

**ARIZONA TRANSACTION PRIVILEGE TAX RULING
TPR 03-2**

(This ruling supersedes Arizona Transaction Privilege Tax Ruling TPR 95-8)

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:

Transaction privilege tax deduction for lessors of motor vehicles that are subject to the motor carrier fee.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42 5061(A) states:

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. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

* * *

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

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42. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing or renting such property.

A.R.S. § 42 5159(A)(37) provides a similar exclusion from the use tax.

A.R.S. § 42 5071(B) states:

The tax base for the personal property rental classification is the gross proceeds of sales or gross income derived from the business, but the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

* * *

4. Leasing or renting a motor vehicle subject to and upon which the fee has been paid under title 28, chapter 16, article 4.

Under Title 28, Chapter 16, Article 4, A.R.S. § 28 5852 imposes an annual motor carrier fee against each motor vehicle registered in this state with a vehicle weight of over 12,000 pounds, in accordance with the rate table in § 28 5854. The motor carrier fee shall be added to the gross weight fee imposed by § 28 5433 and is payable at the time the motor vehicle is registered.

A.R.S. § 28 2232 authorizes the international proportional registration of fleet vehicles.

A.R.S. § 28 2261 authorizes the provision of an alternative proportional registration agreement of fleet vehicles.

A.R.S. § 28 5431 provides the following definitions:

1. “Declared gross weight” means the gross weight in pounds ascribed to a motor vehicle, trailer, semitrailer or vehicle combination by the applicant for registration.
2. “Gross weight” means the sum of the empty weight in pounds of a motor vehicle combination plus the weight in pounds of the maximum load to be carried on the motor vehicle combination at any one time, except that for tow trucks, gross weight means the sum of the empty weight in pounds of the tow truck plus the weight in pounds of operational supplies and equipment.
3. “Vehicle combination” means a motor vehicle and the trailers and semitrailers that it tows.

A.R.S. § 28 5851 states:

In this article, unless the context otherwise requires:

1. “Declared gross weight” has the same meaning prescribed in § 28 5431. If a declaration has not been made, declared gross weight means gross weight.
2. “Gross weight” has the same meaning prescribed in § 28 5431.

3. “Motor carrier” means a person who operates or causes to be operated a motor vehicle on a public highway.

4. “Motor vehicle” means a self propelled motor driven vehicle that has a declared gross vehicle weight of more than twelve thousand pounds and that is subject to vehicle registration before lawful operation on the public highways in this state, excluding a motor vehicle that is exempt from gross weight fees pursuant to § 28 5432.

5. “Public highway” means any way or place in this state that is constructed or maintained with public monies and that is open to use by the public as a matter of right for the purpose of vehicular travel, including a highway under construction.

A.R.S. § 28 5860 states:

A. Payment of the motor carrier fee by a motor carrier exempts the motor carrier from transaction privilege tax or any similar tax imposed by any taxing authority in this state.

B. Except as provided in this article, any other taxing authority in this state shall not impose a transaction privilege tax or any similar tax based on the gross proceeds of sales or gross income from sales derived from any of the following:

1. A motor carrier's use on the public highways under § 42 5062, subsection A, paragraph 1.
2. Leasing a motor vehicle under § 42 5071, subsection B, paragraph 4.

DISCUSSION:

Leasing Motor Vehicles

In accordance with A.R.S. § 42 5071, the transaction privilege tax does not apply to the gross income derived from leasing or renting a motor vehicle subject to and upon which the motor carrier fee has been paid. This deduction is reflected in the motor carrier fee statute under A.R.S. § 28 5860.

Payment of the motor carrier fee is a prerequisite for the transaction privilege tax deduction. The motor carrier fee is based upon the declared gross vehicle weight and is payable annually at the time the motor vehicle is registered. For the deduction to apply to the lease of a motor vehicle, the motor carrier fee must have been paid on that specific vehicle when it was registered.

The International Registration Plan (IRP) is a registration reciprocity agreement among states of the United States and provinces of Canada. The IRP provides that the payment of any periodic recurring fee

required for licensing or registering vehicles, such as, but not limited to, registration fees, license fees or weight fees shall be apportioned on the basis of fleet miles operated in the various jurisdictions. The IRP is a product of International Registration Plan, Inc. and has been adopted by each of the 48 contiguous states. Arizona adopted the plan effective January 1, 1981.

Under the provisions of the IRP, the registration fee for vehicles subject to apportionment shall be determined by:

1. Dividing the in jurisdiction miles by the total distance generated during the preceding year.
2. Determining the total fees required under the laws of each jurisdiction for full registration of each vehicle at the regular applicable fees.
3. Multiplying the sum obtained under #2 by the quotient obtained under #1.

The Arizona motor carrier fee is one of the apportionable fees that is paid on an apportioned vehicle registration in accordance with the provisions of the IRP. Therefore, the deduction for leases of motor vehicles that are subject to the motor carrier fee is applicable to vehicles that are registered on an apportioned basis.

See Arizona Transaction Privilege Tax Ruling TPR 03 3 for information regarding the exemption for motor vehicles that are operated as a fleet of one way rental vehicles subject to the motor carrier fee as part of an allocated fleet.

When vehicles are under a long term lease agreement, it is permissible for the motor carrier fee to be paid by either the lessor or the lessee. The transaction privilege tax deduction is applicable if the motor carrier fee has been paid by the lessor, the lessee, or any third party authorized by the lessor or lessee to make payment on their behalf.

The definition of a motor vehicle includes any self propelled motor driven vehicle that has a declared gross vehicle weight of more than 12,000 pounds and that is subject to vehicle registration before lawful operation on the public highways in this state. The deduction is not limited to trucks, but rather extends to all other self propelled motor driven vehicles that are required to be registered for operation on the public highways in this state.

A crane, which is self powered and licensed for use on the highway, with a declared gross vehicle weight in excess of 12,000 pounds, is an example of a vehicle that qualifies for deduction, provided the motor carrier fee has been paid.

Pursuant to A.R.S. § 28 5431, the term “vehicle combination” means a motor vehicle and the trailers and semitrailers that it tows. The weight class for a vehicle combination is determined by the sum of the empty weight of the vehicle combination plus the weight of the maximum load to be carried on the

vehicle combination at any one time.

A trailer or semitrailer that is leased independently for use as a part of a vehicle combination qualifies for the exemption if the power unit that tows the trailer is a motor vehicle registered as a vehicle combination and the motor carrier fee is paid accordingly.

A lessor of such trailers may establish entitlement to the deduction from the tax base in accordance with the provisions of A.R.S. § 42 5009.

See Arizona Transaction Privilege Tax Ruling TPR 03 4 for information regarding application of the transaction privilege tax exemption when leasing motor vehicles to persons who are engaged in business under the transporting classification.

Sales of Vehicles and Vehicle Parts to Lessors

In addition to the general exemption under A.R.S. § 42 5061(A)(23), the sales of motor vehicles, including the trailers and semitrailers that constitute a vehicle combination, repair and replacement parts, and tangible personal property becoming a part of the motor vehicle, are exempt from both transaction privilege tax and use tax when sold to a motor carrier, subject to the following conditions.

1. The purchaser must be engaged in the business of leasing the vehicle.
2. The vehicle or vehicle operator must be subject to the motor carrier fee.
3. The motor carrier fee must be paid on that motor vehicle, by the lessor, the lessee, or by any third party authorized by the lessor or lessee to make payment on their behalf.

Repair and replacement parts are those individual components and constituent items that constitute the exempt motor vehicle. Tangible personal property becoming a part of the motor vehicle encompasses those items that are attached to and become a part of the exempt motor vehicle. Items that do not become a part of the vehicle are not included in this exemption.

Examples:

Batteries, filters, wheels and tires are examples of repair and replacement parts.

Although items such as antifreeze, motor oil, transmission fluid, bearing grease and windshield washer solution may be replaced with frequency, they are, nevertheless, a part of the vehicle, and therefore, qualify for exemption.

Tire chains become a part of the motor vehicle; safety flares, however, do not. Therefore, safety flares

are taxable.

Radios, speakers and wireless telephones that are installed in an exempt vehicle are exempt. Portable radios and telephones that are merely plugged into the vehicle's electrical source are taxable.

Documentation Required for Exempt Sales

Vendors making sales of qualified vehicles and parts to qualified persons must retain adequate documentation in their files to support the deduction from the tax base.

The department has adopted an exemption certificate (Arizona Form 5000) based on the requirements of A.R.S. § 42 5009. If a vendor accepts the certificate as adopted by the department and it is completed pursuant to statutory requirements, the vendor will be relieved of liability for the tax and the department may require the purchaser to establish the accuracy of the claimed exemption.

Nevertheless, the department may challenge the validity of an exemption certificate if it has reason to believe:

1. The vendor did not act in good faith in accepting the certificate, or
2. The certificate is not complete in its entirety.

See Arizona Department of Revenue Procedure For Use of Exemption Certificates TPP 00 3 for more information regarding the use of the exemption certificate.

RULING:

The gross income derived from leasing or renting a motor vehicle is not subject to transaction privilege tax when two conditions are satisfied:

1. The motor carrier fee is paid by either the lessor, the lessee, or any third party authorized by the lessor or lessee to make payment on their behalf.
2. The motor carrier fee is paid on the specific vehicles that are leased, including vehicles that are registered as an apportioned vehicle.

This deduction is not limited to trucks. It includes all self propelled motor driven vehicles with a declared gross vehicle weight in excess of 12,000 pounds that are required to be registered for operation on the highway and upon which the motor carrier fee has been paid.

A “vehicle combination” means a motor vehicle and the trailers and semitrailers that it tows. A trailer or semitrailer that is leased independently for use as a part of a vehicle combination is not subject to tax if the power unit that tows the trailer is a motor vehicle registered as a vehicle combination and the motor carrier fee is paid accordingly.

In addition to the general exemption for the sale of tangible personal property to a person engaged in the business of leasing such property, sales of motor vehicles are specifically exempt. Sales of motor vehicles includes sales of the trailers and semitrailers that constitute a vehicle combination, repair and replacement parts, and tangible personal property becoming a part of a leased vehicle. These items are not subject to transaction privilege tax or use tax when sold to a person who is engaged in the business of leasing or renting vehicles upon which the motor carrier fee has been paid.

J. Elliott Hibbs, Director

Signed: December 4, 2003

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.