

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-13

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:

Taxation of aircraft flights; amusement classification and transporting classification.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-1310.13.A levies the Arizona transaction privilege tax under the amusement classification as follows:

The amusement classification is comprised of the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions concerts, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement, entertainment or instruction, other than activities or projects of bona fide religious or educational institutions.

A.R.S. § 42-1310.02 provides that the transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in Arizona.

49 U.S.C.S. § 1301.29 defines "navigable airspace" as follows:

"Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations and shall include airspace needed to insure safety in take-off and landing of air craft.

49 U.S.C.S. § 1513 provides for federal preemption in the taxing of persons travelling in air

commerce.

DISCUSSION:

The federal preemption set forth in 49 U.S.C.S. § 1513 prohibits taxation, directly or indirectly, on persons traveling in air commerce or the carriage of persons traveling in air commerce or on the sale of air transportation.

Pursuant to 49 U.S.C.S. § 1301.4 and .5 "air commerce " and "aircraft" are defined as follows:

"Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

"Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

In the matter of State of Arizona v. Cochise Airlines, 128 Ariz. 432, 626 P.2d 596 (1980), the court held "... that when Congress prohibited a tax upon the carriage of persons in air commerce, it preempted the Arizona transaction privilege tax insofar as it relates to the transportation of persons."

A. Amusement Classification

Aircraft flight for amusement purposes necessarily carries people and travels in air commerce with access into federal airways. "Air commerce" includes in its meaning "... **any operation or navigation** of aircraft **within the limits** of any Federal airway or **any operation or navigation** of aircraft which directly affects, or which **may** endanger safety in, interstate, overseas, or foreign air commerce." (Emphasis added.) The customer's reasons for flight do not change the fact that they are being transported in the air pursuant to United States v. Twentieth Century-Fox Film Corp., 235 F.2d 719 (Cal. Ct. App. 1956); 56-2 USTC ¶ 9746 (*cert. denied*, 352 U.S. 917, 77 S. Ct. 216).

B. Transporting Classification

Cochise Airlines clarified that the prohibition pursuant to 49 U.S.C.S. § 1513 preempts the application of state tax upon the carriage of persons in air commerce or the sale of air transportation only as it relates to the transportation of **persons**. The decision specifically states that, "there is ... no prohibition against the Arizona transaction privilege tax on transporting freight." A.R.S. § 42-1310.02 imposes the Arizona transaction privilege tax on the

transporting of passengers and personalty *within* Arizona.

RULING:

Aircraft flights for amusement are within the meaning of "air commerce." The Arizona transaction privilege tax does not apply to gross proceeds from these flights. Examples of aircraft flights for amusement include untethered balloon rides (see Transaction Privilege Tax Ruling TPR 92-1 regarding balloon activities), flights that begin and end at the same point, and aircraft flights associated with parachuting/skydiving.

The charge for scheduled airline service, or for a charter of helicopters and airplanes with a pilot on a non-scheduled basis, for the purpose of transporting *passengers* is not subject to the Arizona transaction privilege tax under the transporting classification because of the federal preemption. However, the transporting of *personal property* (cargo/freight) by air from one point to another point in Arizona is taxable pursuant to A.R.S. § 42-1310.02. Interstate transporting of personal property (cargo/freight) is not taxable since A.R.S. § 42-1310.02 specifically applies only to transporting within Arizona.

Harold Scott, Acting Director
Signed March 15, 1993

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.