

ARIZONA TRANSACTION PRIVILEGE TAX PROCEDURE

TPP 97-2

Procedure for Requesting Refunds of Taxes Paid on Mineral Leases

ISSUE:

This procedure provides guidance to taxpayers requesting a refund of transaction privilege taxes paid under the commercial lease classification for income derived from granting rights to use real property that constitute a "profit à prendre".

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1310.09(C)(17) provides an exclusion under the commercial lease classification for gross income received from providing rights to real property that constitute a profit à prendre.

A.R.S. § 42-130 provides that if the department disallows any claim for refund it shall notify the taxpayer of the denial. The department's action on the claim is final unless the taxpayer appeals to the department in writing within the time and in the manner prescribed by statute.

BACKGROUND:

Laws 1997, Chapter 3, provides an exclusion under the commercial lease classification for gross income received from providing rights to real property that constitute a profit à prendre. The effective date of the provision was July 21, 1997. However, this exclusion applies retroactively to taxable periods beginning after March 22, 1968.

A "profit à prendre" is a right to use the land of another to mine minerals, and carries with it the right of entry and the right to remove and take the minerals from the land and also includes the right to use the surface of the land as is necessary and convenient for exercise of the profit. The exclusion also applies to the right to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. However, the exclusion does not apply to leasehold rights to the real property granted in addition to but not included within the right of profit à prendre.

The tax base for the leasehold right not included within the profit à prendre is limited to the fair market value of the leasehold rights computed after deducting the value of all rights under the profit à prendre.

A taxpayer filing for a refund of taxes paid must do so by December 31, 1997. A failure to file a claim on or before December 31, 1997, constitutes a waiver of the claim for refund.

The burden is on the taxpayer to establish the amount of tax paid for all taxable periods and the amount, if any, attributable to gross income from the grant of a right of profit à prendre. Refunds will not be given until after the department has made a final determination of the amount of all refund claims filed. The department will notify each claimant of the amount determined to be refundable. A taxpayer may appeal the department's determination pursuant to A.R.S. § 42-130.

An appeal of a determined refund amount will suspend the refund process. If a taxpayer appeals the department's determination, the department may notify other taxpayers who have filed claims as to the nature of the delay and the approximate extent of the delay, subject to confidentiality restrictions.

The aggregate amount of tax refunds under this provision is limited to \$100,000. If the aggregate amount of claims that are determined to be correct exceeds \$100,000, each claim will be proportionately reduced so that the total refund amount equals \$100,000, exclusive of any interest paid.

Interest is not allowed, and will not be computed, on any refundable amount if paid before July 1, 1998. However, if the amount cannot be determined or paid until after June 30, 1998, interest will accrue from June 30, 1998, pursuant to A.R.S. § 42-134.

PROCEDURE:

The following is the procedure for applying for a refund of state transaction privilege and county excise taxes paid with regard to gross income received from providing rights to real property that constitute a profit à prendre for tax periods beginning from and after March 22, 1968.

A taxpayer filing for a refund of taxes paid must do so by December 31, 1997. A failure to file a claim on or before December 31, 1997, constitutes a waiver of the claim for refund.

If the tax refund includes monies collected by the taxpayer as an added charge to cover the tax or an added charge that the taxpayer identified as being imposed to cover the tax, the taxpayer shall return the amount of tax refunded by the department to the persons who paid the added charge. The refund requirements are imposed to ensure that any monies refunded are returned to the persons who actually bore the burden of the tax. Taxpayers requesting refunds should provide proof satisfactory to the Department of Revenue that the monies paid as taxes have been returned to, or give assurance that the refunded amounts will be returned to, the

persons who bore the burden of the tax paid.

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.

A fully completed amended return shall include the following information:

1. the taxpayer's name, address, and identification number;
2. the amount of the refund claimed;
3. the period for which the overpayment was made.

The taxpayer or the taxpayer's authorized representative shall sign the amended return.

The taxpayer shall provide proof that the tax for the periods in question has been paid. The following information is requested to show that proof.

1. A copy of the original Form ST-1 or TPT-1 filed for each period in question; and,
2. A copy of the canceled check in payment of the tax for each period in question.

NOTE: The department realizes that there may be periods for which this documentation is not available. The department will make every reasonable effort to work with taxpayers in determining other forms of documentation which will be considered valid for these periods. Please indicate in a refund request if documentation is not available.

Any information required to be submitted under this procedure should be sent to:

Transaction Privilege & Use Tax Audit
Refund Desk
Arizona Department of Revenue
P.O. BOX 29062
Phoenix, AZ 85038-9062

(602) 542-4656

Proof satisfactory that the taxpayer has refunded the tax to the person who bore the burden of the tax can be demonstrated by providing the following information:

- A receipt, signed and dated by the appropriate person indicating the amount received; or,
- A canceled check made payable to the person.

Assurance of the taxpayer that the refunded amounts will be returned to the persons who bore the burden of the tax can be demonstrated by providing the department with the following information:

- A report listing the name and current address of the persons to whom refund monies will be returned, and the dollar amount to be returned to each person; and,
- A closing agreement entered into between the department and the taxpayer certifying that the amounts owed to the persons who bore the burden of the tax will be refunded to them within 90 days following receipt of the refund from the department.
- Within 90 days of the day the refund was received, the taxpayer 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 should be remitted 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 persons who bore the burden of the tax.

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, Form TPT-1X.

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

Mark W. Killian, Director
Date Signed August 25, 1997

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to department personnel. A tax procedure is a written statement issued by the department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.