

## ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 02-3

(Replaces Guideline G 91-10)

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:

How does the department treat the following activities under Arizona's transaction privilege tax:

1. The rental of space by operators or managers of swap meets.
2. Entry fees charged by operators or managers of swap meets.
3. The sale of items at swap meets.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5001(1) defines "business" as, "all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales."

A.R.S. § 42-5010(A)(4) provides that the tax rate is zero per cent of the tax base as computed for the business of every person engaging or continuing in this state in the commercial lease classification described in section 42-5069.

A.R.S. § 42-5061, *Retail classification*, imposes the transaction privilege tax on the business of selling tangible personal property at retail. A.R.S. § 42-5061(V)(3) defines "selling at retail" as a sale for any purpose other than for resale. Therefore, sales for resale are not taxable. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. All retail sales are subject to tax unless specifically exempted by statute.

A.R.S. § 42-5069 contains the commercial lease classification. The statute states:

The commercial lease classification is comprised of the business of leasing for a consideration the use or occupancy of real property.

A person who, as a lessor, leases or rents for a consideration under one or more leases or rental agreements the use or occupancy of real property that is used by the lessee for commercial purposes is deemed to be engaged in business and subject to the tax imposed by article 1 of this chapter, but this subsection does not include leases or rentals of real property used for residential or agricultural purposes.

A.R.S. § 42-5073 contains the amusement classification which states:

The amusement classification is comprised of the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts, except as provided in subsection B of this section, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement or entertainment, including the operation or sponsorship of events by a tourism and sports authority under title 5, chapter 8. For purposes of this section, admission or user fees include, but are not limited to, any revenues derived from any form of contractual agreement for rights to or use of premium or special seating facilities or arrangements.

Arizona Administrative Code (A.A.C.) R15-5-2001 defines "casual sale" to mean an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold.

#### DISCUSSION:

This ruling restates the department's position, as previously provided in Guideline G 91-10, regarding the treatment of certain activities conducted at swap meets.

Arizona's transaction privilege tax differs from the sales tax imposed by most states. Transaction privilege tax is a tax imposed on the privilege of conducting business in the State

of Arizona. This tax is levied on the vendor, not the purchaser. The vendor may pass the burden of the tax on to the purchaser. However, the vendor is ultimately liable to Arizona for the tax. The Arizona transaction privilege tax is imposed under 17 separate business classifications, including retail sales of tangible personal property and operating an amusement activity.

## Managers or Operators of Swap Meets

There are two main issues regarding income received by managers or operators of swap meets. The issues involve income received from the rental of space and income received from entry fees charged by operators or managers of swap meets.

Under A.R.S. § 42-5069 the gross income from rentals of space to participants offering items for sale at swap meets is taxable as commercial property leasing. Under A.R.S. § 42-5010(A) (4), however, the tax rate for the commercial leasing classification is currently zero. The gross income from rentals of space may, however, be subject to any applicable county excise tax.

Under A.R.S. § 42-5073 income derived from entry or admission fees charged to consumers is subject to transaction privilege tax in addition to any applicable county excise tax.

## Persons Participating in Swap Meets to Sell

Persons participating in swap meets on an occasional basis to sell their household goods or other items originally purchased for their own use are engaged in casual sales. Under A.R.S. § 42-5001, casual sales are not considered "business" and the payment of tax is not required.

Those persons participating in swap meets who sell items on a regular basis or who participate in swap meets to sell an inventory or to sell items purchased for resale are considered to be in "business," as defined under A.R.S. § 42-5001 and must pay state transaction privilege tax in addition to any applicable county excise tax.

## RULING:

The gross income from rentals of space to participants offering items for sale at a swap meet is taxable; however, the current applicable state tax rate is zero. County taxes, however, may be applicable. Income derived from entry or admission fees charged to consumers at a swap meet is subject to state transaction privilege tax in addition to any applicable county excise tax.

Persons making casual sales at swap meets are not required to be licensed or to pay tax. Those persons participating in swap meets who sell items on a regular basis or who participate

in swap meets to sell an inventory or to sell items purchased for resale are considered to be in "business," and are subject to the state transaction privilege tax in addition to any applicable county excise tax.

Mark W. Killian, Director  
Signed July 16, 2002

### 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.