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## PRIVATE TAXPAYER RULING LR17-005

January 31, 2017

Thank you for your letter requesting a private taxpayer ruling on behalf of your client, \*\*\* ("Taxpayer"). Specifically, you requested a ruling regarding the applicability of Arizona's transaction privilege tax to Taxpayer's "Propane Delivery Service" and "Refill Sales." 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.

### ISSUES:

1. Whether Taxpayer's gross receipts derived from its Propane Delivery Service are subject to tax:
  - a. Under the utilities classification for state and county transaction privilege tax purposes, pursuant to A.R.S. § 42-5063?
  - b. As utilities for city privilege tax purposes, pursuant to Model City Tax Code ("M.C.T.C.") § \_\_-480?
2. Whether Taxpayer's gross receipts derived from its Refill Sales at its business location are subject to tax:
  - a. Under the retail classification for state and county transaction privilege tax purposes, pursuant to A.R.S. § 42-5061?
  - b. As retail sales for city privilege tax purposes, pursuant to M.C.T.C. § \_\_-460?
3. Under the MCTC, how should the sales described in Issues 1 and 2 above be sourced for privilege tax purposes?

### RULING:

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

Taxpayer's gross receipts derived from its Propane Delivery Service and refilling a customer's empty cylinder at either the Taxpayer's business location or the customer's location are subject to tax under the utilities classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5063 and as utilities for city privilege tax purposes pursuant to M.C.T.C. § \_\_-480.

Taxpayer's gross receipts derived from sales of propane filled cylinders to a customer are subject to tax under the retail classification for state and county transaction privilege tax

purposes pursuant to A.R.S. § 42-5061 and as retail sales for city privilege tax purposes pursuant to M.C.T.C. § \_\_\_-460.

If a customer exchanges an empty cylinder for a propane filled cylinder and the cost, after any reduction in price for the empty cylinder, is equivalent to the cost of merely refilling a customer's cylinder at the Taxpayer's location, such gross receipts are subject to tax under the utilities classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5063 and as utilities for city privilege tax purposes pursuant to M.C.T.C. § \_\_\_-480. If, on the other hand, the customer receives only a nominal reduction in price for exchanging an empty cylinder, such gross receipts are subject to tax under the retail classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5061 and as retail sales for city privilege tax purposes pursuant to M.C.T.C. § \_\_\_-460.

Sales of propane filled cylinders to a customer are sourced to the Taxpayer's location. Propane Delivery Service, refilling a customer's empty cylinder at either the Taxpayer's business location or the customer's location, and an exchange of an empty cylinder for a propane filled cylinder subject to tax under the utilities classification are sourced to the location where the propane is delivered to the customer.

#### **FACTS ASSERTED BY TAXPAYER:**

The following are facts excerpted from your letter.

As you may know, propane may be used for a variety of household uses, including central home heating, water heating, and cooking. It is used in many rural parts of the country in place of or in addition to heating oil, electricity, natural gas, or other energy sources.

Taxpayer is a provider of propane gas, with its central business office located within an unincorporated part of \*\*\*. Taxpayer maintains inventories of propane within the \*\*\*.

Taxpayer's primary business activity involves the sale and delivery of propane to customers at locations in both incorporated cities and towns within \*\*\* and unincorporated parts of the county, along with the provision of other related services (collectively referred to as the "Propane Delivery Service"). Aside from its Propane Delivery Service, a small portion of Taxpayer's business involves sales of propane to a third party that refills portable cylinders for the third-party's customers. Taxpayer is considering expanding its business to include making sales of propane to customers by refilling such customers' portable propane cylinders ("Refill Sales"). For Refill Sales, customers may provide their own portable cylinders for refilling or may exchange empty cylinders for full ones, and this exchange may occur at either Taxpayer's business location or the customer's location.

Taxpayer's Propane Delivery Service requires on-road transport of propane to customers because, unlike natural gas service in urbanized areas, there are no pipeline connections between Taxpayer's storage site and customers' locations that would allow customers to

directly “tap in” to Taxpayer’s propane supply. Upon arrival at customer’s property, Taxpayer fills the customer’s propane storage tank.

## **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. § 42-5063 imposes the transaction privilege tax under the utilities classification. The utilities classification is comprised of the business of producing and furnishing or furnishing to consumers electricity, natural or artificial gas, or water. The tax base is the gross proceeds of sales or gross income derived from the business.

Pursuant to A.R.S. § 42-5063, Taxpayer’s gross receipts derived from its Propane Delivery Service are subject to tax under the utilities classification for state and county tax purposes. Moreover, refilling a customer’s empty cylinder at either the Taxpayer’s business location or the customer’s location is subject to tax under the utilities classification.

The imposition of city privilege tax is separate from the imposition of the state’s transaction privilege tax and accompanying county excise taxes. The League of Arizona Cities and Towns created the Model City Tax Code (“MCTC”) for purposes of the imposition and administration of city privilege taxes. All Arizona cities utilize the MCTC in the imposition of their privilege taxes and use taxes, based upon their local ordinances. Certain options exist, allowing each city to alter or qualify the imposition of its privilege tax or use tax.

M.C.T.C. § \_\_-480 states that the tax rate shall be at an amount equal to \_\_\_\_ percent (\_\_\_%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers who reside within the city. Pursuant to M.C.T.C. § \_\_-480, Taxpayer’s gross receipts derived from its Propane Delivery Service and refilling a customer’s empty cylinder at either the Taxpayer’s business location or the customer’s location, are subject to tax as utilities for city privilege tax purposes.

A.R.S. § 42-5061 imposes the transaction privilege tax under the retail classification. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. All sales of tangible personal property are subject to the transaction privilege tax under the retail classification unless specifically exempted or excluded by statute. Arizona Administrative Code (“A.A.C.”) R15-5-2106 further states that “[t]he gross receipts from sales of bottled gases and bottled water are subject to tax under the retail classification unless otherwise exempt.”

Pursuant to A.R.S. § 42-5061, Taxpayer's gross receipts derived from sales of propane filled cylinders to a customer are subject to tax under the retail classification for state and county tax purposes.

M.C.T.C. § \_\_-460 states that the tax rate shall be an amount equal to \_\_\_\_ percent (\_\_\_%) of the gross income from the business activity upon every person engaging in or continuing in the business of selling tangible personal property at retail. Pursuant to M.C.T.C. § \_\_-460, Taxpayer's gross receipts derived from sales of propane filled cylinders are subject to tax as retail sales for city privilege tax purposes.

If a customer exchanges an empty cylinder for a propane filled cylinder and the cost, after any reduction in price for the empty cylinder, is equivalent to the cost of merely refilling a customer's cylinder at the Taxpayer's location, such gross receipts are subject to tax under the utilities classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5063 and as utilities for city privilege tax purposes pursuant to M.C.T.C. § \_\_-480. If, on the other hand, the customer receives only a nominal reduction in price for exchanging an empty cylinder, such gross receipts are subject to tax under the retail classification for state and county transaction privilege tax purposes pursuant to A.R.S. § 42-5061 and as retail sales for city privilege tax purposes pursuant to M.C.T.C. § \_\_-460.

A.R.S. § 42-5040 states that retail sales of tangible personal property shall be sourced as follows:

1. To the seller's business location if the seller receives the order at a business location in this state.
2. Except as provided in section 42-5008.01, to the purchasers location in this state if the seller receives the order at a business location outside this state.

Therefore, for state and city purposes, sales of propane filled cylinders to a customer are sourced to the Taxpayer's location. However, A.R.S. § 42-5040 only applies to retail sales and leases of tangible personal property. A.R.S. § 42-5034(A)(3) states that for the purpose of determining the location of a business for transaction privilege tax purposes, a taxpayer shall be deemed to be engaged in business as classified under the utilities classification at the location where the electricity, gas or water is delivered to the consumer.

**This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. Therefore, the conclusions in this private taxpayer ruling do not extend beyond the facts presented in your correspondence dated July 18, 2016. 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.**