

# ARIZONA DEPARTMENT OF REVENUE

## ARIZONA TRANSACTION PRIVILEGE TAX RULING

### TPR 93-1

(Note: on 8/27/2020, some statute references were update to reflect the current number and footnotes were added. See footnotes for details. No substantive changes were made.)

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:**

Application of the car rental surcharge.

#### **APPLICABLE LAW:**

A.R.S. § 48-4234(A) provides that the board of directors of a special taxing district may levy, and if levied, the Department of Revenue shall collect a car rental surcharge in order to retain, attract or relocate a major league baseball spring training operation.

A.R.S. § 48-4234(B) provides that "[t]he board shall set the car rental surcharge at a rate not to exceed two and one-half dollars<sup>1</sup> on each lease or rental of a motor vehicle licensed for hire for less than one year and designed to carry fewer than fifteen passengers regardless of whether such vehicle is licensed in this state." (Emphasis added.)

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<sup>1</sup> In a county of more than 500,000 but less than 2,000,000 persons, the surcharge can be up to \$3.50 on each lease or rental. This was added after this ruling was issued.

A.R.S. § 48-4234(I)<sup>2</sup> defines "motor vehicle" as a self-propelled vehicle operated on the streets and highways of this state that is primarily intended to carry passengers and is licensed for hire in the district without a driver.

A.R.S. § 42-5071(D)<sup>3</sup> states that in computing the tax base for the personal property rental classification, the gross proceeds of sales or gross income from the lease or rental of a motor vehicle does not include any amount attributable to the car rental surcharge under § 48-4234.

### **BACKGROUND:**

The Legislature, in 1991, as a means to achieve renovation of existing facilities and the construction of new facilities, enacted legislation which would provide the counties the opportunity to obtain funds for the purpose of promoting major league baseball spring training and for other sports and other purposes. The mechanisms of funding provided to the counties include a car rental surcharge (A.R.S. § 48-4234), a recreational vehicle space surcharge (A.R.S. § 48-4235) and a transaction privilege tax (A.R.S. § 48-4236). The counties are not required to adopt any of these mechanisms of funding. The statutes are enabling statutes, in that they give the counties the authority to impose the surcharge or tax.

### **RULING:**

This ruling is limited to the application of the car rental surcharge provided for under A.R.S. § 48-4234.

The car rental surcharge is levied in a specific amount on each "lease" or rental of a motor vehicle licensed for hire for less than one year and designed to carry fewer than fifteen passengers. The statute requires that there be a lease and that the motor vehicle being leased meet the definition provided in statute.

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<sup>2</sup> This ruling originally referenced subsection F, the definition was moved to subsection I.

<sup>3</sup> This ruling originally referenced A.R.S. § 42-1310.11.D which was renumbered as A.R.S. § 42-5071(D).

## **LEASE REQUIREMENT:**

A lease, with reference to tangible personal property, is defined as "a contract by which one owning such property grants to another the right to possess, use and enjoy it for specified period of time in exchange for periodic payment of a stipulated price, referred to as rent".

Black's Law Dictionary citing Undercofler v. Whiteway Neon Ad, Inc., 114 Ga. App. 644, 152 S. E.2d 616, 618. "Rent" is defined as "the consideration paid for use or occupation of property".

A lease will not be found to exist where monetary rental payments are not received. Therefore, if the use of a motor vehicle is provided on a complimentary basis, i.e. without charge, the car rental surcharge does not apply.

The surcharge applies at the location of the execution of the lease.

## **WHAT IS A MOTOR VEHICLE?**

Statute defines "motor vehicle" as a self-propelled vehicle operated on the streets and highways of this state that is primarily intended to carry passengers and is licensed for hire in the stadium district without a driver. Therefore, if the vehicle is not leased or is not intended to carry passengers, it is not subject to the car rental surcharge.

The car rental surcharge applies to the following types of vehicles when the statutory requirements are met:

1. Passenger vehicles, carrying fewer than 15 passengers:

cars trucks, not including delivery trucks rented primarily for purposes of hauling property rather than passengers vans, not including cargo vans rented primarily for purposes of hauling property rather than passengers.

2. Motor homes.

3. Motorcycles, mopeds and scooters which are licensed for use on the streets and highways.
4. Golf carts which are licensed for use on the streets and highways.

**RELATED ISSUES:**

If vehicles leased as part of a fleet are rental vehicles at the time that lease is entered into, and that lease is for a period less than one year, then that lease is subject to the surcharge. When an individual vehicle is subsequently leased, a separate surcharge is applicable to each lease transaction.

When a leased vehicle breaks down and is replaced by a second vehicle, if use of the second vehicle is merely a continuation of the original lease in that there is no additional consideration given in regard to the second vehicle, there is no additional surcharge.

In a lease for re-lease, the surcharge is applicable to both the initial lease and the re-lease if the other surcharge requirements are met.

Paul Waddell

Signed January 11, 1993