



Douglas A. Ducey
Governor

David Briant
Director

ARIZONA LUXURY TAX RULING LTR 18-1

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:

This ruling addresses the classification and imposition of Arizona luxury privilege tax on cavendish tobacco.

Ruling:

For purposes of Arizona luxury privilege tax, tobacco products composed entirely of cavendish tobacco are classified as cavendish and are taxed at a combined rate of \$0.055 per ounce. Tobacco products that contain, but are not entirely composed of, cavendish tobacco are classified as smoking tobacco and are taxed at a combined rate of \$0.223 per ounce.¹

Discussion:

Under A.R.S. § 42-3051, Arizona imposes luxury privilege tax on the privilege of selling certain luxury items, including tobacco products, to customers for consumption. The legal obligation for luxury privilege tax imposed on tobacco products rests upon the distributor, pursuant to A.R.S. §§ 42-3152(A) and 42-3452.² Distributors of tobacco

¹As used throughout this ruling, “combined rate” refers to tax rates applicable to tobacco products that are not subject to the Indian Reservation Tobacco Tax under A.R.S. § 42-3302. Tobacco products that are subject to the Indian Reservation Tobacco Tax are taxed at a rate of \$0.113 per ounce for smoking tobacco and \$.028 per ounce for cavendish.

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

ARIZONA LUXURY TAX RULING

LTR 18-1

Page 2

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. §§ 42-3462 and 42-3501.

Tobacco products other than cigarettes and cigars are taxed by weight and are divided into two separate categories of tax rates as provided in A.R.S. §42-3052(6)-(7). Products listed in A.R.S. § 42-3052(6) fall into the first category and are taxed at a combined rate of \$0.223 per ounce. Products listed in A.R.S. § 42-3052(7), including cavendish, fall into the second category and are taxed at a combined rate of \$0.055 per ounce.

These products are also subject to tax at the rates prescribed by A.R.S. §§ 42-3251, 42-3251.01, and 42-3371. Tobacco products that are purchased on an Indian reservation are subject to the Indian Reservation Tobacco Tax at the rates prescribed in A.R.S. § 42-3302. When imposing their respective tax rates, these statutes use or refer to the same categories of tobacco products as A.R.S. § 42-3052.

Smoking tobacco, which pursuant to A.R.S. § 42-3001 “includes pipe tobacco,” falls into the first category; however, cavendish is specifically designated as a separate taxing category from other smoking tobaccos. “Where two statutes deal with the same subject, the more specific statute controls.” Pima Cty. v. Heinfeld, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982). While both categories include types of smoking tobacco, A.R.S. § 42-3052(7) is more specific than A.R.S. § 42-3052(6), thus cavendish falls into the second category and is taxed at the lower rate.

Cavendish is not defined in statute; however, as defined by the Tobacco Encyclopedia, it is a “type of dark brown or black pipe tobacco produced in a similar manner to flake. The leaves are deribbed, blended, cased and partially aromatized (with e.g. fruit essences), put into molds and pressed under steam to form firm blocks.” Vogues, Ernst (Ed.) Tobacco Encyclopedia 66 (1984). Cavendish may be sold in block form or shredded and loosened prior to sale.

In determining whether a tobacco product constitutes cavendish for taxation purposes, the Department will consider whether promotional materials (including online marketing and website content), packaging, labeling, and product appearance establish that the product is composed entirely of cavendish. If the Department determines a product is composed entirely of cavendish, the product will fall into the second category and be taxed at the combined rate of \$0.055 per ounce. However, if a product merely includes cavendish, e.g., is a blend of cavendish with other types of smoking tobacco, the product will fall into the first category and be taxed as smoking tobacco at the combined rate of \$0.223 per ounce.

Grant Nülle
Deputy Director, Arizona Department of Revenue

SIGNED: April 17, 2018

ARIZONA LUXURY TAX RULING

LTR 18-1

Page 3

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.