

# STATE OF ARIZONA

Department of Revenue



Janet Napolitano  
**Governor**

J. Elliott Hibbs  
**Director**

October 22, 2004

Attached please find a copy of the Notice of Proposed Rulemaking ("Notice") filed on October 20, 2004 with the Secretary of State ("SOS"). SOS will publish an official copy of the Notice in a future edition of the *Arizona Administrative Register* ("A.A.R."); once it becomes available, the Department will provide a link on our website to the electronic version of A.A.R. that contains the Notice.

The package proposes to repeal Arizona Administrative Code ("A.A.C.") rules R15-5-2306 through R15-5-2308 to remove inconsistent and erroneous language regarding Arizona use tax. The Department also proposes to amend R15-5-2302 to provide general guidance on the imposition and application of use tax. The Department realized the necessity of repealing the above-referenced rules in light of public comment and superseding case law.

As always, thank you for your assistance in the rulemaking process. The Notice provides that an oral proceeding on the proposed rulemaking will be held at the Department on Monday, December 13, 2004. We welcome your participation and any written comments you may wish to send in lieu of or in addition to your attendance.

Sincerely,

Hsin Pai  
Tax Analyst  
Tax Policy & Research Division

Attachment

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 15. REVENUE**

**CHAPTER 5. DEPARTMENT OF REVENUE**

**TRANSACTION PRIVILEGE AND USE TAX SECTION**

**PREAMBLE**

<b><u>1.</u></b>	<b><u>Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
	R15-5-2302	Amend
	R15-5-2306	Repeal
	R15-5-2307	Repeal
	R15-5-2308	Repeal

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-1005

Implementing statute: A.R.S. § 42-5155

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening, 10 A.A.R. \_\_\_\_

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Hsin Pai, Tax Analyst

Address: Tax Policy and Research Division

Arizona Department of Revenue

1600 W. Monroe, Room 810

Phoenix, AZ 85007

Telephone: (602) 716-6851

Fax: (602) 716-7995

E-mail: [hpai@azdor.gov](mailto:hpai@azdor.gov)

Please visit the ADOR Web site to track the progress of these rules and other agency rulemaking matters at [www.azdor.gov/tra/draftdoc.htm](http://www.azdor.gov/tra/draftdoc.htm).

**5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

The Department is amending the rules to more clearly explain the imposition of Arizona use tax on purchasers for out-of-state purchases used, stored, or consumed in this state on which Arizona transaction privilege tax has not already been imposed. This rulemaking also eliminates language that may be confusing and misleading to taxpayers, as it no longer reflects the Department's position in light of superseding case law from two Arizona Court of Appeals opinions: *Arizona Department of Revenue v. Care Computer Systems, Inc.*, 4 P.3d 469 (Ariz. Ct. App. 2000), and *Arizona Department of Revenue v. O'Connor, Cavanagh, Anderson, Killingsworth & Beshears, P.A.*, 963 P.2d 279 (Ariz. Ct. App. 1997). The fact-intensive analyses used by the Court of Appeals to determine whether a transaction is subject to transaction privilege tax or use tax forecloses the simplistic approach taken in the rules that this proposed rulemaking repeals. The Department has likewise repealed an inconsistent *Arizona Transaction Privilege Tax Ruling* addressing the issue of purchases from out-of-state vendors, TPR 94-12, and is currently in the process of drafting a new ruling

to replace it with assistance from interested and affected members of the general public.

- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

There should no significant economic impact to Arizona businesses or consumers arising from the proposed rulemaking. Because the amendments eliminate confusing and potentially misleading information, some out-of-state vendors may experience a minimal impact due to enforced compliance measures. The Department expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the use tax will be greater than the costs.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Hsin Pai, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Room 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6851  
Fax: (602) 716-7995  
E-mail: hpai@azdor.gov

**10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: December 13, 2004  
Time: 9:00 a.m.  
Location: Arizona Department of Revenue—B1 Level Conference Room  
1600 W. Monroe  
Phoenix, AZ 85007

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 15. REVENUE**  
**CHAPTER 5. DEPARTMENT OF REVENUE**  
**TRANSACTION PRIVILEGE AND USE TAX SECTION**  
**ARTICLE 23. USE TAX**

Section

R15-5-2302. General

R15-5-2306. ~~Distinction Between Sales Tax and Use Tax~~ Repealed

R15-5-2307. ~~When a Transaction is Subject to the Sales Tax~~ Repealed

R15-5-2308. ~~When a Transaction is Subject to the Use Tax~~ Repealed

**TITLE 15. REVENUE**  
**CHAPTER 5. DEPARTMENT OF REVENUE**  
**TRANSACTION PRIVILEGE AND USE TAX SECTION**  
**ARTICLE 23. USE TAX**

**R15-5-2302. General**

- A. ~~The Use Tax Act~~ A.R.S. § 42-5155 imposes Arizona use tax upon ~~the buyer a tax on the purchase of a purchaser that has purchased~~ tangible personal property from an out-of-state vendor if the vendor's gross receipts from the sale are not already subject to Arizona transaction privilege tax. Because Arizona transaction privilege tax and Arizona use tax are complementary taxes, only one of the taxes will be imposed on a given transaction.
- B. ~~The Arizona use tax generally applies to the use, storage, or consumption in this state of items tangible personal property purchased from out-of-state suppliers vendors.~~
- C. ~~In cases where the buyer~~ If a purchaser has paid Sales Tax to an out-of-state seller vendor the excise, privilege, sales, or other similar tax of another state on a purchase of tangible personal property that is subject to Arizona use tax, the amount of tax paid to the other state may be applied against his the purchaser's Arizona Use Tax use tax liability.
- D. A purchaser that purchases tangible personal property exempt from tax as a purchase for resale in the ordinary course of business but subsequently uses or consumes the tangible personal property is subject to Arizona use tax.

**R15-5-2306. ~~Distinction Between Sales Tax and Use Tax~~ Repealed**

- A. ~~The Sales Tax is imposed on sales made by vendors located within Arizona, while the Use Tax is levied on purchases from out-of-state vendors.~~

B. ~~Since the Sales Tax and Use Tax are complementary taxes, only one of the taxes can be applied to a given transaction.~~

**~~R15-5-2307. When a Transaction is Subject to the Sales Tax Repealed~~**

~~Sales made by vendors maintaining a place of business within Arizona are subject to the Sales Tax. Sellers operating from a commercial location or point of distribution, soliciting from a public place of business, or buying and selling articles on their own account within the state are deemed to be in business in Arizona.~~

~~For example, an office equipment dealer maintains a sales office in Arizona, solicits business from customers in Arizona, and orders the equipment from its home office out of state. Although the seller maintains no stock of inventory in Arizona and the products are shipped directly to the purchaser, he is nevertheless considered to be engaging in business within the state for purposes of this regulation. Such sales are taxable under the Sales Tax statutes.~~

**~~R15-5-2308. When a Transaction is Subject to the Use Tax Repealed~~**

~~Purchases made from vendors not maintaining a place of business in this state to Arizona customers are subject to the Use Tax. For example, purchases from an out-of-state vendor selling by mail order to Arizona residents are subject to the Use Tax.~~