedures, please contact: Refund Desk Transaction Privilege & Use Tax Audit Arizona Department of Revenue 1600 W. Monroe Phoenix, AZ 85007 (602) 542-4656

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 the 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.