

ARIZONA DEPARTMENT OF REVENUE

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 93-30

(Note: On 9/9/2020, the statute cites were updated to show their current 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.

ISSUE:

Taxation of income received from catering services.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 42-5074 ¹ levies the Arizona transaction privilege tax under the restaurant classification as follows:

The restaurant classification is comprised of 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. § 42-5102(A)² imposes the Arizona transaction privilege tax on the gross proceeds of sales or gross income from the sale of food for

¹ This ruling originally cited A.R.S. § 42-1310.14 which was renumbered as A.R.S. § 42-5074.

² This ruling originally cited A.R.S. § 42-1382.A which was renumbered as A.R.S. § 42-5102(A).

consumption on the premises.

A.R.S. § 42-5101(4)³ states in relevant part:

"Food for consumption on the premises" includes ... food sold by caterers.

Arizona Administrative Code (A.A.C.) R15-5-1860(4) defines caterer to mean a person engaged in the business of serving meals, food and drinks on the premises used by his customer, but does not include employees hired by the hour or day.

DISCUSSION:

A.R.S. §§ 42-5074⁴, 42-5101(4)⁵ and 42-5102(A)⁶ impose the transaction privilege tax on gross income derived from catering services where food or drink is sold for consumption.

Gross income consists of all charges a caterer makes for serving meals, food, and drinks on the customer's premises including charges for food and use of dishes, silverware, glasses, chairs, tables, and other property used by the caterer in connection with serving meals. Gross income also includes the labor of serving meals, whether performed by the caterer or the caterer's employees or subcontractors.

An individual bartender, waitress, cook, or other type of food service person that is only hired by the hour or day is not considered to be a caterer. Such individuals are performing a service and thus are not subject to the transaction privilege tax.

RULING:

The income received from all catering services is subject to the transaction privilege tax under the restaurant classification.

³ This ruling originally cited A.R.S. § 42-1381.4 which was renumbered as A.R.S. § 42-5101(4).

⁴ See footnote number 1.

⁵ See footnote number 3.

⁶ See footnote number 2.

Example: Ms. Brown decides to throw a party and hires Mr. White to provide and serve food at the affair. Mr. White is a caterer and his gross receipts are taxable under the restaurant classification.

The income received by an individual hired to only perform a service by the hour or day is exempt from transaction privilege tax as a service.

Example: Mr. Jones decides to throw a party. He prepares food for the party and hires Mr. Smith to serve that food. Mr. Smith is not a caterer but is merely providing personal services to Mr. Jones and is therefore not taxable under the restaurant classification.

Harold Scott, Director

Signed May 10, 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.