



Douglas A. Ducey
Governor

Carlton Woodruff
Director

ARIZONA DEPARTMENT OF REVENUE ARIZONA TRANSACTION PRIVILEGE TAX RULING TPR 19-2

(This Ruling supersedes and rescinds TPR 93-12)

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:

Sales of seeds and plants.

APPLICABLE LAW:

Arizona Revised Statutes (“A.R.S.”) § 42-5061(A)(33) provides an exemption from the transaction privilege tax (“TPT”) under the retail classification for the gross proceeds of sales or gross income from sales of propagative materials to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state.

A.R.S. § 42-5061(A)(33)(a) defines “propagative material” as including seeds, seedlings, roots, bulbs, liners, transplants, cuttings, soil and plant additives, agricultural minerals, auxiliary soil and plant substances, micronutrients, fertilizers, insecticides, herbicides, fungicides, soil fumigants, desiccants, rodenticides, adjuvants, plant nutrients and plant growth regulators.

A.R.S. § 42-5061(A)(33)(b) allows an exemption for the use of propagative materials in the commercial production of industrial hemp, but not for producing in any part, including seeds, of any plant of the genus cannabis.

A.R.S. § 42-5061(A)(15) provides an exemption from the TPT under the retail classification for the gross proceeds of sales or gross income from the sales of food.

A.R.S. § 42-5101(3) defines “food” as any food item that is intended for human consumption that is intended for home consumption.

A.R.S. § 42-5106(B)(3) includes seeds and plants to grow food for personal consumption in the definition of “food,” and provides that the department shall include these items in the definition of food in any rules promulgated by the Department.

A.R.S. § 42-5001(11) defines "person" or "company" includes an individual, firm, partnership, joint venture, association, corporation, estate, trust, marketplace facilitator or remote seller, this state, any county, city, town, district, other than a school district, or other political subdivision and any other group or combination acting as a unit, and the plural as well as the singular number.

A.R.S. § 42-6017 addresses the city privilege taxes in relation to the retail classification. It provides that “[e]xcept as provided in this section, section 42-5061 supersedes all city or town ordinances or other local laws insofar as the ordinances or local laws now or hereafter relate to the taxation of business activities classified under section 42-5061.” That section also provides certain exceptions where a city may exempt or tax specific items that are not taxable or exempt by the state provisions.

A.R.S. § 42-6017(C)(3)(a) allows cities that, prior to May 1, 2019, had been levying a privilege tax on propagative materials on persons who use those items to commercial produce agricultural, horticultural, viticultural or floricultural crops in Arizona to continue to do so under the following guidelines:

- (i) for a city or town with a population of fifty thousand persons or less, they may continue to levy a city privilege tax until June 30, 2021;
- (ii) for a city or town with a population of more than fifty thousand persons, they may continue to levy a city privilege tax until December 31, 2019.

A.R.S. § 42-6017(D)(4) defines “propagative materials” in the same terms as the state provision.

Additionally, A.R.S. § 42-6017(C)(1) allows cities to levy a city privilege tax on the gross proceeds of sales or gross income derived from the business of selling food at retail notwithstanding A.R.S. § 42-5061(A)(15). A.R.S. § 42-6017(D)(1) provides that “food” has the same meaning as prescribed by rule adopted by the Department.

RULING:

Retail sales of propagative materials to commercial producers of plants, flowers or food crops in this state are deductible from TPT under A.R.S. § 42-5061(A)(33). This does not extend to the retail sale of propagative material to commercial producers of any cannabis plant or any part thereof.

As a result of legislative changes in 2019, the term propagative material was broadened to include a wide variety of items including seeds, seedlings, roots, bulbs, liners, transplants, cuttings, soil, plant additives etc. As a result, seeds and plants are now considered propagative materials. That notwithstanding, those items still qualify as food items if sold to commercial producers or to individuals for personal consumption.

If seeds or plants, which were purchased for commercial production, are taken from inventory and used by the producer for a noncommercial purpose, the seeds or plants are subject to the use tax. For example: seeds are purchased to grow commercial sod. The producer uses a portion of the seed in landscaping the company's own property. The cost of the seed used by the producer is subject to the use tax.

Sales of seeds and plants to individuals to grow food for personal consumption are exempt from tax under A.R.S. § 42-5061(A)(15). For example, the sale of an orange tree to an individual for growing fruit for his own consumption is exempt under this provision.

Sales of seeds and plants to persons for non-commercial use are subject to TPT if the plants or seeds are not used to grow food for personal consumption. For example, the sale of flower seeds and decorative plants to an individual or to a company for home or business landscaping is taxable.

For city privilege tax purposes, the sale of propagative materials remain taxable in cities that had been taxing them prior to May 1, 2019. Only cities with population of less than fifty thousand people may continue to levy a privilege tax on the sale of propagative materials after December 31, 2019. Additionally, no city may levy a privilege tax on the sale of propagative materials after June 30, 2021. However, cities may impose a privilege tax on

food without limitation. The imposition of a tax on food means that the sale of seeds and plants in those cities that tax food are not exempt for city privilege tax purposes.

Grant Nülle, Deputy Director

Signed: December 20, 2019

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 which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the 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.