

ARIZONA USE TAX RULING

UTR 02-1

The Imposition of Use Tax on Purchases of Printed Matter From an Out-of-State Printer Who
Mails the Printed Matter to Arizona Addresses on the Direction of the Purchaser

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

The imposition of use tax on purchases of printed matter from an out-of-state printer who prints, collates, sorts, and mails the printed matter to Arizona addresses.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5155(A) imposes a use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer or utility business, as a percentage of the sales price.

A.R.S. § 42-5155(E) states that every person storing, using or consuming in this state tangible personal property purchased from a retailer or utility business is liable for the tax. The person's liability is not extinguished until the tax has been paid to this state.

A.R.S. § 42-5151(14) defines "sales price" as the total amount for which tangible personal property is sold, including any services that are a part of the sale, without any deduction on account of the cost of the property sold, materials used, labor or services performed, interest charged, losses or other expenses.

A.R.S. § 42-5151(17)(a) states, in part, that the term "retailer" includes every person engaged in the business of making sales of tangible personal property for storage, use or other consumption.

A.R.S. § 42-5151(20) defines "use or consumption" as the exercise of any right or power over tangible personal property incidental to owning the property except holding for sale or selling the property in the regular course of business.

A.R.S. § 42-5159(A)(2) provides that the use tax does not apply to tangible personal property the sale or use of which has already been subjected to an excise tax under the laws of another state of the United States at a rate equal to or exceeding the Arizona use tax rate. If the excise tax imposed by the other state is at a rate less than the Arizona rate, the Arizona tax is reduced by the amount of the tax already imposed by the other state.

DISCUSSION:

Arizona imposes a use tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer. Pursuant to A.R.S. § 42-5151(17) the term "retailer" includes every person engaged in the business of making sales of tangible personal property for storage, use or other consumption. Therefore, the term "retailer" includes out-of-state entities which, if conducting business in Arizona, would be engaged in business under the job printing classification.

Printed materials, or other tangible personal property, purchased from an out-of-state printer for storage, use or consumption in this state are subject to Arizona's use tax. This includes purchases of catalogs, fliers, coupons or other advertising materials that are shipped directly by an out-of-state printer, on the direction of the purchaser, to Arizona addresses.

In *Service Merchandise Co. v. Arizona Department of Revenue*, 188 Ariz. 414, 937 P.2d 336 (App. 1996), the Arizona Court of Appeals held that the right to control the distribution of catalogs and fliers purchased from an out-of-state printer and sent, via the U.S. Postal Service, to in-state addresses was a "use by Service Merchandise incidental to its ownership" within the meaning of A.R.S. § 42-5151(20) (formerly A.R.S. § 42-1401.12) and, therefore, Arizona's use tax applies. Additionally, the court held that the imposition of use tax in this situation was consistent with the Commerce Clause of the United States Constitution.

The tax base for the use tax is the sales price of the tangible personal property. "Sales price" means the total amount for which tangible personal property is sold, including any services that are a part of the sale. A printer is engaged in various activities necessary to produce the final printed product. These activities may include pre-press services such as graphic design, typesetting, layout and color separation in addition to the actual printing of the item. A printer may also perform post-press activities such as stuffing envelopes, sorting, affixing postage and mailing. The tax base for printed matter includes all charges for materials used, pre-press activities, printing activities and post-press activities.

The use tax is imposed directly on the purchaser. If the tangible personal property has already been subjected to an excise tax under the laws of another state at a rate equal to or exceeding

the Arizona use tax rate, no further tax is due. If the excise tax imposed by the other state is at a rate less than the Arizona rate, the Arizona tax is reduced by the amount of tax imposed by the other state.

RULING:

Printed items purchased from an out-of-state printer that are shipped by the printer, on the direction of the purchaser, to Arizona addresses, are subject to Arizona's use tax. The tax base is the total purchase price for the property purchased from the printer, including any services that are a part of the sale, notwithstanding that the printer may separately itemize the charges on the invoice.

Example:

An Arizona business contracts with an out-of-state printer to print advertising coupons and mail all of the coupons to Arizona addresses. The printer charges the Arizona customer for the following items on the invoice:

- Graphic design and layout
- Printing of coupons
- Materials for coupons
- Printing addresses on envelopes
- Materials for envelopes
- Stuffing envelopes
- Affixing postage
- Sorting and bundling
- Mailing

The tax base includes the charges for all items on the printer's invoice.

Mark W. Killian, Director
Signed: April 24, 2002

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position

statement that provides interpretation, detail, or supplementary information concerning application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.