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## PRIVATE TAXPAYER RULING LR05-011

September 26, 2005

The Department issues this private taxpayer ruling in response to your letter of August 4, 2004, in which you request a ruling on behalf of your client . . . ("Company") . . . on the applicability of Arizona transaction privilege tax to certain revenue attained from Company's business operations. You provided supplemental information requested by the Department in a letter dated October 13, 2004.

### **Statement of Facts:**

The following facts are excerpted from your August 4 letter:

. . . [Company], a C Corporation organized and located outside of Arizona, was incorporated in 1965. . . . [Company] is registered for the collection and remittance of [transaction privilege] tax in the state of Arizona. [Company]'s business activity within Arizona consists of solicitation and eventually sales of printed clinical research materials to for-profit and not-for-profit pharmaceutical entities (end users) to be utilized in drug studies, clinical trials and other informational uses. The clinical research materials will be delivered in the form of loose-leaf pages, folders, threefold pamphlets etc. . . . [Company]'s customers provide text information and a description of the required layout or format for the clinical research materials to be printed. . . . [Company] subsequently provides the composition, printing service including supplies, binding if necessary and any required packaging.

Customer orders are in virtually all instances printed in one lot instead of on an as needed basis. Upon completing the order, the customer is billed for the entire contract price associated with the production run regardless of whether the product is immediately shipped or subsequently stored in . . . [Company]'s warehouse. Due to the nature of clinical research and drug studies, the purchaser is not able to immediately determine where or when the product stored in . . . [Company]'s warehouse may be required to be shipped.

Any customer order shipped in one lot (no storage) will be shipped Free On Board (F.O.B.) . . . [Company]'s loading dock. Any order where the product is not immediately shipped will be stored in . . . [Company]'s climate controlled warehouse outside of Arizona at no additional charge. During the period of storage, . . . [Company] will insure the product against damage or loss. However, the product stored is not inventory on the books of . . . [Company]

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since legal title has passed to the customer in a state outside of Arizona. The period of storage may range from several days to several years with shipment occurring at the direction of the purchaser. Releases from storage may be in increments or the entire stock at once. . . . [Company]'s distribution policy for stored products requires a formal notification from the customer. The customer will only be charged for shipping and/or handling, separately stated, on subsequent shipments of product. Shipments are via common carrier as arranged by . . . [Company]. Any products in the warehouse, without activity for an extended period of time (several years), may be destroyed upon confirmation to do so from the customer.

The following scenario is intended to illustrate a common type of sales transaction encountered by . . . [Company]. The percentages are intended for illustrative purposes only and may vary depending on the transaction.

. . . [Company] manufactures a set amount of clinical research study materials for Customer A, an Arizona based taxpayer. Customer A is billed for the entire contract price at the time the printing is complete. Ten percent of the product is immediately shipped to Customer A at their Arizona location with ninety percent stored at . . . [Company]'s warehouse located outside the state of Arizona, at Customer A's request. The remaining ninety percent is shipped over time at Customer A's direction F.O.B., . . . [Company]'s loading dock. The period before the product is shipped could span from a few days to several years. The shipment of the remaining product often includes delivery to states other than Arizona at Customer A's direction. Freight and handling are billed to the customer separately upon shipment; however, the customer is not billed for the subsequent releases of product as the customer is billed for the full contract price at the time the printing is completed. During the period of time the product is stored, . . . [Company] will insure the product.

In the October 13 letter, you stated:

[Company] manufacturer's [*sic*, manufactures] all printed materials (i.e. drug studies, clinical trials, etc.) in its state of domicile, Michigan. The printed materials are stored in Michigan until a request for shipment is made by the customer. The printed materials may be stored for a period not to exceed 3 years at which time the printed materials are reviewed for obsolescence.

**Your Issues:**

You presented the following three issues in your August 4 request:

1. Is Company required to collect and remit Arizona transaction privilege tax on the initial shipment of product sold to the Arizona end user?

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2. Is Company required to collect and remit Arizona transaction privilege tax, or is it the customer's responsibility to remit use tax, on the subsequent shipments of research materials, as it is not known at the initial time of sale when, where, or to whom the research materials will be delivered?
3. Is Company required to collect and remit Arizona transaction privilege tax on the shipping and handling charges for any of the shipments, the initial shipment or subsequent shipments which may occur up to several years after the initial sales transaction?

**Your Positions:**

Your stated positions on the above-mentioned three issues are as follows:

1. Company is subject to the Arizona transaction privilege tax on the initial shipments delivered into the State of Arizona.
2. Customer A is subject to Arizona use tax on subsequent shipments delivered into the State of Arizona.
3. Company's charges for freight and handling are not subject to transaction privilege tax if separately itemized.

**Conclusion and Ruling:**

The Department rules as follows:

1. Company's business activities of creating printed materials based on customer-provided information are of a nature that to the Department considers for purposes of Arizona transaction privilege tax under the job printing classification found at Arizona Revised Statutes § 42-5066. Nevertheless, as a printing business located outside of the state with no Arizona service locations or printing facilities, Company's gross proceeds of sales or gross income derived from sales into the State of Arizona are not subject to transaction privilege tax. This conclusion on Company's liability may vary based Company's business practices that affect nexus for Arizona transaction privilege tax purposes. Nevertheless, the Department does not make determinations of a taxpayer's nexus in private taxpayer rulings.
2. Barring the existence of tangible personal property or real property owned by Company that is located in Arizona, Company bears no use tax collection liability on its sales into Arizona. See Nat'l Geographic Soc'y v. Cal. Bd. of Equalization, 430 U.S. 551 (1977) (presence of in-state real property owned by taxpayer held to

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provide sufficient nexus between taxpayer and state to allow imposition of use tax collection liability).

This private taxpayer ruling does not address the potential use tax liability of Company's customers. Private tax rulings are issued to requesting taxpayers based on *their* prospective tax liabilities to Arizona; as the requesting taxpayer, Company does not bear a potential use tax liability on the property at issue in this ruling.

3. The Department does not address Issue 3 because it concludes that: (a) Company's gross proceeds of sales or gross income derived from its Arizona sales are not subject to Arizona transaction privilege tax and (b) Company is not subject to a use tax collection liability.

The conclusions in this private taxpayer ruling do not extend beyond the facts presented in your letters of August 4 and October 13, 2004.

**This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determinations are 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.**

**The determinations in this private taxpayer ruling are only applicable to the taxpayer requesting the ruling and may not be relied upon, cited, nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.**