

PRIVATE TAXPAYER RULING LR98-001

January 12, 1998

The following private taxpayer ruling is in response to your letter dated November 5, 1997 and the receipt of the requested additional information dated December 1, 1997. Your letter requests a determination regarding the application of transaction privilege tax to leases of concrete pumpers by ...

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

Statement of Facts:

..., dba ..., primarily operates a business consisting of renting motor vehicles and vehicle combinations which are permanently fitted with concrete pumping equipment. Some of ... concrete pumping vehicles are single trucks and others are truck and trailer combinations. The concrete pumping equipment is an integral part of the vehicles and vehicle combinations. The vehicle/equipment is used to transport and pump concrete at construction sites from the ground location of the vehicles to specific portions of the structure or other improvement unreachable by conventional concrete mixing trucks.

... rents its vehicles by the hour with additional charges for each mile traveled by the vehicle in excess of a certain amount of miles (currently 70 miles). ... also provides one or more operators by the hour to operate the equipment. Charges for the operators' time are separately stated on all invoices. ... customers are charged an additional nominal rental for the primer used by ... operators to lubricate the pumper while in operation. The primer is an integral part of the rental much like oil for an engine and thus is a part of the vehicle rental itself. The customer pays the concrete supplier directly for the concrete used to complete the job. Each of the rental fees ... charges its customers are separately billed to the customer.

... vehicles range in gross weight from 50,000 pounds to 80,000 pounds. ... pays the motor carrier fee imposed on each of its vehicles pursuant to A.R.S. Title 28, Chapter 16, Article 4, Section 28-5851 et seq. (formerly § 28-1599.05(B)).

Your Position:

... is a motor carrier pursuant to A.R.S. § 28-5851 et seq. (formerly § 28-1599.05(B)).

... vehicles are motor vehicles subject to the Motor Carrier Fee imposed by A.R.S. Title 28, Chapter 16, Article 4, Section 28-5851 et seq. (formerly § 28-1599.05(B)).

... revenues derived from vehicle hourly rental fees, vehicle mileage fees, primer charges, operator fees and rental fees based upon the yardage of cement/concrete pumped are exempt under A.R.S. § 42-1310.11, Personal Property Rental Classification.

Applicable Statutory Provisions:

A.R.S. § 42-1310.11 levies the transaction privilege tax on the business of leasing or renting tangible personal property for a consideration. The tax base is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-1310.11.B.4 provides a deduction from the tax base for income derived from leasing or renting a motor vehicle subject to and upon which the tax has been paid under Title 28, Chapter 16, Article 4.

Under Title 28, Chapter 16, Article 4, Section 28-5854 (formerly § 28-1599.05(B)) imposes an annual motor carrier fee based on declared gross vehicle weight on motor vehicles weighing between 12,001 pounds and 80,000 pounds. A.R.S. § 28-5851 defines "motor vehicle" to mean a self-powered motor driven vehicle in excess of 12,000 pounds declared gross vehicle weight subject to vehicle registration before lawful operation on the public highways.

A.R.S. § 28-5431.3 defines "vehicle combination" to mean a motor vehicle and the trailers and semitrailers which it tows.

Discussion:

This private taxpayer ruling is limited to determining ... liability for Arizona transaction privilege tax. It does not address whether the vehicles in question are motor vehicles as defined under Title 28, Chapter 16, Article 4, or whether these vehicles are subject to the fee imposed pursuant to Title 28, Chapter 16, Article 4 since those determinations are outside the Department of Revenue's purview.

Arizona's transaction privilege tax is a tax on the privilege of conducting business in the State of Arizona. It is a tax on the seller/lessor, not on the purchaser/lessee. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to Arizona for the tax.

The transaction privilege tax is imposed on the business of leasing or renting tangible personal property for a consideration. However, the transaction privilege tax does not apply to the gross income derived from leasing or renting a motor vehicle subject to and upon which the motor carrier fee has been paid. (A.R.S. § 42-1310.11)

Payment of the motor carrier fee is a prerequisite for the transaction privilege tax exemption.

The exemption is applicable whether the motor carrier fee has been paid by the lessor, the lessee, or any third party authorized by the lessor or lessee to make payment on their behalf.

The motor carrier fee on motor vehicles is based on declared gross vehicle weight. The gross weight of a vehicle combination is the sum of the gross weight of the motor vehicle and the gross weight of the trailers and semitrailers which it tows.

The definition of a motor vehicle includes any self-propelled motor driven vehicle which is subject to vehicle registration before lawful operation on the public highways. The exemption is not limited to trucks, but also extends to all other self-propelled motor driven vehicles which are required to be registered for operation on the highway and which have a declared gross vehicle weight greater than 12,000 pounds.

Pursuant to A.R.S. § 28-5431, the term "vehicle combination" means a motor vehicle and the trailers and semitrailers which it tows. The weight class for a vehicle combination is determined by the empty weight of the motor vehicle combination plus the weight of the maximum load to be carried.

A trailer or semitrailer which is leased independently, for use as a part of a vehicle combination, is not subject to tax if the power unit which tows the trailer is a motor vehicle registered as a vehicle combination and the motor carrier fee is paid accordingly.

A motor vehicle permanently fitted with concrete pumping equipment which is self-propelled and licensed for use on the highway, with a declared gross vehicle weight in excess of 12,000 pounds, is an example of a vehicle which qualifies for exemption, provided the motor carrier fee has been paid.

Arizona Transaction Privilege Tax Ruling TPR 95-8 provides information regarding the statutory exemptions which are provided for lessors of motor vehicles which are subject to the motor carrier fee.

Conclusion and Ruling:

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

The department rules that a motor vehicle permanently fitted with concrete pumping equipment which is self-propelled and licensed for use on the highway, with a declared gross vehicle weight in excess of 12,000 pounds, qualifies for exemption, provided the motor carrier fee has been paid.

The department also rules that the gross income derived by ..., dba ... , from leases of motor vehicles fitted with concrete pumper equipment on which vehicles the motor carrier fee has

been paid, is not subject to transaction privilege tax under the personal property rental classification. As such, ... revenues derived from vehicle hourly rental fees, vehicle mileage fees, primer charges, operator fees and rental fees based upon the yardage of cement/concrete pumped are exempt from transaction privilege tax under A.R.S. § 42-1310.11, Personal Property Rental Classification.

The conclusion in this private taxpayer ruling does not extend beyond the facts as presented in the request for a private taxpayer ruling dated November 5, 1997 and the receipt of the requested additional information dated December 1, 1997.

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.