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ARIZONA INDIVIDUAL INCOME TAX RULING ITR 11-1

(This Ruling Supersedes Arizona Income Tax Ruling ITR 91-1)

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:

State Income Taxation and Withholding on Compensation Paid to Employees of Interstate Rail, Motor and Motor Private Carriers (the carriers).

LEGAL REFERENCES:

49 U.S.C. § 10102(5) defines the term “rail carrier” to mean a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation.

49 U.S.C. § 11502 provides that no part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board, to employees who perform regularly assigned duties in more than one state shall be subject to the income tax laws of any state other than the state of the employee's residence.

49 U.S.C. § 13102(14) defines the term “motor carrier” to mean a person providing commercial motor vehicle (as defined in 49 U.S.C. § 31132) transportation for compensation.

49 U.S.C. § 13102(15) defines the term “motor private carrier” to mean a person other than a motor carrier, transporting property by motor vehicle (as defined in 49 U.S.C. § 31132) when: (1) the transportation is as provided in 49 U.S.C. § 13501; (2) the person is the owner, lessee, or bailee of the property being transported; and (3) the property is being transported for sale, lease, rent or bailment or to further a commercial enterprise.

49 U.S.C. § 13501 provides for the general jurisdiction by the Secretary of Transportation and the Surface Transportation Board over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier.

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49 U.S.C. § 14503 provides that no part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of Title 49, chapter 135, subchapter 1, or by a motor private carrier, to employees who perform regularly assigned duties in more than one state shall be subject to the income tax laws of any state other than the state of the employee's residence.

49 U.S.C. § 31132 defines the term "commercial motor vehicle" to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle meets specified weight and use criteria.

A.R.S. § 43-403(A)(1) provides that no Arizona income tax shall be withheld from wages or salary paid to an employee of a common carrier when the employee is a nonresident and regularly performs services both within and without Arizona.

A.R.S. § 43-408 provides that if an Arizona resident is employed outside of Arizona, the person may request the employer to withhold Arizona taxes on wages earned for the services performed outside of Arizona.

A.R.S. § 43-1091 provides that in the case of nonresidents, Arizona gross income includes only that portion of federal adjusted gross income which represents income from sources within Arizona.

A.A.C. R15-2C-601(D)(4)(g)(v) provides that nonresident individuals who are employed in Arizona at intervals throughout the year are subject to Arizona income tax on a prorated basis.

DISCUSSION:

Under 49 U.S.C. § 11502, no part of the compensation paid by a rail carrier, subject to the jurisdiction of the Surface Transportation Board, to employees who perform regularly assigned duties in more than one state shall be subject to the income tax laws of any state other than the state of the employee's residence. The law applies only to compensation paid by the rail carrier to the nonresident employees and it has no effect on the taxation of income earned from other Arizona sources by those nonresident employees.

Under 49 U.S.C. § 14503, no part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of Title 49, chapter 135, subchapter 1, or by a motor private carrier, to employees who perform regularly assigned duties in more than one state shall be subject to the income tax laws of any state other than the state of the employee's residence. The law applies only to compensation paid by the motor carrier or motor private carrier to the nonresident employees and it has no effect on the taxation of income earned from other Arizona sources by those nonresident employees.

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CONCLUSION AND RULING:

Pursuant to 49 U.S.C. § 11502 and 49 U.S.C. § 14503, employees of the carriers who are nonresidents of Arizona and who perform regularly assigned duties in more than one state are not subject to Arizona income tax laws with respect to the compensation paid for those services performed within Arizona. Therefore, A.R.S. § 43-1091 and A.A.C. R15-2C-601, which provide that nonresident individuals who are employed in Arizona at intervals throughout the year are subject to Arizona income tax on a prorated basis, are preempted by federal law with respect to those individuals to which 49 U.S.C. § 11502 and 49 U.S.C. § 14503 apply.

With respect to withholding, the exclusion provided by A.R.S. § 43-403(A)(1) while still applicable, is in effect, incorporated into federal law. Arizona withholding is precluded by both state statute and federal law with respect to compensation paid by the carriers to nonresidents for services performed within Arizona when the nonresident employee performs regularly assigned duties in more than one state.

Income earned by nonresident employees of the carriers from other Arizona sources is not affected by 49 U.S.C. § 11502 and 49 U.S.C. § 14503 and is subject to applicable Arizona income tax provisions.

Employees of the carriers who are residents of Arizona and who perform duties in more than one state are subject to Arizona income tax on all compensation for services performed both within and without the state. Resident employees of the carriers are subject to Arizona withholding to the extent the compensation is paid for services performed within Arizona. Resident employees of the carriers may also request the carrier to withhold Arizona tax on compensation paid for services performed outside of Arizona.

Gale Garriott, Director

Signed: May 3, 2011

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

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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.