



ARIZONA LUXURY TAX RULING LTR 17-1

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ISSUE:

This ruling addresses the imposition of Arizona luxury privilege tax and regulations on whole leaf tobacco.

RULING:

Whole leaf tobacco may constitute smoking tobacco for the purpose of Arizona luxury taxation and regulation. Smoking tobacco, as defined in Arizona Revised Statutes ("A.R.S.") § 42-3001(22) is "any tobacco that, because of its appearance, type, packaging, labeling or promotion, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes or otherwise consumed by burning." Whole leaf tobacco that meets this criteria is a taxable luxury and is subject to the rates imposed by A.R.S. §§ 42-3052(6), 42-3251(A)(2), and 42-3251.01. If purchased on an Indian reservation, whole leaf tobacco is subject to tax at the rates prescribed by A.R.S. §§ 42-3251 and 42-3251.01, as provided for in A.R.S. § 42-3302. Distributors of this product are required to obtain a license from the Department and adhere to the reporting and payment requirements under A.R.S. § 42-3501.

DISCUSSION:

Under A.R.S. § 42-3051, Arizona imposes luxury privilege tax on the privilege of selling luxury items to customers for consumption. Such items include various forms of tobacco products other than cigarettes and cigars, which are subject to tax at the rates prescribed by A.R.S. §§ 42-3052(6)-(7), 42-3251(A)(2)-(3), 42-3251.01(A), and 42-3371(2)-(3). Tobacco products that are purchased on an Indian reservation are subject to the Indian Reservation Tobacco Tax at the rate prescribed by A.R.S. § 42-3302. The legal obligation for luxury privilege tax imposed on tobacco products rests upon the distributor, pursuant to A.R.S. §§ 42-3152(A) and 42-3452.¹ Distributors of tobacco products are required to obtain a license pursuant to A.R.S. § 42-3401 and comply with the reporting and payment requirements prescribed in A.R.S. § 42-3501.

¹ See also Watkins Cigarette Serv., Inc. v. Ariz. Tax Comm'n, 526 P.2d 708, 711 (Ariz. 1974).

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It is the Department's position that "whole leaf tobacco" does not define a product type or tax classification. Instead, whole leaf tobacco refers to the physical state of the tobacco leaf in its entirety, including both the blade and stem, that has been cured but has not been cut, threshed or stripped. Whole leaf tobacco differs from crude, raw, or green tobacco which have not undergone any processing or curing.

Smoking tobacco is subject to various taxes at the rates imposed by A.R.S. §§ 42-3052(6), 42-3251(A)(2), 42-3251.01(A), 42-3371(2), and 42-3302. The term "smoking tobacco" is defined in A.R.S. § 42-3001(22) as "any tobacco that, because of its appearance, type, packaging, labeling or promotion, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes or otherwise consumed by burning."

In determining whether whole leaf tobacco constitutes smoking tobacco for taxation purposes, the Department will consider whether promotional materials (including online marketing and website content), packaging, labeling or product type and appearance imply or establish the product's suitability for use in manufacturing cigarettes, pipe tobacco or any other tobacco product intended for human consumption by burning. Whole leaf tobacco that is unfit for human consumption and is solely intended for agricultural or horticultural use is exempt from the luxury taxes imposed under Title 42, Chapter 3. Although whole leaf tobacco may be used in various applications, such use does not exempt this form of tobacco from taxation when offered to, or purchased by, consumers for use as smoking tobacco.

APPLICABLE LAW:

A.R.S. § 42-3001(22) defines "smoking tobacco" as any tobacco that, because of its appearance, type, packaging, labeling or promotion, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes or otherwise consumed by burning."

A.R.S. § 42-3002 provides that the area of luxury taxation is preempted by the state.

A.R.S. § 42-3051 imposes a luxury privilege tax on "all cigarettes, cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco, for use as may be prescribed by law."

A.R.S. § 42-3052(6) imposes a luxury privilege tax at a rate of two cents per ounce or major fraction of an ounce on "smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption."

A.R.S. § 42-3251(A)(2) imposes a tobacco tax for health care of 4.5 cents per ounce or major fraction of an ounce on "smoking tobacco, snuff, fine cut chewing tobacco, cut and

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granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption.”

A.R.S. § 42-3251.01(A) imposes a second tax for health care of one and one-half times the tax prescribed by A.R.S. § 42-3251.

A.R.S. § 42-3302 imposes an Indian Reservation Tobacco Tax on “cigarettes, cigars smoking tobacco, plug tobacco, snuff and other forms of tobacco” purchased on an Indian reservation at the rates prescribed by A.R.S. §§ 42-3251 and 42-3251.01.

A.R.S. § 42-3371(2) imposes a tobacco tax for early childhood development and health of 9 cents per ounce or major fraction of an ounce on “smoking tobacco, snuff, fine cut chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut chewing tobacco, and refuse, scrubs, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes unfit for human consumption.”

A.R.S. § 42-3152(A) provides that luxury privilege tax and all increases, interest and penalties are a personal debt of the taxpayer to this state.

A.R.S. § 42-3401 requires every distributor acquiring or possessing tobacco products for the purpose of making the initial sale or distribution of the product in Arizona to obtain a license from the Department.

A.R.S. § 42-3501 provides the return and payment requirements for distributors of tobacco products other than cigarettes.

Grant Nülle, Deputy Director

Signed: June 22, 2017

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.