

PRIVATE TAXPAYER RULING LR98-002

January 20, 1998

The following private taxpayer ruling is in response to your letter of November 25, 1997. Your letter requests a determination regarding the application of transaction privilege tax on courier services provided by . . .

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

Statement of Facts:

. . . is engaged in the business of providing courier services. . . utilizes its employees to provide courier services, not independent contractors. The employees are responsible for providing a vehicle to be used in performing these services and for all the costs of operation of their vehicle, including licensing, insurance, fuel, tires, repairs, etc.

Effective January 1, 1998, . . . will require its employees to register their vehicles as light motor vehicles and pay the resulting light motor vehicle fee. . . will reimburse its employees for the cost of the light motor vehicle fee.

Your Position:

As long as the motor carrier fee is paid on a vehicle used in transporting for hire, the transaction privilege tax is not due on income generated from the use of the vehicle as transportation for hire. Even though the light motor vehicle fee would not be paid directly to ADOT by . . . itself, the exemption would still apply as the vehicle used in providing the service is subject to the tax, the tax is paid and . . . will reimburse the employee for the tax.

Applicable Statutory Provisions:

Arizona Revised Statutes (A.R.S.) § 42-1310.02 imposes the transaction privilege tax under the transporting classification. The transporting classification includes the business of transporting for hire persons, freight or property by motor vehicle from one point to another point in this state.

A.R.S. § 42-1310.02(A)(1) provides that the transporting classification does not include transporting for hire by motor carriers subject to a fee prescribed in title 28, chapter 16, article 4 or, beginning on January 1, 1998, by light motor vehicles subject to a fee under title 28, chapter 15, article 4.

Under title 28, chapter 16 article 4, A.R.S. § 28-5851 et seq. imposes an annual motor carrier fee against each motor vehicle registered in this state with a gross vehicle weight of 12,001 pounds or greater.

Under title 28, chapter 15, article 4, A.R.S. § 28-5492 imposes, beginning on January 1, 1998, an annual light motor vehicle fee on each light motor vehicle.

A.R.S. § 28-5491(2) defines "light motor vehicle" as a self-propelled motor driven vehicle that has a declared gross weight of twelve thousand or fewer pounds and that is used to transport for hire persons, freight or property.

Discussion:

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, not on the purchaser. 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 transporting for hire by motor vehicle. However, the transporting classification does not include:

1. Transporting by motor carriers subject to the motor carrier fee.
2. Transporting by light motor vehicles subject to the light motor vehicle fee.

Each self-propelled motor driven vehicle that has a declared gross weight of 12,000 or fewer pounds which is used to transport for hire is subject to the light motor vehicle fee. The light motor vehicle fee is imposed directly on the motor vehicle and is payable at the time the light motor vehicle is registered. (A.R.S. § 28-5492)

The transaction privilege tax statute specifically provides that the transporting classification does not include transporting by light motor vehicles which are subject to the light motor vehicle fee. (A.R.S. § 42-1310.02)

Therefore, transporting by light motor vehicles which are subject to the light motor vehicle fee is not subject to transaction privilege tax, regardless of whether or not the person providing the transportation service is the person that made payment of the tax to the Arizona Department of Transportation, or whether they have borne the burden of the tax.

Conclusion and Ruling:

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

The department rules that the gross income derived by . . . from the business of transporting for hire by light motor vehicles which are subject to the light motor vehicle fee is not subject to transaction privilege tax.

The department further rules that this exclusion from taxation is applicable regardless of whether it is . . . or its employees that pay the light motor vehicle fee to the Arizona Department of Transportation.

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 25, 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.