

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 99-4

(This Ruling Rescinds TPR 96-4)

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:

The exemption from transaction privilege tax and use tax on sales and purchases of food, beverages, condiments and accessory items sold to airlines if the airlines provide the food and beverages to passengers for consumption during the flight without an additional charge.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5061 imposes the transaction privilege tax on the retail classification. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-5061(A) provides an exemption for tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

A.R.S. § 42-5074 provides that the restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

A.R.S. § 42-5074(C) provides that the tax imposed on the restaurant classification does not apply to the gross proceeds of sales or gross income from tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for

consumption in flight. For purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

A.R.S. § 42-5155 imposes Arizona's use tax on tangible personal property purchased from a retailer which is used, stored or consumed in Arizona, and stipulates that the use tax applies to any purchase of tangible personal property for resale which is subsequently used or consumed by the purchaser.

A.R.S. § 42-5159(A) provides an exemption from the use tax for tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

A.R.S. § 42-5009 provides the requirements for a certificate that established the right to a statutory deduction from a seller's tax base.

DISCUSSION:

As part of the transportation service, airlines frequently provide food, beverages and related nonfood items including plates, napkins, condiments, cups and plastic utensils to their passengers during flights. Laws 1997, Chapter 274, retroactive to from and after December 31, 1981, provides an exemption from transaction privilege tax and use tax for sales of food and beverages to the airlines to be served to passengers at no additional charge for consumption during the flight. Also exempt are accessories used for serving the food and beverages if the accessories are consumed by the passengers in flight.

An exemption is also available under the restaurant classification for the sale of prepared food to the airlines, if the food is to be served to passengers at no additional charge for consumption during the flight.

For information on the procedure to be used to request a refund of transaction privilege or use taxes paid, refer to Arizona Transaction Privilege Tax Procedure TPP 99-2.

RULING:

The transaction privilege tax and use tax exemptions provided by A.R.S. §§ 42-5061(A) and 42-5159 (A) are applicable only to retail sales of food, beverages, condiments and accessories to

commercial airlines if the items are provided without additional charge to passengers for consumption in flight.

The following are examples of items provided without additional charge to passengers for consumption in flight that qualify for the exemption from the transaction privilege and use taxes:

Food, Including Prepared Meals	Beverages	Paper Napkins
Plastic Utensils	Paper Plates	Disposable Cups
Plastic Serving Trays	Salt and Pepper	Condiments such as Ketchup and Relish
Paper Bags	Paper Placemats	Straws
Stirrers and Swizzle Sticks	Disposable Wrap or Packaging	Snack Packs such as Peanuts and Pretzels

The following are examples of items used to serve meals and beverages to passengers during flight. However, these items are not consumed by the passengers and are subject to transaction privilege or use tax:

Beverage and Food Carts	Dry Ice	Urns
Cloth Napkins	China Mugs, Cups and Saucers, Plates, Dishes and Bowls	Nondisposable Drinking Glasses
Bread Baskets	Water Pitchers	Nondisposable Utensils
Ice Buckets		

To document exempt sales, a commercial airline should provide documentation to the vendor as required in A.R.S. § 42-5009. The department's Transaction Privilege Tax

Exemption Certificate (ADOR Form 5000) may be used for this purpose. Refer to Arizona Transaction Privilege Tax Procedure TPP 95-3 on the use and acceptance of exemption certificates.

Mark W. Killian, Director

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.