

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 94-5

(This ruling supersedes and rescinds Arizona Sales Tax Ruling No. 6-25-84)

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 definition of "transient" as used in the transient lodging classification; taxation of lodging facilities.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1310.10 provides that:

A. The transient lodging classification is comprised of the business of operating, for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy. For purposes of this subsection "transient" means any person who either at his own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or on any other basis for less than thirty consecutive days.

B. The transient lodging classification does not include:

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2. A lease or rental of a mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house

trailer furnished by them for such occupancy for thirty or more consecutive days.

The definition of "transient" under subsection A and the exclusion under subsection B.2 are both effective for periods beginning from and after December 31, 1978.

A.R.S. § 42-1301.8 defines "person" to include:

[A]n individual, firm, partnership, joint venture, association, corporation, estate or trust, 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.

DISCUSSION:

Definition of "Transient":

Laws 1993, Chapter 105, Section 2, amended A.R.S. § 42-1310.10 to define the term "transient" as used in the transient lodging classification, effective retroactively to periods beginning from and after December 31, 1978.

Under this definition, a person is considered a "transient" if they obtain lodging space under any of the following circumstances:

On a daily or weekly basis regardless of the total period of time; or,

On any other basis for less than 30 consecutive days.

If a person obtains lodging for 30 or more days but does so in increments of less than 30 days rather than as a block of time, the person is considered a transient for purposes of taxation under the transient lodging classification.

Examples:

A person rents a motel room on a weekly basis for 10 consecutive weeks. The total rental period is greater than 30 consecutive days; however, the method of renting by the week meets the definition of "transient". Gross receipts from renting lodging space on such a basis are subject to tax under the transient lodging classification.

A motion picture company contracts with a hotel to rent a block of 15 rooms for a three month period during which filming will occur in the area. During that three

month period a variety of crew members and actors will occupy the rooms. Any one room may have a different occupant during the three month time period as filming progresses and different actors or crew members are involved in the production of the film. The rental by the motion picture company for the three month period is not subject to tax under the transient lodging classification since the motion picture company contracted with the hotel to rent for a three month period and, therefore, does not meet the definition of a transient.

An individual reserves a room in a rooming house for two weeks. The individual decides to stay another two weeks. The total number of days stay is now at 28 days. Once again, the individual extends the stay by two weeks. Each time period is less than 30 days. Even though the total period of time is over 30 days, after the third extension of two weeks, the individual continues to be a transient for purposes of taxation under the transient lodging classification. If the individual had rented the room for 30 days or more after the first two weeks, gross receipts from the additional time would not be subject to tax. However, the first two week block of time would remain taxable since that time period falls under the definition of transient.

Exception:

An exception to the definition of transient is provided in the exemption for the lease or rental of a mobile home or house trailer at a fixed location or other similar structure including a space, lot or slab if such a facility is occupied or intended or designed for occupancy by transients for 30 or more consecutive days. Any rental of this type of facility for 30 or more consecutive days, regardless of how the rental is arranged, is exempt from tax under the transient lodging classification.

Example:

An individual rents a slab on which to park an RV. Initially, the individual decides to stay for a week. The gross receipts are subject to tax under the transient lodging classification. The individual continues to stay on a weekly basis for a total of 30 consecutive days. Pursuant to the exclusion under A.R.S. § 42-1310.10.B.2, the gross receipts from this rental are not subject to tax under the transient lodging classification since the individual has rented the slab continuously for 30 days. There is no qualification as to the method of renting under this exclusion.

Refund:

Any taxes remitted to the department are subject to refund if the gross receipts from renting

lodging space are subsequently determined not to have been subject to tax. The Arizona transaction privilege tax is assessed on the vendor; however, the vendor may pass the tax through to the person renting the lodging. If the vendor separately identifies the tax and passes it on to the person renting the lodging, the tax and any applicable interest refunded to the vendor must in turn be refunded to the lodger who paid the additional amount designated as tax to the vendor. Any amount which cannot be refunded to the lodger who made the initial payment to the vendor is considered excess tax collected. Excess tax collected, which includes applicable interest, must be returned to the department pursuant to A.R.S. § 42-1302.

Special Transitional Refund Provisions:

The legislation amending the transient lodging classification to provide a definition of "transient" contained a retroactivity provision. As a result, taxes remitted to the department may be refunded to the taxpayer, for periods falling within the applicable four year statute of limitations under A.R.S. § 42-113, if such taxes were on gross receipts from lodging on a basis of 30 days or more, meeting the statutory requirements for exemption or exclusion from tax.

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The taxpayer must provide documentation to substantiate the gross receipts from renting to nontransient guests. Refund requests must be submitted for applicable time periods on Form ST-1X. Refund requests should be submitted to:

Arizona Department of Revenue
Transaction Privilege & Use Tax Audit/Refund Desk
1600 W. Monroe
Phoenix, AZ 85007

Tax Base and Recordkeeping:

Gross receipts from the business of providing lodging to "transients" as that term is defined under the transient lodging classification, are subject to tax. That portion of gross receipts of a lodging facility which rents to persons not meeting the statutory definition of "transient" or to persons otherwise exempt under the provisions of the transient lodging classification are not subject to tax.

However, a lodging facility in the business of providing lodging to transients which also

provides lodging to nontransient guests must indicate on its original invoices and keep its books and records so as to separately reflect receipts from providing lodging to transient and nontransient guests. If invoices and records are not kept so as to show receipts from providing lodging for transient guests separately from receipts from providing lodging for nontransient guests, all gross receipts from being in the business of providing lodging will be subject to tax under the transient lodging classification.

Please also note that appropriate documentation to substantiate income from rentals to exempt persons must be kept for the statutorily required period of time pursuant to A.R.S. § 42-113.

RULING:

The term "transient" as used in the transient lodging classification refers to a person who obtains lodging space on a daily or weekly basis regardless of the total period of time, or on any other basis for less than 30 consecutive days.

If a lodging facility is in the business of providing transient and nontransient lodging, the facility must keep separate records of its taxable and nontaxable receipts. If such records are not kept by the facility, the total receipts are subject to tax under the transient lodging classification unless otherwise exempt.

An exemption is provided under the transient lodging classification for gross receipts from the lease or rental of a mobile home or house trailer at a fixed location or other similar structure including a space, lot or slab for 30 or more consecutive days regardless of the basis under which such facilities are rented.

Harold Scott, Director
Signed May 25, 1994

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 92-1 for more detailed information regarding documents issued by the Department of Revenue.