

## PRIVATE TAXPAYER RULING LR95-015

November 17, 1995

The following private taxpayer ruling is in response to your letter dated September 12, 1995, requesting the department to rule that the income received from the performance of a construction contract with the ... is exempt from Arizona's transaction privilege tax.

Statement of facts:

The following is a restatement of the facts presented in your letter.

... is engaged in the business of construction and installing water delivery systems in Arizona. ... regularly files transaction privilege tax returns and remits tax under the prime contracting classification on income derived from taxable construction contracting.

... has entered into a contract with the ... to construct the ... North Development Area irrigation system, which is owned by the ... (Community). The Community is an Indian tribe and the ... North Development Area irrigation system is located on the Community's Indian reservation.

The contract between ... and ... was entered into on May 8, 1995. The project is ongoing and scheduled for completion on or about January 10, 1996.

Your position:

The transaction privilege tax does not apply to gross proceeds derived from construction projects performed on an Indian reservation by non-Indian prime contractors if the work is performed for the tribe. ... is working for an Indian tribe on the reservation established for that tribe. Therefore, ... is not subject to transaction privilege tax on the gross proceeds derived from the project.

Applicable statutory provision:

Arizona Revised Statutes (A.R.S.) § 42-1310.16 levies the transaction privilege tax on the business of prime contracting.

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.

Generally, persons engaged in the business of constructing, improving or altering real property are subject to the transaction privilege tax under the prime contracting classification. (A.R.S. § 42-1310.16) However, with regard to contracting activities occurring on Indian reservations, the law in this area has been developed through case law, rather than statute. This can make determinations of the tax status of construction projects on Indian reservations difficult.

Sales to affiliated Indians by off reservation vendors are not subject to Arizona's transaction privilege tax if the solicitation for the sale, signing of the contract, delivery of the goods and payment for the goods all occur on the reservation. *Central Machinery Co. v. Arizona Tax Commission*, 448 U.S. 160 (1980).

Due to the decision in *Central Machinery Co.* and other court decisions, the department has taken the position that construction contractors performing improvements to real property on Indian reservations are not subject to the imposition of Arizona transaction privilege tax under the following conditions:

1. The construction work is performed for the tribe or a tribal entity for which the reservation was established.
2. The construction work is performed for an individual Indian, who is a member of the tribe for which the reservation was established.

Conclusion and ruling:

The following ruling is given based on the facts presented in your request.

The department rules that the construction contract between the ... Indian Community and ... meets the requirement that construction work on a reservation be performed for the tribe or a tribal entity for which the reservation was established. Therefore, the gross proceeds derived from the construction of the ... irrigation system on the ... reservation are not subject to Arizona's transaction privilege tax.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letters and related documents dated September 12, 1995 and October 23, 1995 in this 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 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.