

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-43

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:

Application of the Arizona transaction privilege and use tax on income derived from the sale of machinery, equipment, technology and related supplies used by physically and developmentally disabled persons and persons with head injuries.

APPLICABLE LAW:

Arizona Revised States (A.R.S.) § 42-1310.01.A.36 provides an exemption from the transaction privilege tax imposed under the retail classification for:

Machinery, equipment, technology or related supplies that are only useful to assist a person who is physically disabled as defined in section 46-191, has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201, to be more independent and functional.

A.R.S. § 46-191.9 provides that "physically disabled" means:

An individual who has a physical impairment that substantially limits one or more major life activities and who has a diagnosis of such impairment.

A.R.S. § 36-551.13 provides that "developmentally disabled" means:

Either a strongly demonstrated potential that a child under the age of six years is developmentally disabled or will become developmentally disabled as determined by a test performed pursuant to § 36-694 or by other appropriate test, or a severe, chronic disability which:

- (a) Is attributable to mental retardation, cerebral palsy, epilepsy or autism.
- (b) Is manifest before age eighteen.
- (c) Is likely to continue indefinitely.
- (d) Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (i) Self care.
 - (ii) Receptive and expressive language.
 - (iii) Learning.
 - (iv) Mobility.
 - (v) Self-direction.
 - (vi) Capacity for independent living.
 - (vii) Economic self-sufficiency.
- (e) Reflects the need for a combination and sequence of individually planned or coordinated special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration.

A.R.S. § 41-3201 provides that "head injury" means:

A partial or total disability that is caused by damage to the brain or its coverings, that is not degenerative in nature and that results in a decrease in mental, cognitive, behavioral or physical functioning. Head injury includes a trauma to the central nervous system that prevents a person from being completely self-sufficient. Head injury does not include vascular accidents, aneurysms and congenital defects.

A.R.S. § 42-1316 delineates the documentation required to establish entitlement to allowable deductions from the tax base.

DISCUSSION:

General:

Medical devices currently exempt from taxation include:

1. Prosthetic appliances prescribed by a health professional, § 42-1310.01.A.9;
2. Insulin, insulin syringes and glucose test strips, § 42-1310.01.A.10;
3. Prescription eyeglasses or contact lenses, § 42-1310.01.A.11;
4. Durable medical equipment, § 42-1310.01.A.12; and,
5. Medical oxygen and equipment when prescribed by a medical, dental or veterinary professional, § 42-1310.01.A.33.

A medical device may be exempt from transaction privilege tax and use tax under more than one exemption. The exemptions listed above should be applied in conjunction with the exemption for machinery, equipment and technology used by disabled individuals as provided in § 42-1310.01.A.36.

Laws 1993, Chapter 56 (SB 1045), effective September 30, 1993, established the exemption from transaction privilege tax and use tax on sales of machinery, equipment, technology and related supplies when purchased or used by individuals with physical or developmental disabilities or individuals with head injuries.

For purposes of this ruling, the term "health care professional" includes but is not limited to those individuals designated as health professionals pursuant to Arizona Revised Statutes Title 32, Chapter 32, Article 1. The pertinent health care professions include chiropractics, medicine and surgery, naturopathic physicians, nursing, optometry, osteopathic physicians and surgeons, physical therapy, psychologists, physicians assistants and homeopathic physicians. The term also includes behavioral health professionals, social workers, occupational therapists, and speech therapists.

Qualification:

Two factors must be examined in order to determine if the exemption is applicable:

1. Whether the individual qualifies as a person who is physically disabled, developmentally disabled or has a head injury; and,
2. Whether the specific item being sold is machinery, equipment, technology or a

related supply only useful to assist a qualified individual become more independent and functional.

First, in order to be eligible for the exemption, an individual must be physically disabled, developmentally disabled or have a head injury. The statutory definitions detail the requirements necessary to be classified as one of these individuals. It is impossible to provide a comprehensive list of conditions that meet the requirements of these definitions given the wide variety of possible impairments. However, a specific diagnosis of one of the three conditions by a health care professional would constitute adequate proof of the condition.

Second, the exemption is available for machinery, equipment, technology or related supplies only useful to assist an individual become more independent and functional. The machinery, equipment or technology exempt under § 42-1310.01.A.36 can be categorized into several groups. Examples of items only useful to assist individuals to become more functional and independent include:

- (1) ambulation devices such as walkers, scooters and mobilizers;
- (2) communication devices such as tape communicators and phone holders;
- (3) life skills devices such as utensil holders and dressing aids; and,
- (4) learning devices such as computer access products and training programs.

Further examples of machinery, equipment or technology can be found in the United States Department of Health & Human Services, Food & Drug Administration regulations which classify medical devices under a broad assortment of categories (21 Code of Federal Regulations Chapter 1). Specific classifications of qualifying machinery, equipment and technology which enable disabled individuals to be more independent and functional include:

1. Nonpowered communication systems such as alphabet boards and page turners;
2. Powered communication systems such as a specialized typewriter, a reading machine, and a video picture and word screen;
3. Powered environmental control systems such as devices used to control room temperature, to answer door bells or telephones, or to sound an alarm for assistance;
4. Daily activity assist devices such as modified adaptors or utensils (e.g. a dressing, grooming, recreational activity, transfer, eating, or homemaking aid)

intended to assist a patient to perform a specific function; and,

5. Vehicle modification devices such as mechanical hand and foot driving controls intended to enable persons who have limited use of their arms or legs to drive an automobile and various wheelchair lifts intended to enable access to the vehicle.

Please note: Only the excess cost of modifying or altering a vehicle over the cost of the vehicle before its modification is allowed as a tax exempt purchase.

Each category contains many types of items which can be varied for specialized use. The categories are not intended as an exhaustive list of the exempt types of machinery, equipment and technology. The categories serve as a guide to the most common types of devices exempt from transaction privilege and use tax. Therefore, each individual's disability must be considered in resolving whether an item is exempt.

The statute also exempts related supplies used by a qualified individual. Related supplies includes component and repair parts for any item included under the statute. Related supplies also includes items used in conjunction with the machinery, equipment or technology enabling it to achieve its therapeutic benefit or to assure its proper functioning.

Documentation Required for Exempt Sales:

Vendors making sales of qualified machinery, equipment, technology or related supplies to qualified individuals must retain adequate documentation in their files to support the deduction from the tax base.

The Department has adopted an exemption certificate (Form ADOR 5000) based on the requirements of A.R.S. § 42-1316.A. If a vendor accepts the certificate as adopted by the Department and it is completed pursuant to statutory requirements, the vendor will be relieved of liability for the tax and the Department may require the purchaser to establish the accuracy of the claimed exemption.

However, the Department may challenge the validity of an exemption certificate if it has reason to believe:

1. The vendor did not act in good faith in accepting the certificate; or
2. The certificate is not completed in its entirety.

See *Arizona Department of Revenue Procedure for Use of Exemption Certificates - TPP 92-1* for more information regarding the use of the exemption certificate.

RULING:

For the § 42-1310.01.A.36 exemption to apply, the individual must be physically or mentally disabled or have a head injury. Diagnosis of the individual's condition by a health care professional (as defined previously) is the most expedient and reliable method of making this determination.

If the individual is determined to be physically or mentally disabled or have a head injury, the item must be only useful to assist such an individual become more independent and functional. For example, the exemption for machinery, equipment, technology or related supplies is applicable if the item is used by the individual as an ambulation, communication, life skill or learning device. Once again, the recommendation of a health care professional would be helpful in making this determination.

When selling an item to a qualified individual, the retailer should obtain sufficient documentation necessary to support the exempt transaction. See TPP 92-1 for further guidance.

Harold Scott, Director
Signed August 27, 1993

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 which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the 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 92-1 for more detailed information regarding documents issued by the Department of Revenue.