

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 92-1

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ISSUE:

Application of the Arizona transaction privilege tax on income derived from hot air balloon activities.

APPLICABLE LAW:

A.R.S. § 42-1310.13.A (former A.R.S. § 42-1309) levies the Arizona transaction privilege tax under the amusement classification as follows:

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, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement, entertainment or instruction, other than activities or projects of bona fide religious or educational institutions....

49 U.S.C.S. § 1301.29 defines "navigable airspace" as follows:

"Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations and shall include airspace needed to insure safety in take-off and landing of aircraft.

49 U.S.C.S. § 1513 provides for federal preemption in the taxing of persons traveling in air commerce.

DISCUSSION:

The federal preemption set forth in 49 U.S.C.S. § 1513 prohibits taxation, directly or indirectly, on persons traveling in air commerce or the carriage of persons traveling in air commerce or on the sale of air transportation.

Pursuant to 49 U.S.C.S. § 1301.4 and .5 "air commerce" and "aircraft" are defined as follows:

"Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

"Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

This definition of "aircraft" is sufficiently broad to include hot air balloons.

Webster's Third New International Dictionary defines "commerce", in pertinent part, as "... involving transportation from place to place."

In the matter of State of Arizona v. Cochise Airlines, 128 Ariz. 432, 626 P.2d 596 (1980), the court held as follows: "... that when Congress prohibited a tax upon the carriage of persons in air commerce, it preempted the Arizona transaction privilege tax insofar as it relates to the transportation of persons."

CONCLUSION AND RULING:

A hot air balloon, which transports people, is a federally registered aircraft which travels in air commerce with access into federal airways. Gross receipts from the business of hot air ballooning when it includes the transporting of people in an untethered hot air balloon are not subject to transaction privilege tax.

A tethered hot air balloon does not travel in air commerce regardless of whether or not it "transports people". As such, gross receipts from a tethered balloon "ride" are subject to transaction privilege tax under the amusement classification.

Normally, the gross receipts from the rental of a hot air balloon would be subject to transaction privilege tax under the personal property rental classification.

Paul Waddell, Director

Signed March 10, 1992