

PRIVATE TAXPAYER RULING LR01-006

September 19, 2001

The following private taxpayer ruling is in response to your letter that was received on July 24, 2001, which requested a determination regarding the application of transaction privilege tax on the income derived by . . . from providing crane service.

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

Statement of Facts:

. . . (Taxpayer) owns two cranes with a declared gross vehicle weight of more than 12,000 pounds which are licensed motor vehicles, and on which the motor carrier fee is paid. From time to time the Taxpayer is contracted to provide craning services. The Taxpayer sends out the crane with an operator and bills by the hour.

Your Position:

The gross income derived from the renting of crane vehicles is not subject to transaction privilege tax if such vehicles are subject to and the motor carrier tax is paid.

Applicable Statutory Provisions:

Arizona Revised Statutes (A.R.S.) § 42-5071 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. § 42-5071(B)(4) provides a deduction from the tax base for the gross proceeds of sales or gross income derived from leasing or renting a motor vehicle subject to and upon which the fee has been paid under Title 28, Chapter 16, Article 4.

Under Title 28, Chapter 16, Article 4, A.R.S. § 28-5852 imposes against each motor vehicle a motor carrier fee. The annual motor carrier fee is imposed on each motor vehicle registered in this state with a gross vehicle weight of 12,001 pounds or greater, in accordance with A.R.S. § 28-5854. The fee is payable at the time the motor vehicle is registered.

A.R.S. § 28-5851 defines the term "motor vehicle" as a self-propelled motor driven vehicle that has a declared gross vehicle weight of more than 12,000 pounds and that is subject to vehicle registration before lawful operation on the public highways in this state.

Arizona Administrative Code (A.A.C.) R15-5-612 states that the income from crane and concrete pumping activities, provided with or without operators, is taxable as rental of personal 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 leasing or renting tangible personal property for a consideration. Rentals of cranes, with or without operators, are subject to tax as rentals of personal property. However, a deduction from the tax base is provided for 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. § 42-5071]

The motor carrier fee is based on the declared gross vehicle weight and is payable annually at the time the motor vehicle is registered. The term "motor vehicle" includes every self-propelled motor driven vehicle that has a declared gross vehicle weight of more than 12,000 pounds and which is required to be registered before it can be lawfully operated on the public highways.

A crane, with a gross vehicle weight in excess of 12,000 pounds, which is self-propelled and licensed for use on the highway, is subject to the motor carrier fee. Payment of the motor carrier fee is a prerequisite for the transaction privilege tax deduction.

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 Taxpayer from rentals of cranes with operators, on which cranes the motor carrier fee has been paid, is not included in the tax base under the 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.

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.