

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 95-11

(This Ruling Supersedes and Rescinds Arizona Sales Tax Ruling No. 11-17-80, TPR 89-2 and TPR 89-3)

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 transaction privilege tax on activities performed on Indian reservations located within the State of Arizona.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) 42-1306 provides that transaction privilege tax is imposed on persons engaging in business under specific business classifications within the State of Arizona.

A.R.S. 42-1310.01.A.28 provides an exemption from transaction privilege tax for the sale of a motor vehicle to an enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.

A.R.S. 42-1329 provides that for the purpose of proper administration of this article and to prevent evasion of the tax imposed by this article it is presumed that all gross proceeds of sales and gross income derived by a person from business activity classified under a taxable business classification comprise the tax base for the business until the contrary is established.

Even when the taxed activity involves reservation sourced products, a state tax may be sustained if the state regulates or provides services to the activity, and the effect of the tax on the tribe is insubstantial, indirect or non-existent. *Cotton Petroleum v. New Mexico*, 490 U.S. 163, 109 S. Ct. 1698 (1989); *Peabody Coal Co. v. State of Arizona, Department of Revenue* 158 Ariz. 190, 761 P.2d 1094 (App. 1988), *cert. denied*, 490 U.S. 1051, 109 S. Ct. 1967 (1989).

The state in which an Indian reservation is located may impose its tax on non-affiliated Indians

doing business on reservations within their borders. *Arizona Department of Revenue v. Dillon*, 170 Ariz. 560, 826 P.2d 1186 (App. 1991).

Indian tribes are generally recognized as having taxing power within the reservation over both Indians and non-Indians. This power is concurrent with state taxing power over non-Indians on the reservation. *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 100 S. Ct. 2069 (1980).

Sales of tangible personal property to affiliated Indians which take place off the reservation are subject to Arizona's transaction privilege tax. However, sales to affiliated Indians by off reservation vendors are not subject to Arizona's transaction privilege tax if the solicitation for the sale, signing of the contract, delivery of the goods and payment for the goods all occur on the reservation. *Central Machinery Co. v. Arizona Tax Commission*, 448 U.S. 160 (1980).

Federal law does not preempt application of the state transaction privilege tax to an Arizona corporation's gross receipts from construction contracts with a state school district located on an Indian reservation. *Arizona Department of Revenue v. Greenberg Construction*, 1 CA-TX 93-0007 (App. 1995).

DEFINITIONS:

For purposes of this ruling the following definitions apply:

"Affiliated Indian" means an individual Native American Indian duly registered on the tribal rolls of the Indian tribe for whose benefit the reservation was established.

"Indian tribe" means any organized nation, tribe, band or community recognized as an "Indian tribe" by the United States Department of the Interior.

"Indian reservation" means all lands within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law, or executive order and which areas are currently recognized as "Indian reservations" by the United States Department of the Interior.

DISCUSSION:

The Arizona tax laws provide for the imposition of transaction privilege tax on the gross income of persons engaged in certain business activities. These business activities are categorized under classifications such as retail, restaurant, transient lodging and prime contracting.

The State of Arizona has several Indian reservations within its borders. The purpose of this ruling is to clarify the imposition of Arizona's transaction privilege tax on business activities

occurring on those Indian reservations. This ruling also addresses the imposition of transaction privilege tax on retail sales to Indians by vendors who are not located on an Indian reservation.

The Commerce Clause of the United States Constitution grants Congress the power to regulate commerce with Indian tribes. This provision does not automatically bar all state taxation of activities which take place on Indian reservations.

RULING:

In general, except as provided in this ruling, Arizona's transaction privilege tax applies to the gross income derived from being engaged in a business on an Indian reservation within Arizona if the activities of the business fall under a taxable business classification.

I. Business activities under a taxable business classification taking place on a reservation.

A. Business activities performed by affiliated Indian vendors on the reservation.

Arizona's transaction privilege tax does not apply to business activities performed by businesses owned by an Indian tribe, a tribal entity or an individual tribal member if the business activity takes place on the reservation which was established for the benefit of the tribe.

Please note: Arizona's use tax applies to purchases of tangible personal property by non-Indians or non-affiliated Indians from Indian retailers located on Indian reservations, if the property will be stored, used or consumed in Arizona.

B. Business activities performed by non-affiliated Indian and non-Indian vendors located on the reservation.

The gross proceeds derived from business activities performed by non-affiliated or non-Indian vendors on the reservation, for Indians who are enrolled members of the tribe for which the reservation was established, are not subject to Arizona's transaction privilege tax. However, the gross proceeds derived from sales to non-Indians or non-affiliated Indians are subject to Arizona's transaction privilege tax.

C. Construction contracts performed on Indian reservations.

The gross proceeds derived from contracting activities performed on a reservation by the Indian tribe, a tribal entity or an affiliated Indian are not subject to Arizona's transaction privilege tax.

The gross proceeds derived from construction projects performed on Indian reservations by non-affiliated Indian or non-Indian prime contractors are not subject to the imposition of Arizona transaction privilege tax under the following conditions:

1. The activity is performed for the tribe or a tribal entity for which the reservation was established; or
2. The activity is performed for an individual Indian who is a member of the tribe for which the reservation was established.

The gross proceeds derived from construction projects performed on Indian reservations by non-affiliated Indian and non-Indian prime contractors for all other persons, including the federal government, are subject to the imposition of Arizona transaction privilege tax.

II. Business activities performed for Indians by off-reservation vendors.

A. Businesses located off the reservation.

In general, transaction privilege tax applies to retail sales to, or business activities performed for, affiliated Indians by vendors located off an Indian reservation.

However, retail sales ***to an enrolled member of the Indian tribe or a tribal entity of an Indian tribe*** are not subject to the imposition of Arizona transaction privilege tax when the sale of tangible personal property, other than motor vehicles, takes place on the reservation, i.e., solicitation of the order, the delivery of the goods and the payment for the goods takes place on or from the reservation ***and***

1. the sale is to the tribe or tribal entity for which the reservation was established;
or
2. the sale is to an individual Indian who is a member of the tribe for which the reservation was established.

B. Retail sales of automobiles to Indians by vendors located off the reservation.

The sale of a motor vehicle to an enrolled member of an Indian tribe who resides on the reservation established for that tribe is exempt from transaction privilege tax. The vendor is not

required to deliver the vehicle to the reservation in order for this exemption to apply.

The vendor should obtain a completed *Arizona Department of Revenue Transaction Privilege Tax Certificate for Sales to Native American Indian Tribes, Tribal Members and Owned Businesses* (ADOR Form 5001) in order to document the exempt sale.

III. Record keeping requirements.

Non-affiliated Indian and non-Indian vendors are required to retain sufficient documentation of their taxable and nontaxable income to enable the department to determine which transactions are subject to transaction privilege tax. If records are not kept so as to distinguish between taxable and nontaxable income, the gross income from all business activities is taxable.

EXAMPLES:

1. An enrolled member of the tribe for which the reservation was established operates a retail store located on the reservation. The store makes retail sales to customers who are not affiliated Indians. Arizona's transaction privilege tax does not apply to the gross income of an enrolled member derived from making retail sales on the reservation.
2. An Indian tribe owns commercial real property located on the reservation which is leased to a non-Indian. The leasing of the commercial real property by the tribe is not subject to Arizona's transaction privilege tax.
3. An Indian tribe owns commercial real property which is leased to a non-Indian. The non-Indian person subleases the commercial real property to another non-Indian. The gross proceeds derived from subleasing the commercial real property by a non-Indian to another non-Indian is subject to Arizona's transaction privilege tax.
4. A non-Indian person operates a restaurant on an Indian reservation. The restaurant sells meals to both affiliated Indians and non-Indians.

The gross income or gross proceeds of sales derived from sales of meals to non-Indians and non-affiliated Indians is subject to Arizona's transaction privilege tax. The gross income derived from sales of meals to affiliated Indians is not subject to Arizona's transaction privilege tax.

In its books and records, the restaurant must keep non-taxable sales to affiliated Indians separate from the taxable sales. If the restaurant does not keep its books and records in such a manner as to allow the department to determine which

sales are subject to transaction privilege tax, all of the gross proceeds of sales or gross income derived from the business will be subject to Arizona's transaction privilege tax.

Harold Scott, Director
Signed: April 21, 1995

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.