



ARIZONA TRANSACTION PRIVILEGE TAX RULING

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(This Ruling Supersedes and Rescinds TPR 95-11)

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Date Proposed: February 28, 2022

Date Final:

ISSUE:

The imposition of transaction privilege tax on activities performed on Native American Indian reservations located within the State of Arizona.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5008 provides that transaction privilege tax is imposed on persons engaging in business under specific business classifications within the State of Arizona.

A.R.S. § 42-5023 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 (Ct. App. 1988), *cert. denied*, 490 U.S. 1051, 109 S. Ct. 1967 (1989).

The state in which a Native American reservation is located may impose its tax on non-affiliated Native Americans doing business on reservations within their borders. *Arizona Department of Revenue v. Dillon*, 170 Ariz. 560 (Ct. App. 1991).

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

A.R.S. § 42-5122 exempts the following activities involving Native American tribes, tribally owned businesses, tribal entities or affiliated tribal members:

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- Business activities performed by a Native American tribe, tribally owned business, tribal entity or affiliated tribe member if the business activity occurs on the reservation of that tribe, tribally owned business, tribal entity or affiliated tribe member. A.R.S. § 42-5122(1).
- Business activities performed by non-affiliated Native Americans or non-Native American vendors on a Native American reservation for a tribe, tribally owned entity or affiliated member of the tribe on which the business activities occur. A.R.S. § 42-5122(2).
- Contracting activities occurring on a Native American reservation performed by a Native American tribe, tribally owned business, tribal entity or affiliated tribal member. A.R.S. § 42-5122(3).
- Contracting activities occurring on a Native American reservation for a Native American tribe, tribal owned business, tribal entity or affiliated tribal member performed by a non-affiliated Native American or non-Native American contractor. A.R.S. § 42-5122(4).
- Retail sales of tangible personal property to a Native American tribe, tribally owned business, tribal entity or affiliated tribe member if the tangible personal property is ordered from and delivered to a Native American reservation. A.R.S. § 42-5122(5).
- The sale of a motor vehicle to an enrolled Native American tribal member who resides on a Native American reservation established for that Native American tribe. A.R.S. § 42-5122(6)

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 a Native American reservation. *Arizona Dep't of Revenue v. Greenberg Const.*, 182 Ariz. 397 (Ct. 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 Native American tribe for whose benefit the reservation was established.

"Indian tribe" means any organized nation, tribe, band or community recognized as a Native American tribe by the United States Department of the Interior and includes any entity formed under the laws of the Native American tribe.

"Indian reservation" means all lands within the limits of areas set aside by the United States for the exclusive use and occupancy of a Native American by treaty, law, or executive order and which areas are currently recognized as Native American "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, to name a few.

The State of Arizona has several Native American 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 Native American reservations. This ruling also addresses the imposition of transaction privilege tax on retail sales to Native Americans by vendors who are not located on a Native American reservation.

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

RULING:

In general, except as provided in this ruling or by statute, Arizona's transaction privilege tax applies to the gross income derived from being engaged in a business on an Native American 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 Native American vendors on the reservation.

Arizona's transaction privilege tax does not apply to business activities performed by businesses owned by an Native American tribe, a tribal entity or an individual tribal member if the business activity takes place on the reservation (*e.g.*, restaurants, places of amusement, mining, etc.) which was established for the benefit of the tribe.

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

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

The gross proceeds derived from business activities performed by non-affiliated or non-Native American vendors on the reservation, for a tribe, tribally owned entity or affiliated member 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-Native Americans or non-affiliated Native Americans are subject to Arizona's transaction privilege tax.

C. Construction contracts performed on Native American reservations.

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

The gross proceeds derived from construction projects performed on Native American reservations by non-affiliated Native American or non-Native American 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 Native American who is a member of the tribe for which the reservation was established.

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The gross proceeds derived from construction projects performed on Native American reservations by non-affiliated Native American and non-Native American 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 Native Americans 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 Native Americans by vendors located off an Native American reservation.

However, retail sales **to an enrolled member of the Native American tribe or a tribal entity of an Native American tribe** are not subject to the imposition of the Arizona transaction privilege tax when the sale of tangible personal property, other than motor vehicles, takes place on the reservation. A sale is deemed to take place on the reservation if the goods are ordered from and delivered on 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 Native American who is a member of the tribe for which the reservation was established.

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

The sale of a motor vehicle to an enrolled member of an Native American tribe who resides on the reservation established for that tribe is exempt from state and county transaction privilege tax. The vendor is not required to deliver the vehicle to the reservation in order for this exemption to apply. However, A.R.S. § 42-6017(C)(6)(b) allows a city or town to tax the sale of a motor vehicle to an enrolled member of a Native American tribe unless possession of the vehicle takes place on the enrolled member's Native American reservation.

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 5013) in order to document the exempt sale.

III. Native American Reservations within City Limits.

Certain Native American reservations located in Arizona may also be found within city or town limits. Although city boundaries may be located within a Native American reservation, a city's taxing authority, similar to the state and county, does not supersede the sovereignty of the Native American reservations. All transactions occurring on these reservations should follow the procedures provided in Sections I and II above. After completing the analysis if a transaction is taxable, then it is taxable for state, county and city.

IV. Record keeping requirements.

Non-affiliated Native American and non-Native American vendors are required to retain sufficient documentation of their taxable and nontaxable income to enable the department to determine which

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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.

V. Tribal Taxes

The department does not collect tribal taxes imposed by the Native American tribes. Please contact the tribe for collection requirements and rates. If tribal tax is imposed on a transaction, a corresponding TPT deduction is provided. See [deduction codes](#).

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 Native Americans. Arizona's transaction privilege tax does not apply to the gross proceeds of sale or gross income of an enrolled member derived from making retail sales on the reservation. Non-affiliated Native American are subject to use tax on the sale of tangible personal property which was excluded from transaction privilege tax because it was sold by a Native American who operates a store located on their reservation.
2. A Native American tribe owns commercial real property located on the reservation which is leased to a non-Native American. The leasing of the commercial real property by the tribe is not subject to Arizona's transaction privilege tax.
3. A Native American tribe owns commercial real property which is leased to a non-Native American. The gross proceeds derived from this lease are not subject to Arizona's transaction privilege tax because this is a lease for sublease. The non-Native American person subleases the commercial real property to another non-Native American. The gross proceeds derived from subleasing the commercial real property by a non-Native American to another non-Native American is subject to Arizona's transaction privilege tax. The sublessor should report the taxable gross proceeds derived from the sublease using business code 013 and sourcing with the appropriate reservation code (as provided in Table 4 of the monthly published transaction privilege tax rate table).
4. A non-Native American person operates a restaurant on an Native American reservation. The restaurant sells meals to both affiliated Native Americans and non-Native Americans.

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

The gross income derived from all sales should be reported using business code 011 and sourcing with the appropriate reservation code. The gross income attributable to sales to affiliated Native Americans may be deducted using deduction code 570.

In its books and records, the restaurant must keep non-taxable sales to affiliated Native Americans 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,

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

5. An enrolled member of a Native American tribe purchases a vehicle, and takes possession at a dealership located in a city off the reservation. Arizona's state and county transaction privilege tax does not apply to the gross income derived from the sale. However, the vehicle sale will be subject to the city privilege tax.
6. An enrolled member of a Native American tribe purchases home goods from an online retailer. Checkout and payment is made while the enrolled member is located on the reservation in which they are enrolled. The home goods are then delivered to the enrolled member's delivery address on the reservation. Arizona's state, county and city transaction privilege tax does not apply to the gross income derived from the sale.

Robert Woods, Director

Signed:

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.