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ARIZONA TRANSACTION PRIVILEGE TAX RULING TPR 18- 1

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BACKGROUND:

Laws 2016, H.B. 2326, effective August 6, 2016, amended the taxation of livestock and poultry feed, salts, vitamins, and other additives for livestock or poultry. As a result of the various H.B. 2326 amendments to A.R.S. §§, 3-561, 3-563(A), 42-5009(N), 42-5022, 42-5061(A)(42) and 42-5159(A)(8), Arizona Transaction Privilege Tax Procedure TPP 94-5 was no longer current. Therefore, the Department rescinded TPP 94-5. The purpose of this ruling is to provide subsequent guidance.

ISSUES:

1. The taxation of livestock and poultry feed, salts, vitamins, and other additives for livestock or poultry consumption.
2. The tax treatment of food producers.

RULING:

Sales by Retailers as of August 6, 2016

Sales of livestock and poultry feed, salts, vitamins, and other additives for livestock or poultry consumption are exempt sales for both noncommercial and commercial purposes. Arizona retailers, such as feed stores, are required to obtain a properly completed Department exemption certificate for qualifying sales.

Non-qualifying sales of livestock and poultry feed (e.g., such as hay used for construction, decorative, animal bedding, or other purposes) or animal food other than livestock and poultry feed or other animal salts, vitamins, and other additives remain subject to tax under the retail classification (e.g., pet food sold for dogs and cats, vitamins sold for parrots or song birds).

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Agricultural producers who are owners, proprietors or tenants of agricultural lands, orchards, farms or gardens where agricultural products are grown, raised or prepared for market and who are marketing their own agricultural products are excluded from transaction privilege tax under the retail classification. Owners, proprietors or tenants of agricultural lands or farms who sell livestock or poultry feed that is grown or raised on their lands are not required to obtain an exemption certificate when they sell the livestock or poultry feed to any of the following:

1. Persons who feed their own livestock or poultry.
2. Persons who are engaged in the business of producing livestock or poultry commercially.
3. Persons who are engaged in the business of feeding livestock or poultry commercially or who board livestock non-commercially.

City Tax

Sales of feed for livestock, poultry or ratites, including salts, vitamins, and other additives to such feed are exempt only for commercial purposes in cities that follow the general Model City Tax Code provisions and have not adopted Model Option #10.

Sales of feed for livestock, poultry or ratites, including salts, vitamins, and other additives to such feed are taxable in those cities that have adopted Model Option #10.

All sales of animal feed by a person meeting the definition of "food producer" directly to any person for their own animals or animals they are boarding are always exempt from city/town TPT. Any provision of a municipal ordinance that seeks to impose a tax or fee on a producer, or a purchaser of a food product from a producer, is void.

Example:

A beekeeper who sells honey from his bees at a farmers market is not subject to licensing or tax. If the beekeeper also sells candles made from the bees wax, the beekeeper would be required to be licensed and pay tax on the retail sale of the candles, but not on sales of honey. If in addition to honey they sell sunglasses, they would be required to be licensed and pay tax on the retail sale of sunglasses, but not on sales of honey.

DISCUSSION:

The Arizona transaction privilege tax is a tax imposed on the privilege of conducting business in the state of Arizona. The tax is levied on the *vendor*, not the purchaser. The vendor may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax. The transaction privilege tax is imposed under various business classifications, including the retail sale of tangible personal property. County excise taxes "piggyback" the imposition of the state's transaction privilege tax. All sales subject to the transaction privilege tax are also subject to applicable county excise taxes.

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Retail Classification

The transaction privilege tax is imposed on the business of selling tangible personal property at retail in accordance with Arizona Revised Statutes (A.R.S.) § 42-5061. "Selling at retail" is defined by A.R.S. § 42-5061(V)(4) to mean a sale for any purpose other than for resale in the regular course of business. The tax base is the gross proceeds of sales or gross income derived from the business. All retail sales of tangible personal property are subject to tax unless specifically excluded or deducted by statute.

Laws 2016, H.B. 2326, effective August 6, 2016, amended A.R.S. § 42-5061(A)(42) to provide a deduction from the tax base of the retail classification for sales of:

(a) Livestock and poultry to persons engaging in the business of farming, ranching or producing livestock or poultry.

(b) Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons for use or consumption by their own livestock or poultry, for use or consumption in the businesses of farming, ranching and producing or feeding livestock, poultry, or livestock or poultry products or for use or consumption in noncommercial boarding of livestock. For the purposes of this paragraph, "poultry" includes ratites.

A parallel use tax exemption is provided by amended A.R.S. § 42-5159(A)(8).

Sales by Growers of Food Products as of August 6, 2016

Prior to the passage of H.B. 2326, in *Monthan v. City of Tucson*, 80 Ariz. 179, 294 P.2d 668 (1956), the court clarified that "food products" were limited to edible food products. Former A.R.S. § 49-1301 (now A.R.S. § 3-561) defined "food products" to include every product of the soil in its natural or manufactured state, and all swine, fowls, eggs and milk, and all products arising therefrom. Despite this language, construction of the section as a whole compelled the court's conclusion that only edible products of the soil were to be considered "food products". Therefore, alfalfa, hay or other similar agricultural products were previously not exempted from tax under this provision. Previously, A.R.S. § 3-563(A) provided that no tax, license, or fee be imposed on a grower for a sale of a *food product* produced on their land.

H.B. 2326, however, amends both A.R.S. § 3-561 and A.R.S. § 3-563(A). A.R.S. § 3-561 as amended provides that "food product" includes:

- (a) Every product of the soil in its natural or manufactured state.
- (b) Beef and beef products.
- (c) Swine and pork products.

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(d) Fowls and poultry products.

(e) Eggs and egg products.

(f) Milk and milk products.

(g) Lamb and sheep products.

(h) Animal feed that is grown or raised by the producer and sold as feed for livestock, poultry or ratites purchased or raised for slaughter, including livestock purchased or raised for production or use, such as milk cows, breeding bulls, laying hens and riding or work horses.

A.R.S. § 3-563(A) as amended provides that a tax, license or fee may not be imposed or levied on or demanded or collected from a producer for a sale of a food product or from a purchaser of a food product from a producer. Furthermore, any municipal ordinance that seeks to impose or subject a producer, or a purchaser of a food product from a producer, to a tax, license or fee is void.

A.R.S. §§ 42-5009(N) and 42-5022, as amended by H.B. 2326, provide that owners, proprietors or tenants of agricultural lands or farms who sell livestock or poultry feed that is grown or raised on their lands are not required to obtain an exemption certificate when they sell the livestock or poultry feed to any of the following:

1. Persons who feed their own livestock or poultry.
2. Persons who are engaged in the business of producing livestock or poultry commercially.
3. Persons who are engaged in the business of feeding livestock or poultry commercially or who board livestock non-commercially.

A.R.S. § 42-5061(H)(1) is amended to specifically exclude from the tax base of the retail classification “[a]gricultural producers who are owners, proprietors or tenants of agricultural lands, orchards, farms or gardens where agricultural products are grown, raised or prepared for market and who are marketing their own agricultural products.”

City Tax

The imposition of *city* privilege and use taxes is separate and distinct from the imposition of the state's transaction privilege tax and use taxes. The League of Arizona Cities and Towns created the *Model City Tax Code* (MCTC) for the purposes of the imposition and administration of city taxes available at <http://modelcitytaxcode.az.gov/>.

MCTC Section 460 *Retail sales: measure of tax; burden of proof; exclusions*, imposes the city privilege tax on the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.

MCTC Section 465(r) exempts from retail sales:

sales of the following **to persons engaging or continuing in the business of farming, ranching, or feeding livestock, poultry or ratites (Emphasis added):**

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(1) seed, fertilizer, fungicides, seed treating chemicals, and other similar chemicals.

(2) feed for livestock, poultry or ratites, including salt, vitamins, and other additives to such feed.

(3) livestock, poultry or ratites purchased or raised for slaughter, but not including livestock purchased or raised for production or use, such as milk cows, breeding bulls, laying hens, riding or work horses.

(4) (Reserved)

++(Local Option #W:

(4) neat animals, horses, asses, sheep, swine, or goats for the purpose of becoming breeding or production stock, including sales of breedings or ownership shares in such animals.)++

++ Model Option #10:

Section 465(r) (Reserved)

Cities adopting this option do NOT exempt livestock, feed and agricultural chemicals purchased by ranchers, farmers, etc.

Grant Nülle, Deputy Director

Signed: January 4, 2018

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