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ARIZONA TRANSACTION PRIVILEGE TAX RULING TPR 95-18

SALES OF PERSONAL HYGIENE ITEMS FOR USE IN TRANSIENT LODGING BUSINESSES

(Note: on 5/11/2021, the statute references and the reference to a procedure were updated to show their new numbers. See footnotes for details. In addition, the note on page 3 was added. No substantive changes were made.)

ISSUE:

Which items of tangible personal property purchased by a person engaged in business and subject to the transaction privilege tax under the transient lodging classification, qualify as nontaxable "personal hygiene items"?

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5061(A)(45)¹ provides a retail exemption from the transaction privilege tax for sales of tangible personal property to a person engaged in business and subject to the tax under the transient lodging classification, if the tangible personal property is a personal hygiene item which is furnished to and intended to be consumed by the transient during his occupancy.

A.R.S. § 42-5159(A)(13)(l)² provides a similar exemption from the use tax for purchases of personal hygiene products by a transient lodger, which are furnished without additional charge and intended to be consumed by the transient during his occupancy.

Laws 1995, Chapter 267, Sections 5 and 6, provide that the above exemptions apply retroactively to tax reporting periods starting on or after June 1, 1990, and that refunds for such reporting periods shall not be granted unless satisfactory proof is provided that the transaction privilege tax or use tax paid on the personal hygiene items was not passed on to the ultimate consumer by way of increased transient lodging costs.

A.R.S. § 42-5009³ delineates the requirements for the certificate which establishes entitlement to a statutory deduction from a seller's tax base. As authorized by A.R.S. § 42-5009(C)⁴, the *Arizona*

¹ This ruling originally cited A.R.S. § 42-1310.01(A)(48) which has been renumbered as A.R.S. § 42-5061(A)(45).

² This ruling originally cited A.R.S. § 42-1409(A)(13)(k) which has been renumbered as A.R.S. § 42-5159(A)(13)(l).

³ This ruling originally cited A.R.S. § 42-1316 which has been renumbered as A.R.S. § 42-5009.

⁴ This ruling originally cited A.R.S. § 42-1316(C) which has been renumbered as A.R.S. § 42-5009(C).

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Department of Revenue Transaction Privilege Tax Exemption Certificate (ADOR Form 5000), may be provided to the seller by the purchaser for the purpose of establishing entitlement to the above statutory tax exemptions.

DISCUSSION:

A.R.S. § 42-5061(A)(45)⁵ and A.R.S. § 42-5159(A)(13)(I)⁶ provide tax exemptions for retail sales to transient lodging facilities of personal hygiene items that are furnished to and intended to be consumed by lodgers during their stays at these facilities. In order to establish entitlement to these tax exemptions, a person engaged in business and taxable under the transient lodging classification should provide a certificate to the vendor which fulfills the requirements of A.R.S. § 42-5009⁷. Please refer to Arizona Transaction Privilege Tax Procedure TPP 17-1⁸ for information on the use and acceptance of exemption certificates.

The following items are examples of "personal hygiene items" which qualify for the tax exemptions provided by A.R.S. §§ 42-5061(A)(45)⁹ and 42-5159(A)(13)(I)¹⁰:

Soap	Shampoo	Hair conditioner	Shower caps
Toothbrush	Toothpaste	Mouthwash	Sunscreen lotion
Razors	Shave cream	After shave	Hand/Body lotion
Talcum powder	Bathroom tissue	Facial tissue	Sanitary napkins/disposal bags
Glass wrappers	Disposable cups	Ice container liners	

Although they may be intended either for a traveler's convenience, to simplify the cleaning of the guest's room, or to assist in providing services to a guest, the following are examples of items which do **not** qualify as "personal hygiene items":

Laundry bags	Hangars	Sewing kit	Shoe mitts/polishers
Garbage bags	Trashcan liners	Clothes brush	Shoe horns
Stationery	Postcards	Pens	Pads of paper
Matches	Local attraction magazines		

⁵ See footnote number 1.

⁶ See footnote number 2.

⁷ See footnote number 3.

⁸ This ruling originally referenced TPP 92-1, the current procedure that deals with the use and acceptance of exemption certificates is TPP 17-1.

⁹ See footnote number 1.

¹⁰ See footnote number 2.

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Note: pages 3 and 4 are obsolete because they deal with refunds for tax periods that are now outside of the statutes of limitations.

PROCEDURE FOR REFUNDS:

Laws 1995, Chapter 267, Sections 5 and 6, state that the exemptions provided by A.R.S. §§ 42-1310.01.A.48 and 42-1409.A.13 apply retroactively to tax reporting periods starting on or after June 1, 1990, and that refunds for such reporting periods shall not be granted unless satisfactory proof is provided that the transaction privilege tax or use tax paid on the personal hygiene items was *not* passed on to the ultimate consumer by way of increased transient lodging costs.

In general, a claim for refund must be in writing and must identify the claimant by name, address and tax identification number. In addition, each claim shall include the amount of refund requested, the specific tax periods involved, and the specific grounds on which it is founded. An Amended Transaction Privilege Tax Return (Form TPT-1X) is to be used when filing for a refund. A Form TPT-1X should be filed for each taxable period for which the taxpayer is requesting a refund.

TRANSACTION PRIVILEGE OR USE TAX COLLECTED BY VENDOR:

For refunds of transaction privilege tax, the taxpayer filing a refund request will be the vendor who made sales of personal hygiene items to a person engaged in business and subject to tax under the transient lodging classification. In the case of the use tax, the person filing a refund request is the registered vendor who has collected the use tax from a transient lodging establishment. (For transient lodging establishments which have remitted the use tax directly to the department, or vendors which have factored the transaction privilege tax, see "Special Situations".)

Vendors requesting refunds should provide proof from the person engaged in business under the transient lodging classification that the transaction privilege tax or use tax that was paid on the personal hygiene items was not passed on to the ultimate consumer by way of increased prices for transient lodging.

A vendor who has paid the transaction privilege tax or collected the use tax and who requests a refund should provide the following to the Department of Revenue:

1. A completed amended return for each taxable period for which the taxpayer is requesting a refund. Senate Bill 1344 should be referenced in the section which states the reason for amending the return.
2. Proof satisfactory that the vendor has refunded the tax to the transient lodging establishments or assurance of the vendor that the refunded amounts will be returned to the transient lodging establishments.
 - Proof satisfactory that the vendor has refunded the tax to the transient lodging establishments can be demonstrated by providing the following information:

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- A receipt, signed and dated by the appropriate customer indicating the amount paid; or,
- A canceled check made payable to the customer.
- Assurance of the vendor that the refunded amounts will be returned to the transient lodging establishments can be demonstrated by providing the department with a report listing the name and current address of customers to whom refund monies will be returned, and the dollar amount to be returned to each customer.

Within 90 days of the day the refund was received, the vendor should submit a report listing the names and addresses of the persons to whom monies were refunded and the dollar amount returned to each person. This report should indicate any changes from the original report submitted with the refund request. Any monies not returned to customers should be returned to the Department of Revenue with this report.

Documentation should be kept for the statutorily required period of time (generally four years) to substantiate that the refunds were actually paid to the customers.

Under A.R.S. § 42-117.A, if the department is not satisfied with a return, the department may examine the return, including any books, papers, records or memoranda relating to the return. This includes an amended transaction privilege tax return.

All information relating to a refund is subject to verification by the department.

SPECIAL SITUATIONS:

USE TAX PAID BY TRANSIENT LODGING ESTABLISHMENT VENDOR FACTORING THE TRANSACTION PRIVILEGE TAX

A transient lodging establishment that has purchased personal hygiene items and paid the use tax applicable to such purchases directly to the department may apply for a refund of such use tax. The transient lodging establishment must provide proof that the use tax paid on the items was not passed on to the ultimate consumer by way of increased prices for transient lodging.

A vendor who has not passed the economic burden of the transaction privilege tax to the transient lodging establishment but has instead factored the tax pursuant to Arizona Administrative Code rule R15-5-2210.01, may also file for a refund of the tax subject to all statutory reporting requirements.

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RULING:

The transaction privilege tax and use tax exemptions respectively provided by A.R.S. § 42-5061(A)(45)¹¹ and A.R.S. § 42-5159(A)(13)(I)¹² are applicable only to retail sales to transient lodging facilities of personal hygiene items that are furnished to and intended to be consumed by lodgers during their stays at transient lodging facilities. In order to establish entitlement to these tax exemptions, a person engaged in business and taxable under the transient lodging classification should provide documentation to the vendor which establishes entitlement to the exemption per the requirements of A.R.S. § 42-5009¹³. The department's transaction privilege tax exemption certificate (ADOR Form 5000) may be used for this purpose. Refer to Arizona Transaction Privilege Tax Procedure TPP 17-1¹⁴ on the use and acceptance of exemption certificates.

Laws 1995, Chapter 267, Sections 5 and 6, provide that the above exemptions apply retroactively to tax reporting periods starting on or after June 1, 1990, and that refunds for such reporting periods shall not be granted unless satisfactory proof is provided that the transaction privilege tax or use tax paid on the personal hygiene items was not passed on to the ultimate consumer by way of increased transient lodging costs.

Harold Scott, Director

Signed: December 20, 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.

¹¹ See footnote number 1.

¹² See footnote number 2

¹³ See footnote number 3.

¹⁴ See footnote number 8