

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 95-15

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:

Inclusion of amounts representing reimbursement for permit fees under the prime contracting classification.

APPLICABLE LAW:

A.R.S. § 42-1310.16.B provides that the tax base for the prime contracting classification is 65 percent of the gross proceeds of sales or gross income derived from the business, less certain statutory deductions.

Arizona Revised Statutes (A.R.S.) § 42-1301.4 defines "gross income" as:

[T]he gross receipts of a taxpayer derived from trade, business, commerce or sales"

A.R.S. § 42-1301.5 defines "gross proceeds of sales" as:

[T]he value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses

A.R.S. § 42-1301.7 defines "gross receipts" as:

[T]he total amount of the sale ... including any services that are part of the sales ... without any deduction from the amount on account of the property sold, materials used

A.R.S. § 42-1329 states that:

[T]o prevent evasion of the tax imposed by this article it is presumed that all gross proceeds of sales and gross income derived by a person from business activity classified under a taxable business classification comprise the tax base for the business until the contrary is established.

LEGAL REFERENCES:

Gietz v. Webster, 46 Ariz. 261, 50 P.2d 573 (1935).

J.H. Welsh & Son Construction Company v. Arizona State Tax Commission, 4 Ariz. App. 398, 420 P.2d 970 (1966), *aff'd*, 102 Ariz. 443, 432 P.2d 455 (1967).

New Cornelia Cooperative Mercantile Company v. Arizona State Tax Commission, 23 Ariz. App. 324, 533 P.2d 84 (1975).

Tucson Electric Power Company v. Arizona Department of Revenue, 170 Ariz. 145, 822 P.2d 498 (App. 1991).

DISCUSSION:

A.R.S. § 42-1310.16 levies the transaction privilege tax on the business of prime contracting. The tax base for the prime contracting classification is 65 percent of the gross proceeds of sales or gross income derived from the business. Deductions and exemptions are not to be implied. They must exist, if at all, within a specific statutory grant. The statutory provision does allow for specific enumerated deductions from the tax base. These deductions include the sales price of land, not to exceed the fair market value; sales and installation of groundwater measuring devices required under A.R.S. § 45-604; and, furniture, furnishings, fixtures, and appliances not incorporated as component parts of manufactured buildings.

Permits are required in order to perform many contracting activities. By law, governmental entities such as cities and counties have authority to require these permits. A building permit constitutes a reimbursement for expenses incurred by the entity responsible for inspection, recording, and associated clerical tasks which must be performed to ensure public health, safety and welfare. The intent of requiring the permit is to ensure compliance with civic purposes and public interests, and also to uphold certain standards for work quality and related considerations. These permits are usually related to the type of work activity or materials utilized, and the location at which the activity is performed.

The cost of acquiring permits is a normal cost incurred by a person doing business under the prime contracting classification. As such, any amount received as reimbursement for acquiring the permits is part of gross receipts from being in business; and, therefore, is subject to tax.

RULING:

The business of prime contracting includes obtaining permits required for performance of a contracting activity. The amount received by a prime contractor for reimbursement of permit fees is fully taxable as gross income under the prime contracting classification.

EFFECTIVE DATE:

This ruling is effective for reporting periods beginning from and after July 1, 1995.

Harold Scott, Director
Signed April 17, 1995

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 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.