

PRIVATE TAXPAYER RULING LR95-013A

February 12, 1998

The following addendum to private taxpayer ruling LR95-013, issued to the ..., is in response to your request of February 5, 1998. Your letter requests a clarification of the application of Arizona's transaction privilege tax to the construction of a hospital facility at ..., Arizona within the boundaries of the

Specifically, you request clarification as to state taxation of construction contracts entered into between the ... general contractor and subcontractors in relation to the construction of the hospital facility at You also request clarification in regard to the contracts enter into by both the general contractor and the subcontractors with material suppliers.

Statement of facts:

The facts as presented in your original request dated April 27, 1995, are incorporated herein.

Your position:

Your position as stated in the original request dated April 27, 1995, is incorporated herein.

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.

In *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, the U.S. Supreme Court addressed the construction of a school by a non-Indian contractor on the Navajo Reservation in New Mexico. The project was funded by the BIA. The tribal organization was the design and building contractor but could subcontract out the actual construction work to third parties. The Court held that "the comprehensive regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax in this case."

Therefore, due to the decision in *Ramah* 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.

The facts presented in your ruling request and the accompanying documentation describing the construction of the hospital facility are very similar to the facts presented in *Ramah*. The construction of the hospital facility is to be funded with money received through a contract between the ... and the ... under the Indian Self-Determination and Education Assistance Act (PL 93-638). This Act establishes a policy which permits a transition from Federal domination of programs for services to Indians to participation by the Indian people in the planning, conduct and administration of those services and programs. Even though the design and construction of facilities under such a contract is subject to federal law, the tribal organization (...) contracts with the contractors and subcontractors performing the work and payment for the work is made by the tribal organization (...).

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 ... and its prime contractor and subcontractors 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 construction of the hospital facility in the community of ... on the ... is not subject to tax. In addition, contracts between the ... general contractor and subcontractors in relation to the construction of the hospital facility are not subject to tax.

With regard to your request for clarification on the taxation of contracts entered into by both the

general contractor and the subcontractors with material suppliers, the department can not address this matter with the ... since the suppliers of the materials are the taxpayer subject to tax. However, a contractor may purchase materials to be incorporated into a project exempt from tax.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the letters and related documents dated April 27, 1995 and September 13, 1995 in this request for a private taxpayer ruling.

The department grants your request for an extension of the period of validity of this private taxpayer ruling. This will remain in effect for four years from the date of this addendum, or until there is a change in statute, administrative rule, case law or notification of a different department position.

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. 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.