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Director

## PRIVATE TAXPAYER RULING LR16-008

July 14, 2016

Thank you for your letter requesting a private taxpayer ruling on behalf of your client, \*\*\* ("Taxpayer"). Specifically, you requested a ruling regarding whether masticating shrubs on grassland is subject to Arizona's transaction privilege tax. Pursuant to Arizona Revised Statutes (A.R.S.) § 42-2101, the Arizona Department of Revenue ("Department") may issue private taxpayer rulings to taxpayers and potential taxpayers on request.

### ISSUE:

Whether masticating shrubs on grassland is subject to Arizona's transaction privilege tax?

### RULING:

Based on the facts and documentation provided, the Department rules as follows:

Masticating shrubs on grassland is akin to lawn maintenance services and therefore not subject to Arizona's transaction privilege tax under the prime contracting classification. This private taxpayer ruling is limited to masticating Juniper and Pinyon shrubs at the ground level and does not include uprooting the shrubs or removing the stump.

### FACTS ASSERTED BY COMPANY:

The following are facts excerpted from your letter.

In order to masticate shrubs, Taxpayer uses a large rubber tired prime mover tractor with a mastication attachment on it. The purpose of masticating the shrubs is to clear grasslands of shrubs (Juniper and Pinyon).

As a result of Taxpayer performing his mastication services, nothing is removed from the site. Additionally, the shrubs are not uprooted. Only the "above ground" tops of the shrubs are masticated.

. . . . A masticating machine cuts/grinds the shrubs off above ground level and grinds them up into slash (cut up shrub debris) on the ground where it was severed. . . . the masticated shrubs' roots could grow back the shrubs causing them need to be masticated again.

Typically, in the grasslands that Taxpayer works in, Juniper is well over 99% of what is masticated and Pinyon is far less than 1%. However, on a very rare occasion a grassland area may have the percentage of Juniper at about 95% and Pinyon 5%.

Typically, the Juniper and Pinyon that is masticated averages just 4 to 8 feet tall.

## **DISCUSSION & LEGAL ANALYSIS:**

Arizona imposes a transaction privilege tax on the privilege of conducting business in the State of Arizona. The authority to levy the transaction privilege tax is found in Arizona Revised Statutes (A.R.S.) § 42-5008. The tax is levied on the seller, rather than the purchaser.

A.R.S. § 42-5075 imposes the transaction privilege tax under the prime contracting classification. The prime contracting classification is comprised of the business of prime contracting and the business of manufactured building dealer.

A.R.S. § 42-5075(R)(9) defines “prime contracting” as engaging in business as a prime contractor. A.R.S. § 42-5075(R)(10), in turn, defines a “prime contractor” as “a contractor who supervises, performs or coordinates the modification of any building, highway, road, railroad, excavation, manufactured building or other structure, project, development or improvement including the contracting, if any, with any subcontractors or specialty contractors and who is responsible for the completion of the contract.”

A.R.S. § 42-5075(I) states that “[t]he gross proceeds of sales or gross income derived from a contract for lawn maintenance services are not subject to tax under this section if the contract does not include landscaping activities. Lawn maintenance service is a service pursuant to section 42-5061, subsection A, paragraph 1, and includes lawn mowing and edging, weeding, repairing sprinkler heads or drip irrigation heads, seasonal replacement of flowers, refreshing gravel, lawn de-thatching, seeding winter lawns, leaf and debris collection and removal, tree or shrub pruning or clipping, garden and gravel raking and applying pesticides, as defined in section 3-361, and fertilizer materials, as defined in section 3-262.”

However, A.R.S. § 42-5075(J) affirms that “the gross proceeds of sales or gross income derived from landscaping activities are subject to tax under this section. Landscaping includes installing lawns, grading or leveling ground, installing gravel or boulders, planting trees and other plants, felling trees, removing or mulching tree stumps, removing other imbedded plants, building irrigation berms, installing railroad ties and installing underground sprinkler or watering systems.”

Masticating shrubs on grassland is similar to tree or shrub pruning and thus falls under lawn maintenance services rather than taxable landscaping activities. Masticating shrubs

on grassland is akin to lawn maintenance services and therefore not subject to Arizona's transaction privilege tax under the prime contracting classification. This private taxpayer ruling is limited to masticating Juniper and Pinyon shrubs at the ground level and does not include uprooting the shrubs or removing the stump.

**This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in the Request. Therefore, the conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated January 15, 2015. 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 private 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. In addition, this private taxpayer ruling only applies to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.**