

ARIZONA REVISED STATUTES

Title 42. Taxation.

Chapter 5 TRANSACTION PRIVILEGE AND AFFILIATED EXCISE TAXES

Article 2 Transaction Privilege Classifications

42-5001. Definitions.

In this article and article 2 of this chapter, unless the context otherwise requires:

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13. "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration, and includes:

(a) Any transaction by which the possession of property is transferred but the seller retains the title as security for the payment of the price.

(b) Fabricating tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work.

(c) Furnishing, preparing or serving for a consideration any tangible personal property consumed on the premises of the person furnishing, preparing or serving the tangible personal property.

42-5069. Commercial lease classification; definitions [Formerly 42-1310.09]

A. The commercial lease classification is comprised of the business of leasing for a consideration the use or occupancy of real property.

B. 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 is deemed to be engaged in business and subject to the tax imposed by article 1 of this chapter, but this subsection does not include leases or rentals of real property used for residential or agricultural purposes.

C. The commercial lease classification does not include:

1. Any business activities which are classified under the transient lodging classification.

2. Activities engaged in by the Arizona exposition and state fair board or county fair commissions in connection with events sponsored by those entities.

3. Leasing real property to a lessee who subleases the property if the lessee is engaged in business classified under the commercial lease classification or the transient lodging classification.

4. Leasing real property pursuant to a written lease agreement entered into before December 1, 1967. This exclusion does not apply to:

(a) The businesses of hotels, guest houses, dude ranches and resorts, rooming houses, apartment houses, office buildings, automobile storage garages, parking lots or tourist camps, or to the extension or renewal of any such written lease agreement.

(b) Any such written lease agreement unless a rental occupancy tax is paid pursuant to article 9 of this chapter.

5. Leasing real property by a corporation to an affiliated corporation. For purposes of this paragraph, "affiliated corporation" means a corporation which owns or controls at least eighty per cent of the lessor, is at least eighty per cent owned or controlled by the lessor or is at least eighty per cent owned or controlled by a corporation which also owns or controls at least eighty per cent of the lessor. Ownership and control are determined by reference to the voting shares of a corporation.

6. Leasing real property for sublease if the tenant in possession of the property is subject to the rental occupancy tax pursuant to article 9 of this chapter.

7. Leasing real property for boarding horses.

8. Leasing or renting real property or the right to use real property at exhibition events in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with major league baseball teams or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

9. Leasing or renting real property or the right to use real property for use as a rodeo featuring primarily farm and ranch animals in this state sponsored, operated or conducted by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

10. Leasing or renting dwelling units, lodging facilities or trailer or mobile home spaces if the units, facilities or spaces are intended to serve as the principal or permanent place of residence for the lessee or renter or if the unit, facility or space is leased or rented to a single tenant thirty or more consecutive days.

11. Leasing or renting real property and improvements for use primarily for religious worship by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

12. Leasing or renting real property used for agricultural purposes under either of the following circumstances:

(a) The lease or rental is between family members, trusts, estates, corporations, partnerships, joint venturers or similar entities, or any combination thereof, if the individuals or at least eighty per cent of the beneficiaries, shareholders, partners or joint venturers share a family relationship as parents or ancestors of parents, children or descendants of children, siblings, cousins of the first degree, aunts, uncles, nieces or nephews of the first degree, spouses of any of the listed relatives and listed relatives by the half-blood or by adoption.

(b) The lessor leases or rents real property used for agricultural purposes under no more than three leases or rental agreements.

13. Leasing, renting or granting the right to use real property to vendors or exhibitors by a trade or industry association which is a qualifying organization

pursuant to section 513(d)(3)(C) of the internal revenue code for a period not to exceed twenty-one days in connection with an event that meets all of the following conditions:

(a) Where the majority of such vending or exhibition activities relate to the nature of trade or business sponsoring the event.

(b) The event is held in conjunction with a formal business meeting of the trade or industry association.

(c) The event is organized by the persons engaged in the particular trade or industry.

14. Leasing, renting or granting the right to use real property for a period not to exceed twenty-one days by a coliseum, civic center, civic plaza, convention center, auditorium or arena owned by this state or any of its political subdivisions.

15. Leasing or subleasing real property used by a nursing care institution as defined in section 36-401 that is licensed pursuant to title 36, chapter 4.

16. Leasing or renting a transportation facility as provided in section 28-7705, subsections A and B.

17. Granting or providing rights to real property that constitute a profit à prendre for the severance of minerals, including all rights to use the surface or subsurface of the property as is necessary or convenient to the right to sever the minerals. This paragraph does not exclude from the commercial lease classification leasehold rights to the real property that are granted in addition to and not included within the right of profit à prendre, but the tax base for the grant of such a leasehold right, if the gross income derived from the grant is not separately stated from the gross income derived from the grant of the profit à prendre, shall not exceed the fair market value of the leasehold rights computed after excluding the value of all rights under the profit à prendre. As used in this paragraph, "profit à prendre" means a right to use the land of another to mine minerals, and carries with it the right of entry and the right to remove and take the minerals from the land and also includes the right to use the surface of the land as is necessary and convenient for exercise of the profit.

D. The tax base for the commercial lease classification is the gross proceeds of sales or gross income derived from the business, but reimbursements to the lessor for utility service shall be deducted from the tax base.

E. Notwithstanding section 42-1104, subsection B, paragraph 1, subdivision (b) and paragraph 2, the failure to file tax returns for the commercial lease classification that report gross income derived from any agreement that constitutes, in whole or in part, a grant of a right of profit à prendre for the severance of minerals does not constitute an exception to the general rule for the statute of limitations.

F. For purposes of this section:

1. "Leasing" includes renting.

2. "Real property" includes any improvements, rights or interest in such property.

ARIZONA ADMINISTRATIVE CODE

Title 15. Revenue

CHAPTER 5. DEPARTMENT OF REVENUE TRANSACTION PRIVILEGE AND USE TAX SECTION

(Authority: A.R.S. § 42-1004)

ARTICLE 16. COMMERCIAL LEASE CLASSIFICATION

R15-5-112. Sales by Auctioneers

A. Gross receipts from the sales of tangible personal property by an auctioneer are subject to tax under the retail classification.

B. An auctioneer shall obtain a transaction privilege tax license prior to conducting an auction.

R15-5-1601. Definitions [Formerly R15-5-1603]

The following definitions apply for purposes of the rules in this Article, unless the context requires otherwise or unless otherwise defined.

1. "Agricultural property" means land or structures which are used for the purposes of growing crops or raising animals including agronomy, horticulture, viticulture, or animal husbandry.

2. "Economic unit of agricultural property" means agricultural property which is rented to the same lessee under one lease or rental agreement but may include more than one parcel or location which is functionally integrated.

3. "Real property used for commercial purposes" means land or structures, including parking lots but not including agricultural property or land or structures used for residential purposes.

4. "Rental" means renting or leasing

5. "Unit" means a single real property location rented or leased to a single tenant under one lease or rental agreement.

R15-5-1604. Gross Income

A. Gross income under the commercial lease classification shall include all amounts paid to or on behalf of the lessor including but not limited to the following items

1. Rent;

2. Property tax paid by the lessee either as reimbursement to the lessor or paid directly to the county assessor on the lessor's behalf;

3. Insurance paid by the lessee either as reimbursement to the lessor or directly on the lessor's behalf;

4. Common area maintenance charges paid by the lessee;

5. Payments by the lessee for the promotion of the facility or of the lessee;

6. Flat fees paid by the lessee for telephone and reception services, clerical services, library services, reproduction services or facsimile services when such services are contracted for as part of the lease or are obligatory under the lease

7. Utility connect/disconnect charges;

8. Improvements to the leased property made on behalf of the lessor; or

9. Reimbursement for utility service in excess of the actual amount charged by the utility company.

B. Refundable deposits shall not be subject to tax at the time of receipt if such deposits are separate from gross receipts from commercial leasing and are maintained on the books and records of the lessor as a liability and not as income.

1. Any portion of a refundable deposit which is retained by the lessor as a forfeited deposit shall be included in gross receipts subject to tax.

2. Any portion of a refundable deposit which is not claimed by the tenant at the time the tenant departs shall be presumed to be abandoned property if not claimed within five years from the date of departure pursuant to A.R.S. Title 44, Chapter 3 and shall be reported and delivered as unclaimed property to the Department after the five- year period of time has elapsed.

3. If amounts reported as income are claimed as refundable deposits, the burden of proof shall be on the taxpayer to show that the income reported is not gross receipts subject to tax.

C. Nonrefundable charges, such as cleaning charges, shall be included in gross income at the time of receipt.

R15-5-1608. Commercial property -- storage facilities

Income from the rental of storage facilities is taxable, provided the lessee retains the right of direct access to the stored goods. Conversely, the storage of property by a warehouse, when the warehouse proprietor maintains full control over the specific location of the stored goods within the building, is not taxable. Such storage is deemed to be a service rather than rental of real property.

R15-5-2001. Definitions

The following definitions apply for the purposes of the rules in this Chapter, unless the context requires otherwise or unless otherwise defined. An individual rule may contain definitions which are specific to the context of that rule.

1. "Casual sale" means an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold.