

ARIZONA DEPARTMENT OF REVENUE ARIZONA

TRANSACTION PRIVILEGE TAX RULING

TPR 90-3

(Note: On 8/20/2022 the statute references were updated to show the current statute numbers. 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.

Effective December 1, 1990

ISSUE:

Application of the Arizona transaction privilege tax on income derived from activities conducted by a city at an airport.

APPLICABLE LAW:

A.R.S. § 28-8411(A)¹ provides that the governing body of a city or town or the board of supervisors of a county may acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports for the use of aircraft within or without the limits of the municipality, and for that purpose may use property suitable therefor which is or may hereafter be owned or controlled by the city, town or county.

A.R.S. § 28-8412² provides that lands acquired, owned, controlled or occupied by

¹ The original document referenced A.R.S. § 2-301.A which was moved to A.R.S. § 28-8411(A).

² The original document referenced A.R.S. § 2-302 which was moved to A.R.S. § 28-8412.

the Department of Transportation, in the operation and maintenance of the Grand Canyon National Park airport, cities, towns or counties for the purposes enumerated in § 28-8411³ are for a public purpose and for a public necessity.

A.R.S. § 42-5069(B)⁴ levies the commercial lease transaction privilege tax on a person who, as a lessor, leases or rents for a consideration under one or more leases or rental agreements the use or occupancy of real property that is used by the lessee for commercial purposes.

A.R.S. § 42-5074(A)⁵ levies the restaurant transaction privilege tax on 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. § 42-5061(A)⁶ levies the retail transaction privilege tax on the business of selling tangible personal property at retail.

A.R.S. § 42-5070(A)⁷ levies the transient lodging transaction privilege tax on the business of operating, for occupancy by transients, a hotel or motel, etc.

A.R.S. § 42-5071(A)⁸ levies the personal property rental transaction privilege tax on the business of leasing or renting tangible personal property for a consideration.

DISCUSSION:

By reading A.R.S. §§ 28-8411⁹ and 28-8412¹⁰ together, it appears that the public purpose or governmental activity of a city at an airport is limited to operation "for use of aircraft". This would lead to a conclusion that activities which are an integral part of or are very closely related to "aircraft transportation" at the airport are governmental when carried on by a city. Other activities which are incidental to aircraft transportation and which are in competition with private industry would be

³ The original document referenced A.R.S. § 2-301 which was moved to A.R.S. § 28-8411.

⁴ The original document referenced A.R.S. § 42-1310.09(B) which was moved to A.R.S. § 42-5069(B).

⁵ The original document referenced A.R.S. § 42-1310.14(A) which was moved to A.R.S. § 42-5074(A).

⁶ The original document referenced A.R.S. § 42-1310.01(A) which was moved to A.R.S. § 42-5061(A).

⁷ The original document referenced A.R.S. § 42-1310.10(A) which was moved to A.R.S. § 42-5070(A).

⁸ The original document referenced A.R.S. § 42-1310.11(A) which was moved to A.R.S. § 42-5071(A).

⁹ See footnote number 3.

¹⁰ See footnote number 2.

proprietary when carried on by a city.

CONCLUSION:

The integral aircraft activities, which would be exempt from state transaction privilege tax as having a governmental purpose, would include:

1. The commercial leasing by a city, as the lessor, of real property related to the use of the airport by the airline companies, fixed base operators, air charter companies, airlines carrying passengers and or cargo for hire, and aeronautical users. Aeronautical users would include, but are not limited to, aircraft repair shops, aircraft interior shops and aircraft parts suppliers. Subleases of that real property by the tenant, as lessor, to sublessee in proprietary activities, are taxable under commercial leasing classification.
2. The commercial leasing by a city, as the lessor, of real property related to the Civil Aeronautics Board, Federal Aviation Authority, and U. S. Department of Customs.
3. The provision of certain services required by the airlines, such as accounting, financial, ticketing, etc., and the city's commercial leasing, as lessor, of real property to the airlines therefor. Subleases of that real property by the tenant, as lessor, to a sublessee are taxable under commercial leasing classification.
4. The commercial leasing by a city, as lessor, of real property for in-flight meal preparation kitchens.
5. The commercial leasing by a city, as lessor, of real property for hangars and tie-downs.
6. Sales by the city of aeronautical charts.

Activities engaged in by a city, the income from which would be taxable as being proprietary, include, but are not limited to:

1. The rental of tangible personal property not directly related to

aircraft.

2. Commercial leases to rental car entities. The rental of automobiles and commercial leases to rental car entities.
3. The rental of automobile parking spaces and commercial leases to concessionaires of parking lots and spaces.
4. Food and beverage sales, food and beverage concessions sales and commercial leases to such concessionaires.
5. Retail/general merchandise sales, retail/general merchandise concessions sales and commercial leases to such concessionaires.
6. The ground transportation of persons and commercial leases to ground transportation operations.
7. Commercial leases to flight insurance concessionaires.
8. Transient lodging operations.
9. The subleasing of commercial space by an exempt aeronautical user, as the lessor, to a sublessee engaged in any proprietary activity.

Paul Waddell, Director

Signed October 15, 1990