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ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 06-__

DRAFT (07/10/06): FOR REVIEW AND COMMENT PURPOSES ONLY

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ISSUE:

Taxation of charges for goods, services or activities customarily provided in the course of the business of operating a transient lodging facility.

APPLICABLE STATUTES AND RULES:

Arizona Revised Statutes (A.R.S.) § 42-5008(A) levies a transaction privilege tax measured by the amount or volume of business transacted by persons on account of their business activities.

A.R.S. § 42-5001(1) defines “business” as “all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales.”

A.R.S. § 42-5001(4) defines “gross income” as “the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses.”

A.R.S. § 42-5023 states that “[f]or the purpose of proper administration of this article and to prevent evasion of the tax imposed by this article it is presumed that all gross proceeds of sales and gross income derived by a person from business activity classified under a taxable business classification comprise the tax base for the business until the contrary is established.”

A.R.S. § 42-5061 imposes the transaction privilege tax under the retail classification. The retail classification is comprised of the business of selling tangible personal property at retail.

A.R.S. § 42-5061(A)(6) states that the tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from business activity that is properly included in any other business classification.

A.R.S. § 42-5062 imposes the transaction privilege tax under the transporting classification. 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 in this state.

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35 A.R.S. § 42-5064 imposes the transaction privilege tax under the telecommunications classification.
36 The telecommunications classification is comprised of the business of providing intrastate
37 telecommunications services.

38

39 A.R.S. § 42-5069 imposes the transaction privilege tax under the commercial lease classification. The
40 commercial lease classification is comprised of the business of leasing for a consideration the use or
41 occupancy of real property.

42

43 A.R.S. § 42-5070 imposes the transaction privilege tax under the transient lodging classification. The
44 transient lodging classification is comprised of the business of operating, for occupancy by transients, a
45 hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or
46 bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club,
47 mobile home or house trailer at a fixed location or other similar structure, and also including a space,
48 lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or
49 house trailer furnished by them for such occupancy.

50

51 A.R.S. § 42-5071 imposes the transaction privilege tax under the personal property rental classification.
52 The personal property rental classification is comprised of the business of leasing or renting tangible
53 personal property for a consideration.

54

55 A.R.S. § 42-5073 imposes the transaction privilege tax under the amusement classification. A.R.S. §
56 42-5073 states the following:

57

58 The amusement classification is comprised of the business of operating or conducting
59 theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals,
60 circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool
61 parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating
62 rinks, tennis courts, except as provided in subsection B of this section, video games,
63 pinball machines, sports events or any other business charging admission or user fees for
64 exhibition, amusement or entertainment, including the operation or sponsorship of events
65 by a tourism and sports authority under title 5, chapter 8. For purposes of this section,
66 admission or user fees include, but are not limited to, any revenues derived from any
67 form of contractual agreement for rights to or use of premium or special seating facilities
68 or arrangements.

69

70 A.R.S. § 42-5074 imposes the transaction privilege tax under the restaurant classification. The
71 restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms,
72 lunchrooms, lunch stands, soda fountains, catering services or similar establishments where articles of
73 food or drink are sold for consumption on or off the premises.

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75 A.R.S. § 42-5155 levies and imposes an excise tax on the storage, use or consumption in this state of
76 tangible personal property purchased from a retailer or utility business as a percentage of the sales
77 price.

78
79 A.R.S. § 42-5252 imposes a telecommunications excise tax on every provider of wire and wireless
80 service.

81
82 A.R.S. § 42-5251(4) defines a “provider” as “public service corporation offering telephone or
83 telecommunications services pursuant to title 40, which provides exchange access services.”

84
85 Arizona Administrative Code (A.A.C.) R15-5-1002 states the following:

86
87 A. If a transient lodging facility is engaged in the business of providing lodging and
88 engages in the business of providing meals, the gross receipts from lodging shall be
89 separately stated and reported from the gross receipts from restaurant activities.

90
91 B. Gross receipts from the providing of meals or room service shall be subject to tax
92 under the restaurant classification.

93
94 C. Gross receipts from the sale of tangible personal property by transient lodging
95 facilities such as from magazine stands, gift shops, or in-room food or beverage bars shall
96 be subject to tax under the retail classification.

97
98 A.A.C. R15-5-1708 states the following:

99
100 A. A restaurant's gross receipts from gratuities that are separately stated on the check or
101 bill are not included in the restaurant's tax base if:

102
103 1. The exact amount charged on a check for gratuities is segregated on the seller's
104 records for the account of the employees actually providing the services; and

105
106 2. The amounts so segregated are distributed directly to the employees providing
107 the services for which the charges were made.

108
109 B. If a restaurant cannot specifically segregate the charges for gratuities or if any portion
110 of the amounts charged for gratuities is not distributed to the employees involved, the
111 total gross receipts from the gratuities are included in the tax base under the restaurant
112 classification.

113
114 A.A.C. R15-5-2004 states that a person who engages in more than one type of business under each
115 license shall maintain books and records so that the gross proceeds of sales or gross income of each
116 taxable business classification is shown separately. Failure to maintain appropriate books and records

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117 shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales or gross income
118 applicable to a classification under which the taxpayer is doing business.

119

120 APPLICABLE CASE LAW:

121

122 The Arizona Supreme Court has stated that “[i]f activities are incidental in the sense that they are
123 inseparable from the principal business and interwoven in the operation thereof to the extent that they
124 are in effect an essential part of the major business, they cannot be taxed as a separate business.” Trico
125 Electric Coop., Inc. v. State Tax Comm’n, 79 Ariz. 293, 297, 288 P.2d 782, 784 (1955).

126

127 In addition, the Arizona Supreme Court has held that,

128

129 [w]here it can be readily ascertained without substantial difficulty which portion of the
130 business is for non-taxable professional services . . . , the amounts in relation to the
131 company’s total taxable Arizona business are not inconsequential, and those services
132 cannot be said to be incidental to the . . . business, the professional services are not
133 merged for tax purposes into the taxable . . . business and are not subject to taxation.

134

135 State Tax Comm’n v. Holmes & Narver, Inc., 113 Ariz. 165, 169, 548 P.2d 1162, 1166 (1976).

136

137 In Walden Books Co. v. Ariz. Dep’t of Revenue, 198 Ariz. 584, 588, 12 P.3d 809, 813 (App. 2000), the
138 Arizona Court of Appeals acknowledged the soundness of the Arizona Supreme Court’s holding in
139 Holmes & Narver, but made clear that the test outlined by the Holmes & Narver Court is inapplicable in
140 determining the taxability of goods, services and activities that are subject to a specific exemption or
141 exclusion.

142

143 The Arizona Court of Appeals stated that the “practicality, efficiency and convenience of administrative
144 enforcement is taken into consideration by courts when interpreting tax statutes”. Valencia Energy Co.
145 v. Ariz. Dep’t of Revenue, 189 Ariz. 79, 82, 938 P.2d 474, 477 (App. 1996) (*vacated in part*, 191 Ariz.
146 565, 959 P.2d 1256 (1998)).

147

148 The Valencia Court further held that a taxpayer that supplied coal to an electric power plant could not
149 reduce the amount of taxable gross proceeds by an amount attributable to its transportation and
150 handling services, due to its failure to keep separate sales records; that a hypothetical separate retail
151 price for coal could be constructed from taxpayer's purchase records did not satisfy the statutory
152 bookkeeping requirement. Valencia, 189 Ariz. at 82-83, 938 P.2d at 477-478 .

153

154 DISCUSSION:

155

156 Unlike the sales tax imposed by most states, Arizona imposes a transaction privilege tax on the
157 privilege of conducting business in the State of Arizona. The tax is levied on the business, rather than
158 the consumer. The business may pass the burden of the tax on to the consumer, but the business is
159 ultimately liable to Arizona for the tax.

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160

161 The Arizona transaction privilege tax is imposed under numerous business classifications, including the
162 transient lodging, retail, transporting, telecommunications, commercial lease, personal property rental,
163 amusement and restaurant classifications. In addition, county excise taxes “piggyback” the imposition
164 of the state’s transaction privilege tax. Sales that are subject to Arizona’s transaction privilege tax are
165 also subject to applicable county excise taxes.

166

167 A.R.S. § 42-5070 imposes the transaction privilege tax under the transient lodging classification. The
168 transient lodging classification is comprised of the business of operating, for occupancy by transients, a
169 hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or
170 bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club,
171 mobile home or house trailer at a fixed location or other similar structure, and also including a space,
172 lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or
173 house trailer furnished by them for such occupancy. A.R.S. § 42-5070 focuses on providing facilities
174 for occupancy by transients.

175

176 A.R.S. § 42-5070(F) defines a “transient” as “any person who either at the person's own expense or at
177 the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or
178 on any other basis for less than thirty consecutive days”.

179

180 A.R.S. § 42-5070(C) states that the tax base for the transient lodging classification is the gross proceeds
181 of sales or gross income derived from the business. A.R.S. § 42-5001(1), in turn, defines “business” as
182 “all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of
183 gain, benefit or advantage, either directly or indirectly, but not casual activities or sales.” A.R.S. § 42-
184 5023 states that it is presumed that all gross proceeds of sales and gross income derived by a person
185 from business activity classified under a taxable business classification comprise the tax base for the
186 business until the contrary is established. Therefore, the gross proceeds of sales or gross income
187 derived from all activities or acts engaged in by a transient lodging facility with the object of gain,
188 benefit or advantage, either directly or indirectly, may be subject to transaction privilege tax under the
189 transient lodging classification.

190

191 In addition to the rental of rooms, transient lodging facilities routinely provide a variety of goods,
192 services and activities that may be subject to transaction privilege tax under one or more of the various
193 business classifications. Examples of such goods, services and activities include laundry and dry
194 cleaning services, pay-per-view movies, golf courses, golf lessons, spa services, gift shops, restaurants
195 and room service. Given the number of goods, services and activities that may be provided by a
196 transient lodging facility, there has been some confusion regarding whether such goods, services and
197 activities are subject to tax under the transient lodging classification or whether charges for the same
198 constitute a separate line of business subject to tax, or exempt from tax, under one or more of the
199 various business classifications.

200

201 Case law has shown that a taxpayer may provide goods, services or activities that constitute separate
202 lines of business. The case law was decided for past periods and determinations were based on facts

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203 that had already taken place. Some of the criteria considered in the case law could not be determined
204 until after the event had occurred. Where there are a myriad of services and activities occurring on a
205 daily basis, this historical perspective is not conducive to providing clear and consistent guidance
206 regarding the taxation of future transactions. A clear and consistent interpretation of the tax statutes
207 allows a transient lodging business to correctly determine the amount of their tax liability at the time of
208 the transaction and allows for administration of the tax more efficiently.

209
210 Legislation was enacted to clarify how goods, services and activities are taxable to businesses operating
211 under the transient lodging classification. It provided specific statutory exclusions under the transient
212 lodging classification. To the extent the statutes now provide for specific exclusions from the transient
213 lodging tax base, or otherwise specify how certain services or activities should be treated for tax
214 purposes, a separate line of business analysis is inapplicable to the services or activities discussed in
215 this ruling where those goods, services or activities fall within one of the enumerated exclusions.

216
217 To the extent a separate line of business analysis is still applicable to a transient lodging business, the
218 Department will focus on whether goods, services or activities are incidental or “integral” to the rental
219 of a room. See Trico Electric, 79 Ariz. at 297, 288 P.2d at 784; Walden Books, 198 Ariz. at 588, 12
220 P.3d at 813. This focus is consistent with the underlying premise that the transaction privilege tax is
221 imposed under the transient lodging classification on lodging facilities that provide occupancy for
222 transients, as well as the focus of the statutory exclusions that center around whether or not a service or
223 activity is limited to transients. This focus on whether or not a service or activity is limited only to
224 transients, or is open to the public, is consistent with prior case law. The determining issue is still
225 whether or not a service or activity is incidental to, inseparable from and interwoven in the operation of
226 the transient lodging business to the extent that it is an essential part of the transient lodging business.

227
228 Although A.R.S. § 42-5070(C) states that the tax base for the transient lodging classification is the
229 gross proceeds of sales or gross income derived from the business, A.R.S. § 42-5070(C)(1) states that
230 the tax base does not include

231
232 [g]ross proceeds of sales or gross income derived from business activity that is properly
233 included in another business classification under this article and that is taxable to the
234 person engaged in that business classification, but the gross proceeds of sales or gross
235 income to be deducted shall not exceed the consideration paid to the person conducting
236 the activity.

237
238 A.R.S. § 42-5070(D) states the following:

239
240 For the purposes of this section, the tax base for the transient lodging classification does
241 not include gross proceeds of sales or gross income derived from:

- 242
243 1. Transactions or activities that are not limited to transients and that would not be
244 taxable if engaged in by a person not subject to tax under this article.

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- 245 2. Transactions or activities that are not limited to transients and that would not be
246 taxable if engaged in by a person subject to taxation under section 42-5062 or 42-
247 5073 due to an exclusion, exemption or deduction.
248 3. Commissions paid to a person that is engaged in transient lodging business subject to
249 taxation under this section by a person providing services or property to the
250 customers of the person engaging in the transient lodging business.

251
252 A.R.S. § 42-5073(B)(4) states that the tax base for the amusement classification is the gross proceeds of
253 sales or gross income derived from the business, except that the following shall be deducted from the tax
254 base:

255
256 The gross proceeds of sales or gross income derived from sales to persons engaged in the
257 business of transient lodging classified under § 42-5070, if all of the following apply:

- 258
259 (a) The persons who are engaged in the transient lodging business sell the amusement to another
260 person for consideration.
261 (b) The consideration received by the transient lodging business is equal to or greater than the
262 amount to be deducted under this subsection.
263 (c) The transient lodging business has provided an exemption certificate to the person engaging
264 in business under this section.

265 A.R.S. § 42-5064 imposes the transaction privilege tax under the telecommunications classification.
266 The telecommunications classification is comprised of the business of providing intrastate
267 telecommunications services. Transient lodging facilities routinely provide telecommunication services
268 that are limited to transients. However, A.R.S. § 42-5064(C) provides that a transient lodging business
269 that is subject to tax under A.R.S. § 42-5070 and that provides telephone, fax or internet access services
270 to its customers at an additional charge, which is separately stated on the customer invoice, is
271 considered to be engaged in business subject to taxation under the telecommunications classification for
272 the purposes of taxing the gross proceeds of sales or gross income derived from providing those
273 services.

274 A.R.S. § 42-5252 levies a tax on every “provider” for each activated wire and wireless service account
275 for the purpose of financing emergency telephone communication services. A “provider” is defined by
276 A.R.S. § 42-5251(4) as “a public service corporation offering telephone or telecommunications services
277 pursuant to title 40, which provides exchange access services.” Although revenue received from local
278 telephone charges and long distance intrastate telephone charges, if separately stated on the folio, is
279 taxable to a lodging facility under the telecommunications classification, the lodging facility is not a
280 “provider” for purposes of the telecommunications service excise taxes imposed by A.R.S. 42-5252.
281 Therefore, the telecommunications service excise taxes are not levied on such lodging facility. In
282 addition, the exemption provided by A.R.S. § 42-5061(B)(3) for sales of certain telecommunications
283 equipment is not available to a lodging facility that provides telephone or internet services.

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EXAMPLES:

While other exclusions, exemptions or deductions may be relevant, following is a discussion of some of the most common exclusions, exemptions and deductions followed by related examples.

A.R.S. § 42-5070(C)(1)

A.R.S. § 42-5070(C)(1) states the following:

the tax base does not include gross proceeds of sales or gross income derived from business activity that is properly included in another business classification under this article and that is taxable to the person engaged in that business classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

Therefore, the gross proceeds of sales or gross income to be deducted by a lodging facility may not exceed the consideration paid to the third party provider and the business activity must be taxable to the third party provider.

Example 1:

Hotel A arranges for a golf outing for one of its guests. The golf course is neither owned nor operated by Hotel A. Upon check-out, a charge of \$110 appears on the guest's folio. This charge represents a \$100 greens fee collected by the hotel on behalf of the golf course and a \$10 mark-up by Hotel A. The \$100 charge for greens fees is subject to tax under A.R.S. § 42-5073. However, the \$100 charge is taxable to the person engaged in business under the amusement classification, which is the golf course. The \$10 mark-up charge is taxable to Hotel A under the transient lodging classification. When Hotel A reports its gross receipts, it reports \$110 as gross receipts and \$100 as a deduction.

Example 2:

Hotel B purchases 25 golf packages from a local golf course for \$100 each. Hotel B provides the golf course with an exemption certificate for the entire purchase, which totals \$2,500. Hotel B then resells 10 of the golf packages to guests of the hotel for \$75 each. Hotel B resells 10 of the golf packages to guests of the hotel for \$200 each. The remaining 5 golf packages are given to Hotel B's guests and employees free of charge.

A.R.S. § 42-5073(B)(4) allows the local golf course to deduct from its gross proceeds the price of the golf packages sold to Hotel B if (i) Hotel B resells such packages, (ii) for an amount equal to or greater than what Hotel B paid for the golf packages and (iii) Hotel B provides an exemption certificate to the local golf course.

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329 The local golf course must mark its invoice and indicate that the gross receipts from the
330 sale of golf packages to Hotel B were deducted from the local golf course's tax base. The
331 local golf course must also obtain a complete and properly executed exemption certificate
332 from Hotel B at the time of the transaction. If the local golf course accepts the exemption
333 certificate from Hotel B in good faith, with the reasonable expectation that Hotel B will
334 be selling the packages for \$100 or more, the local golf course will not be liable for any
335 tax on the transaction. See A.R.S. § 42-5009. If, however, the local golf course is aware
336 that 15 of the golf packages will be sold or given away by Hotel B for less than the
337 amount paid by Hotel B, the local golf course cannot in good faith accept the exemption
338 certificate and is subject to tax on the sale of those packages.

339
340 Assuming Hotel B presents the local golf course with an exemption certificate indicating
341 that all 25 packages are to be sold at an amount equal to or greater than Hotel B's
342 purchase price, Hotel B is responsible for remitting an amount equal to the tax the local
343 golf course should have paid on the transaction, had the local golf course known the
344 number of packages Hotel B intended to sell for an amount less than \$100. In this
345 example, Hotel B must remit the amount of tax that results from applying the amusement
346 tax rate to the \$1,500 paid to the local golf course for the 15 golf packages (15 golf
347 packages purchased for \$100 each and sold for or given away for less than \$100). See
348 A.R.S. § 42-5009. Hotel B must remit the amount of tax that results from applying the
349 amusement tax rate to the \$2,000 paid to Hotel B by its guests (10 golf packages sold to
350 Hotel B's guests for \$200 each). See A.R.S. § 42-5070(C)(1).

351
352 A.R.S. § 42-5070(D)(1)
353

354 A.R.S. § 42-5070(D)(1) states that the tax base for the transient lodging classification does not include
355 gross proceeds of sales or gross income derived from "[t]ransactions or activities that are not limited to
356 transients and that would not be taxable if engaged in by a person not subject to tax under this article."
357 In other words, such transactions or activities must be open and available to the general public. In order
358 for a transaction or activity to be deemed "open to the public," it must be the hotel's or motel's policy
359 and practice to provide the same to the general public. A hotel's or motel's practice may not be
360 established by evidence of providing a service or activity on an occasional basis or in an isolated
361 example. The Department will look beyond the form of the alleged policy or practice to its substance.

362
363 Examples of transactions or activities that would not be taxable if engaged in by a taxpayer other than a
364 transient lodging facility include pet grooming, babysitting, laundry services, salon services, self-
365 parking, long distance interstate telephone charges, high speed internet access, shipping and mailing
366 charges and secretarial services.

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372 Example 3:

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Example 4:

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A.R.S. § 42-5070(D)(2)

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A.R.S. § 42-5070(D)(2) states that the tax base for the transient lodging classification does not include gross proceeds of sales or gross income derived from “[t]ransactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under section 42-5062 or 42-5073 due to an exclusion, exemption or deduction.”

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Examples of transactions or activities that would not be taxable if engaged in by a taxpayer subject to tax under the transporting or amusement classifications due to an exclusion, exemption or deduction include “[t]ransporting for hire persons, freight or property by motor carriers subject to a fee prescribed in title 28, chapter 16, article 4 or by light motor vehicles subject to a fee under title 28, chapter 15, article 4” as provided by A.R.S. § 42-5062(A)(1), golf or tennis lessons, or membership fees granting the right to use a recreational facility for 28 days or more.

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Example 5:

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Hotel D offers a shuttle service to and from its location and the local airport for \$20. This shuttle service is available to hotel guests and to members of the general public. Charges for the same shuttle service would not be taxable if performed by a business subject to tax under the transporting classification but exempt from tax due to the exemption provided by A.R.S. § 42-5062(A)(1). Thus, charges by Hotel D for the shuttle service performed for guests and members of the general public are not subject to tax if Hotel D meets the requirements of A.R.S. § 42-5062(A)(1). This exemption states that the transporting classification does not include “[t]ransporting for hire persons, freight or

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414 property by motor carriers subject to a fee prescribed in title 28, chapter 16, article 4 or
415 by light motor vehicles subject to a fee under title 28, chapter 15, article 4.”

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A.R.S. § 42-5070(D)(3)

420 A.R.S. § 42-5070(D)(3) excludes “[c]ommissions paid to a person that is engaged in transient lodging
421 business subject to taxation under this section by a person providing services or property to the
422 customers of the person engaging in the transient lodging business.”

423

424 Example 6:

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426 Hotel E provides information to its guests about a horseback riding trip through the desert
427 provided by Company X, an unrelated third party provider. Hotel E neither arranges the
428 trip, nor do charges for the trip appear on the hotel folio. Hotel E receives a commission
429 from Company X for each horseback riding trip later arranged by a guest. The
430 commission received by Hotel E from Company X is not subject to tax.

431

432 A.R.S. § 42-5070(D)(3) excludes commissions paid only to persons engaged in a transient
433 lodging business.

434

435 Example 7:

436

437 Hotel F is a full-service destination resort. Golf Course X owns and manages a golf
438 course on Hotel F’s property. Golf Course X receives a commission from Golf Course
439 Y, another area golf course, for either referring golfers to Golf Course Y or arranging for
440 tee times for golfers at Golf Course Y. A.R.S. § 42-5070(D)(3) does not exempt such
441 commissions. Golf Course X is not a business subject to tax under the transient lodging
442 classification. Therefore, A.R.S. § 42-5070(D)(3) is inapplicable and does not exempt
443 such commissions.

444

445

PACKAGES

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447 A hotel or motel may provide a package to its guests for a lump sum price. This price includes goods,
448 services or activities in addition the rental of a room. The hotel or motel folio presented to the guest at
449 check-out may state the lump sum amount for the package and any applicable tax for the guest’s
450 convenience. However, the books and records maintained by the hotel or motel must separately state
451 each item and the applicable tax. As stated in A.A.C. R15-5-2004, “[f]ailure to maintain appropriate
452 books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of
453 sales or gross income applicable to a classification under which the taxpayer is doing business.”

454

455 The cost of a “destination services” package provided by a third party may appear on a guest’s folio.
456 Generally, the charge for such a package is merely a “pass-through transaction.” A “pass-through

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457 transaction” is defined as a transaction where goods or services are provided to a guest by a third party
458 and the charges are itemized separately on the folio merely for the guest’s convenience. A “pass-
459 through” transaction is not limited to “destination services.” The hotel collects the charges and remits
460 the entire amount to the third party, without mark-up by the hotel. The hotel must maintain proof that
461 an unrelated third party provided goods or services to the guest and that the revenue was purely pass-
462 through in nature. The hotel is merely acting as an agent of the third party provider. The appearance of
463 the third party provider’s name on the hotel folio with no mark-up by the Hotel is sufficient proof that
464 an unrelated third party provided goods or services to the guest.
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Example 8:

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Hotel G offers a weekend summer package for its guests for \$500. This price includes the rental of a hotel room for two nights, a spa treatment, one round of golf at a local golf course, and dinner in Hotel G’s restaurant.

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RULING:

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Transient lodging facilities routinely provide a variety of goods, services and activities in addition to the rental of rooms. Examples of such goods, services and activities include laundry and dry cleaning services, pay-per-view movies, golf courses, golf lessons, spa services, gift shops, restaurants and room service.

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Arizona case law has shown that a taxpayer may provide goods, services or activities that constitute a separate line of business. However, goods, services or activities that are incidental or integral to the rental of a room cannot be taxed as a separate line of business. This line of cases did not provide a useful guide for Arizona’s transient lodging businesses. Therefore, legislation was enacted to clarify how goods, services and activities are taxable to businesses operating under the transient lodging classification by providing specific statutory exclusions under the transient lodging classification.

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500 Although the Arizona Supreme Court’s holding in Holmes & Narver is still good law, the test outlined
501 by the Court is inapplicable in determining the taxability of goods, services and activities that are
502 subject to a specific exclusion, exemption or deduction. To the extent the statutes now provide for
503 specific exclusions, exemptions or deductions from the transient lodging tax base, or otherwise specify
504 how certain goods, services or activities should be treated for tax purposes, a separate line of business
505 analysis is inapplicable to the services or activities discussed in this ruling where those goods, services
506 or activities fall within one of the enumerated exclusions, exemptions or deductions.

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508 To the extent a separate line of business analysis is still applicable to a transient lodging business, the
509 Department will focus on whether goods, services or activities are incidental or “integral” to the rental
510 of a room.

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512 The purpose of this ruling and the guidance provided in the “Arizona Tax Matrix for Hotel/Motel
513 Lodging Industry” (“Matrix”)¹ attached to this ruling, and incorporated by reference, is to clarify when
514 revenue is taxable to a hotel or motel (or other transient lodging facility) and the appropriate business
515 classification for such revenue. Although the legislation discussed in the ruling may be retroactive, this
516 Matrix is prospective. The Matrix is intended to be a guide for the transient lodging industry for those
517 goods, services or activities that may be provided in addition to the rental of rooms. Nevertheless, the
518 principles discussed in this ruling should guide the transient lodging industry for items that may arise in
519 the future. This ruling and the accompanying matrix applies to persons engaged in business under the
520 transient lodging classification. Neither this ruling nor the Matrix applies to, or may be used by, any
521 taxpayer not engaged in the transient lodging business.

522
523 The Matrix provides a detailed list of goods, services and activities that are inseparable from the
524 principal business of a lodging facility and interwoven in the operation thereof to the extent that they
525 are in effect an essential part of the lodging facility’s business and therefore, cannot be taxed as a
526 separate business. The Matrix provides a safe harbor for taxpayers engaged in the business of transient
527 lodging. If a taxpayer chooses not to follow the Matrix, for whatever reason, neither the taxpayer nor
528 the Department will be precluded from raising any valid arguments regarding the taxation of the
529 taxpayer’s business activities.

530
531 Please see the attached Matrix for a detailed list of goods, services and activities that may be taxable
532 under the transient lodging or other business classification. The Matrix includes many items not
533 discussed in this ruling. This ruling does not discuss the taxation of goods, services or activities by the
534 cities. However, the Matrix addresses whether revenue is taxable to a hotel or motel (or other transient
535 lodging facility) by the cities and the appropriate business classification for such revenue. For a
536 detailed discussion of the cities’ tax treatment of such revenue, see the guideline issued by the Unified
537 Audit Committee.

¹ The term “guest” as used in the Matrix is limited to a person, who either at the person’s own expense or at the expense of another, rents a room at a lodging facility. For purposes of this definition, the term “room” includes a banquet room, meeting room or lodging room.

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Gale Garriott, Director

Date

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.