

STATE OF ARIZONA

Department of Revenue



Janet Napolitano
Governor

Gale Garrriott
Director

June 4, 2007

Attached please find copies of two proposed documents: an Arizona General Tax Ruling explaining the forms of written and oral advice provided by the Department and an Arizona General Tax Procedure providing the procedure for requesting private taxpayer rulings. The documents supersede and rescind *Arizona General Tax Ruling* GTR 97-1 and *Arizona General Tax Procedure* 01-3. In an ongoing effort to interact with and inform the public regarding issues relating to taxation, the Department would appreciate your written comments on these drafts.

As you may know, the documents are the third revisions issued by the Department over a three-year period. They have been most recently amended based on comments received from the 2006 informal review-and-comment period.

Please be advised that the deadline for comments is **Thursday, July 5, 2007**. Any request for an extension of time for review must also be made by this date. This office will review all comments that are received through this date and make any appropriate revisions before the Department issues the final documents.

Please address your comments to:

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Thank you for your continuing efforts to establish an ongoing line of communication with the Arizona Department of Revenue.

Sincerely,

/s/ Hsin Pai
Tax Analyst
Tax Research & Analysis

Attachments



ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Janet Napolitano
Governor

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Director

1 ISSUE:

2
3 Information concerning written and oral advice provided to taxpayers by the Department of
4 Revenue ("Department").

6 APPLICABLE LAW:

8 Arizona Revised Statutes ("A.R.S.") § 42-1004 states:

- 10 A. The department shall administer and enforce the provisions of this title, title
11 43 and other laws assigned to it and has all the powers and duties prescribed
12 by law for such purposes. In all proceedings prescribed by law the
13 department may act on behalf of this state. In addition, the department shall:
14
15 1. Formulate policies, plans and programs to effectuate the missions and
16 purposes of the department.
17
18
19
20 6. Provide information and advice within the scope of its duties subject to
21 the laws on confidentiality of information and departmental rules
22 adopted pursuant to such laws.

24 A.R.S. § 42-1123(C) states:

26 If the tax, whether determined by the department or the taxpayer, or any portion of
27 the tax is not paid on or before the date prescribed for its payment the department
28 shall collect, as a part of the tax, interest on the unpaid amount at the rate
29 determined pursuant to this section from the date prescribed for its payment until it is
30 paid.

32 A.R.S. § 42-2052 states:

- 34 A. Notwithstanding sections 42-1123 and 42-1125, no interest or penalty may be
35 assessed on an amount assessed as a deficiency if either:
36
37 1. The deficiency assessed is directly attributable to erroneous written
38 advice furnished to the taxpayer by an employee of the department
39 acting in an official capacity in response to a specific request from the
40 taxpayer and not from the taxpayer's failure to provide adequate or
41 accurate information.
42
43 2. All of the following are true:

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 2

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- (a) A tax return form or tax ruling prepared by the department contains a statement that, if followed by a taxpayer, would cause the taxpayer to misapply this title or title 43.
- (b) The taxpayer reasonably relies on the statement.
- (c) The taxpayer's underpayment directly results from this reliance.

B. Each employee of the department, at the time any oral advice is given to any person, shall inform the person that the department is not bound by such oral advice.

C. For purposes of this section:

- 1. "Tax return form" includes the instructions that the department prepares for use with the tax return form whether the form or instructions are provided on paper or by electronic means.
- 2. "Tax ruling" means a statement issued by the director and denominated as a tax ruling or a tax procedure.

A.R.S. § 42-2078 states:

A. Unless expressly authorized by law, the department shall not apply any newly enacted law retroactively or in a manner that will penalize a taxpayer for complying with prior law.

B. If the department adopts a new interpretation or application of any provision of this title or title 43 or determines that any of those provisions applies to a new or additional category or type of taxpayer, and the change in interpretation or application is not due to a change in the law:

- 1. The change in interpretation or application applies prospectively unless it is favorable to taxpayers.
- 2. The department shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.
- 3. The change is an affirmative defense in any administrative or judicial action for retroactive assessment of tax, interest and penalties to taxable periods before the new interpretation or application was adopted.

C. Tax liabilities, penalties and interest paid before a new interpretation or application of chapter 5 of this title by the department shall not be refunded

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 3

91 unless the taxpayer requesting the refund provides evidence satisfactory to
92 the department that the amounts will be refunded to the person who paid an
93 added charge to cover the tax.
94

- 95 D. For the purposes of this section, "new interpretation or application" includes
96 policies and procedures adopted by administrative rule, tax ruling, tax
97 procedure or instructions to a tax return.
98

99 A.R.S. § 42-2101 states:

- 100
101 A. The department may issue private taxpayer rulings to taxpayers and potential
102 taxpayers on request. Each request shall be in writing and shall:

- 103
104 1. State the name, address and, if applicable, taxpayer identifying
105 number of the taxpayer or potential taxpayer who requests the ruling.
106
107 2. Describe all facts that are relevant to the requested ruling.
108
109 3. State whether, to the best knowledge of the taxpayer or potential
110 taxpayer, the issue or related issues are being considered by the
111 department in connection with an active audit, protest or appeal that
112 involves the taxpayer or potential taxpayer and whether the same
113 request has been or is being submitted to another taxing authority for
114 a ruling.
115
116 4. Be signed by the taxpayer or potential taxpayer who makes the
117 request or by an authorized representative of the taxpayer or potential
118 taxpayer.
119

- 120 B. A private taxpayer ruling may be revoked or modified by either:

- 121
122 1. A change or clarification in the law that was applicable at the time the
123 ruling was issued, including changes or clarifications caused by
124 legislation, adopted administrative rules and court decisions.
125
126 2. Actual written notice by the department to the last known address of
127 the taxpayer or potential taxpayer of the revocation or modification of
128 the private taxpayer ruling.
129

- 130 C. With respect to the taxpayer or prospective taxpayer to whom the private
131 taxpayer ruling was issued, the revocation or modification of a private
132 taxpayer ruling shall not be applied retroactively to tax periods or tax years
133 before the effective date of the revocation or modification and the department
134 shall not assess any penalty or tax attributable to erroneous advice that it
135 furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:

- 136
137 1. The taxpayer reasonably relied on the private taxpayer ruling.

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 4

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- 2. The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.
- D. A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.
-
- F. A private taxpayer ruling constitutes the department's interpretation of the law or rules only as they apply to the taxpayer making, and the particular facts contained in, the request.
-
- J. In this section, "private taxpayer ruling" means a written determination by the department issued on or after September 21, 1991 that interprets and applies one or more statutes contained in this title or title 43 and any applicable administrative rules that the department has adopted to the specific prospective facts described in the request for a private taxpayer ruling.

161 In *Valencia Energy Co. v. Arizona Department of Revenue*, 959 P.2d 1256, 1267-68, 1272
162 (Ariz. 1998), the Arizona Supreme Court held that equitable estoppel may be applied
163 against Department in attempting to collect transaction privilege tax from a taxpayer if the
164 Department provided erroneous advice to the taxpayer and the elements of equitable
165 estoppel (*i.e.*, the party to be estopped commits acts inconsistent with a position it
166 subsequently adopt, the other party relies on the earlier acts, and the latter party suffers
167 injury resulting from the former's repudiation of its prior conduct) are met.

DISCUSSION:

171 The statutes governing the administration of Arizona tax laws direct the Department to
172 assist in the compliance of taxpayers by providing them with information and advice. The
173 Department is issuing this ruling as part of its continuing efforts to maintain an open line of
174 communication with the public.

RULING:

177
178 It is the Department's practice to respond to requests for information from individuals and
179 organizations concerning their statuses for tax purposes and the tax effects of their
180 transactions. The Department provides this guidance in the form of private taxpayer
181 rulings, tax rulings and tax procedures, information letters, tax information notices and
182 publications, and oral advice.

ARIZONA GENERAL TAX RULING

GTR 07-__

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DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 5

183

184 This ruling delineates the manner in which the Department provides information to
185 taxpayers. The various documents issued by the Department are defined along with the
186 reliance that may be placed on each document.

187

188 **Private Taxpayer Rulings**

189

190 A private taxpayer ruling (sometimes referred to as a “letter ruling”) is a written document
191 responding to a written inquiry by an individual or organization that is identified as a private
192 taxpayer ruling request. Private taxpayer rulings are issued by the Tax Research and
193 Analysis Section of the Department’s Tax Policy and Research Division and are always
194 identified as “private taxpayer rulings.”

195

196 A private taxpayer ruling interprets and applies Arizona tax laws to a particular set of facts
197 set forth by the requester. A private taxpayer ruling is issued for a specific fact situation. It
198 does not apply to different fact situations of the requesting taxpayer or to other taxpayers.
199 Private taxpayer rulings issued in response to requests received by the Department after
200 July 17, 1994 are available for public inspection after all information that could identify the
201 taxpayer and any other parties involved in the activity is redacted. See *Arizona General*
202 *Tax Procedure* GTP 07-__ for more information on private taxpayer rulings and the
203 procedure for requesting them.

204

205 Among other reasons listed in GTP 07-__, the Department will not issue private taxpayer
206 rulings to issues that are subjects of existing audits, appeals, or refund claims with respect
207 to taxpayers requesting the rulings or to anonymous or otherwise insufficiently identified
208 requesters. A requesting taxpayers must be identified by name and identification number.
209 Professional preparers or representatives acting on behalf of taxpayers must provide their
210 names and individual identification numbers, as well as proof that they are authorized
211 agents of the taxpayers requesting the private taxpayer rulings.

212

213 If the advice given by the Department in a private taxpayer ruling is found to be erroneous,
214 the Department cannot assess any tax, interest or penalties attributable to the taxpayer
215 following the erroneous advice if the taxpayer provided accurate and adequate information
216 in the request and the taxpayer shows reasonable reliance on the ruling.

217

218 A taxpayer may rely on a private taxpayer ruling that the Department has issued to the
219 taxpayer unless there was a misstatement or omission of material facts by the taxpayer or
220 the taxpayer's representative. A taxpayer may not rely on a private taxpayer ruling issued
221 to another taxpayer.

222

223 A taxpayer must submit a request for a private taxpayer ruling in writing. More information
224 on the procedures for requesting, issuing, and revoking a private taxpayer ruling is
225 provided in GTP 07-__.

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 6

226

227 **Tax Rulings and Tax Procedures**

228

229 A tax ruling is a public written statement of the Department's position that interprets Arizona
230 tax laws and applies the law to a specific set of facts or a general category of taxpayers.

231

232 A tax procedure is a public written statement issued by the Department to assist taxpayers
233 in the implementation of tax laws, administrative rules, and tax rulings by delineating
234 procedures that taxpayers may follow in order to achieve compliance.

235

236 No penalties or interest will be assessed on any deficiency due to a statement in a tax
237 ruling or procedure issued by the Department if the taxpayer reasonably relies on the
238 statement and the underpayment of tax results directly from that reliance. See A.R.S. § 42-
239 2078 (the Department will not assess any tax, penalty or interest retroactively based on a
240 change in interpretation or application of a A.R.S. Title 42 or 43 statute that is not prompted
241 by a legislative action); see also *Valencia Energy Co. v. Ariz. Dep't of Revenue*, 959 P.2d
242 1256, 1268 (Ariz. 1998) (reasonable reliance element of the reliance requirement for
243 equitable estoppel of the state requires that the party seeking estoppel act in good faith by
244 providing the state with correct information and neither knew nor was put on notice that the
245 state's position was erroneous). Nevertheless, unless based on a "new interpretation or
246 application" of the tax statutes as defined in A.R.S. § 42-2078, the taxpayer will be liable for
247 any tax that may be assessed. Also, if a taxpayer is issued a proposed assessment and
248 fails to pay once the liability is found due and owing, interest begins to accrue from the date
249 that the assessment becomes final, pursuant to A.R.S. § 42-1123(C).

250

251 See *Arizona General Tax Procedure* GTP 96-1 for more information on tax rulings and tax
252 procedures and *Arizona General Tax Procedure* GTP 02-1 for the procedure to request an
253 abatement of tax, interest, or penalties.

254

255 **Information Letters, Statements of General Guidance, and Other Forms of** 256 **Correspondence Issued by the Department**

257

258 An information letter is a letter that responds to a written inquiry from taxpayers, taxpayer
259 representatives, and various business, trade, and industrial associations or similar groups.
260 The Department issues information letters only in response to written requests, never to
261 oral inquiries.

262

263 An information letter may be issued if: (a) the taxpayer's inquiry indicates a need for
264 general information that requires written assistance or advice on tax principles or
265 applications or (b) the taxpayer's request does not meet the requirements for a private
266 taxpayer ruling request but the Department determines that written assistance or advice is
267 appropriate. The Department may offer advice in an information letter by providing a
268 general discussion of tax principles or applications. The discussion may incorporate

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 7

269 references to relevant statutes, case law, administrative rules, and tax rulings or tax
270 procedures.

271
272 Information letters are not private taxpayer rulings. They do not constitute statements of
273 agency policy that apply, interpret, or prescribe the tax laws administered by the
274 Department. In the event the advice given in an information letter is found to be erroneous,
275 the Department will not assess penalties or interest directly attributable to the erroneous
276 advice in response to a specific request from the taxpayer if the information provided by the
277 taxpayer was adequate and accurate. Nevertheless, the taxpayer will be liable for any tax
278 that may be assessed.

279
280 The Department's standard disclaimer for information letters is as follows:

281
282 **This is an information letter and not a private taxpayer ruling. The advice it**
283 **contains is solely dependent upon the adequacy and accuracy of the**
284 **information provided. Therefore, inadequate and/or inaccurate taxpayer**
285 **information could result in the imposition of additional tax, interest and**
286 **penalties. Conversely, if the taxpayer information is correct but the**
287 **Department later determines that this advice is erroneous, any penalties and**
288 **interest directly attributable to following this advice will be abated.**

289
290 Although the Department provides oral advice to taxpayers, as discussed below,
291 information letters will not be provided to persons currently under audit. Accordingly, the
292 Department cannot issue information letters to anonymous or otherwise insufficiently
293 identified requesters. Moreover, in order to comply with Rule 31 of the Rules of the Arizona
294 Supreme Court (see *Arizona General Tax Procedure* GTP 07-__ for further discussion), the
295 Department generally cannot issue an information letter responding to a request made by
296 taxpayer's agent or representative that is unaccompanied by a properly executed power of
297 attorney. Instead, the Department may issue a *statement of general guidance*, which is
298 designed to provide general advisory guidance that, while not providing a determination for
299 a specific person, may be useful in helping the requester comply with the laws
300 administered by the Department. Statements of general guidance are not binding on the
301 Department, and the advice contained within is solely dependent upon the adequacy and
302 accuracy of the information provided.

303
304 The Department's standard disclaimer for statements of general guidance is as follows:

305
306 **This is a Statement of General Guidance. A Statement of General Guidance**
307 **does not pertain to a specific identified client. The Statement is designed to**
308 **provide general advisory guidance that may be useful in complying with the**
309 **laws administered by the Department. Statements of General Guidance are not**
310 **binding on the Department. In addition, the advice it contains is solely**
311 **dependent upon the adequacy and accuracy of the information provided.**

312

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 8

313 The Department may respond to a request for an information letter with:

314

315 • The issuance of an information letter;

316

317 • The issuance of a statement of general guidance;

318

319 • A request for additional information necessary to complete an information letter; or

320

321 • A response declining to answer the request, explaining why the issuance of an
322 information letter is not appropriate, and, if applicable, explaining why a request
323 should be submitted to the Tax Research and Analysis Section for a private
324 taxpayer ruling.

325

326 The Department will usually decline to answer an information letter request when it is too
327 fact-intensive to answer with a general discussion or if the Department has no current
328 position on the issues raised in the request.

329

330 Note that the Department issues many forms of taxpayer correspondence that constitute
331 neither information letters nor statements of general guidance, as these two categories of
332 responses are described above. Examples include:

333

334 • Collection letters,

335

336 • Assessments,

337

338 • Audit correspondence, including billings, no-change letters, and refund denials.

339

340 Consequently, the Department will always identify information letters and statements of
341 general guidance as such. All correspondence will provide explanations of the level of
342 reliance that taxpayers may reasonably expect to place on them.

343

344 **Notices and Publications**

345

346 Notices and publications issued by the Department are general guides to assist taxpayers
347 in becoming familiar with Arizona tax laws. This category of documents includes both
348 online and hard-copy versions of bulletins, brochures, pamphlets, and stuffers issued by
349 the Department, as well as the *Arizona Tax News* publication.

350

351 Notices and publications are not intended to address complex issues in detail or to address
352 a taxpayer's specific circumstance. If the information provided in a tax information notice or
353 publication conflicts with Arizona tax laws, the language of the Arizona Revised Statutes
354 and the Arizona Administrative Code will control.

355

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 9

356 If the information in a notice or publication issued by the Department is shown to be
357 erroneous and a taxpayer shows reasonable reliance on that information, the taxpayer will
358 be liable for any tax or interest which may result from the erroneous advice, but no
359 penalties will be imposed.

360

361 **Tax Forms and Instructions**

362

363 Tax forms and instructions include the various tax return forms and instructions prescribed
364 by the Department for the filing of tax information. If the information provided in the
365 instructions to a tax return conflicts with Arizona tax laws, the language of the Arizona
366 Revised Statutes and the Arizona Administrative Code will control.

367

368 No penalties or interest will be assessed on any deficiency due to a statement on a tax
369 return form prepared by the Department if the taxpayer reasonably relies on the statement
370 and the underpayment of tax results directly from that reliance. Nevertheless, the taxpayer
371 will be liable for any tax that may be assessed. Also, if a taxpayer is issued a proposed
372 assessment and fails to pay once the liability is found due and owing, interest begins to
373 accrue from the date of the final assessment.

374

375 See *Arizona General Tax Procedure* GTP 96-2 for more information on tax forms and
376 instructions.

377

378 **Oral Advice**

379

380 Taxpayers often request oral advice from employees of the Department. The Department
381 does not issue private taxpayer rulings, information letters, or statements of general
382 guidance in response to oral requests. In addition, the Department does not issue oral
383 rulings. Nevertheless, employees of the Department will ordinarily discuss issues relating
384 to a particular tax situation with taxpayers or their representatives.

385

386 By statute, oral advice is not binding on the Department. In the event oral advice provided
387 to a taxpayer is found to be erroneous, the taxpayer will be liable for any tax and interest
388 and also may be liable for any associated penalties which are attributable to the taxpayer
389 following the erroneous advice.

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate

ARIZONA GENERAL TAX RULING

GTR 07-__

(This ruling supersedes and rescinds GTR 97-1)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 10

any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.

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ARIZONA GENERAL TAX PROCEDURE

GTP 07-___

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Janet Napolitano
Governor

Gale Garriott
Director

Issuance of Private Taxpayer Rulings

(This procedure supersedes and rescinds GTP 01-3)

1 In 1991, the Legislature adopted a statutory provision, currently found at Arizona Revised
2 Statutes ("A.R.S.") § 42-2101, authorizing the Department of Revenue (the "Department")
3 to issue private taxpayer rulings (often referred to as "letter rulings") to provide Arizona
4 taxpayers with all available knowledge relating to a specific tax situation. This legislation
5 was intended to aid the taxpayer in making determinations of the taxability of unusual or
6 complex transactions and thereby offer some protection from possible assessment at a
7 later date. In 1994, the Legislature amended the statute to provide additional information to
8 taxpayers concerning private taxpayer rulings.

9
10 The Department issues this procedure to explain some of the basic principles of and
11 answer frequently asked questions about the issuance of private taxpayer rulings.
12 Additionally, this procedure discusses areas in which the Department will not issue private
13 taxpayer rulings and the reliance that may be placed on them by taxpayers and the
14 Department.

GENERAL INFORMATION:

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18 A private taxpayer ruling is a written statement issued by the Tax Research and Analysis
19 Section of the Department's Tax Policy and Research Division to a taxpayer or potential
20 taxpayer. The Department will issue a private taxpayer ruling only in response to a written
21 inquiry by a taxpayer, a potential taxpayer, or an authorized representative of a taxpayer or
22 potential taxpayer. A private taxpayer ruling interprets and applies Arizona tax laws to a
23 particular set of facts.

24
25 A private taxpayer ruling:

- 26
27 1. Provides a taxpayer with guidance through a specific tax determination that is
28 based on the taxpayer's specific fact situation.
- 29
30 2. Is issued for a particular fact situation. A private taxpayer ruling does not
31 apply to different fact situations of either the requesting taxpayer or other
32 taxpayers.
- 33
34 3. May not be relied upon by a taxpayer other than the taxpayer to whom the
35 Department issued the private taxpayer ruling.

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 2

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- 4. Will be open to public inspection after the Department removes all information that could identify the taxpayer and any other parties involved in the activity or transaction. The Department will delete the names, addresses, and identifying numbers of the taxpayer and any other party to the transaction.

The Department will also redact any other information that would permit a person generally knowledgeable of the appropriate community to identify any party to the transaction. The "appropriate community" is the group of persons who would be able to identify a particular person from the information regarding the transaction that is the subject of the ruling.

The appropriate community will necessarily vary according to the nature of the transaction. For example, if the transaction involves the purchase and installation of machinery or equipment that is particular to a certain industry, the appropriate community may include all persons engaged in business in that industry.

- 5. May be revoked or modified by the Department if either there is a change or clarification in the law that applied at the time the ruling was issued (e.g., changes or clarifications caused by legislation, adopted administrative rules, or court decisions) or the Department issued erroneous advice in the ruling. The Department will not assess taxes, penalties, or interest attributable to erroneous advice it provided in a private taxpayer ruling if the taxpayer provided accurate and adequate information in the request and the taxpayer shows reasonable reliance on the ruling.

The revocation or modification of a private taxpayer ruling may not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification. If the Department revokes or modifies a private taxpayer ruling, the taxpayer or potential taxpayer will be notified by mail sent to the last known address of the taxpayer or potential taxpayer contained in the original ruling request or subsequent related correspondence.

The Department will issue a private taxpayer ruling only if no tax has accrued with respect to the transactions, events, or facts contained in the request. Although the Department may issue a private taxpayer ruling that addresses a taxpayer's ongoing business activities, the ruling applies only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling. The audit process will normally resolve issues relating to transactions that a taxpayer has already reported. The Department will issue a private taxpayer ruling for prospective transactions that may occur, but the Department will not issue a private taxpayer ruling to an anonymous taxpayer or for abstract hypothetical

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 3

78 situations.

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80 PROCEDURE FOR REQUESTING A PRIVATE TAXPAYER RULING:

81

82 The Department requires that a request for a private taxpayer ruling be submitted in hard
83 copy (*i.e.*, paper) format. Nevertheless, to assist the Department's efforts to issue
84 responses in an efficient and expeditious manner, taxpayers or taxpayer representatives
85 are encouraged to also submit requests and subsequent related correspondence in
86 electronic format. The Department prefers that the request be sent in a rich text format
87 (RTF) or Microsoft Word (.doc) file; supplemental documents such as contracts, deeds,
88 diagrams, and photographs may be submitted in alternate formats such as Adobe Portable
89 Document Format (PDF) or JPEG.

90

91 A request for a private taxpayer ruling must include the following information:

92

- 93 1. The taxpayer's name and taxpayer identification number with the signature of
94 the taxpayer or the taxpayer's authorized representative. A request
95 submitted by a taxpayer's representative also must include proof that the
96 representative is an authorized agent of the taxpayer and include an
97 *individual* identification number unique to the representative. When using the
98 General Disclosure/Representation Authorization Form (Arizona Form 285),
99 an original or photocopied hard copy signed by the taxpayer must be
100 submitted. No faxed or electronically signed authorization will be accepted in
101 lieu of the hard copy.

102

103 To constitute adequate proof that a taxpayer's representative is an authorized
104 agent of the taxpayer, the representative must demonstrate the authority to
105 bind the taxpayer. Examples of such proof include the designation (*e.g.*, on
106 an Arizona Form 285) of the representative as an authorized agent by a
107 principal officer or member of the taxpayer or a resolution of the managers or
108 similar governing body. The taxpayer must similarly authorize any additional
109 persons with whom the Department may discuss issues or convey
110 information relating to a private taxpayer ruling request.

111

112 In Section 2 ("APPOINTEE INFORMATION") of Arizona Form 285, or within
113 any alternate document evidencing proof of authorization, the taxpayer's
114 representative must provide one of four types of identification numbers: a
115 state bar number, a Certified Public Accountant number, an Internal Revenue
116 Service Enrolled Agent number, or a Social Security or "other identification
117 number." As stated above, for any one of these categories, the identification
118 number provided must be *unique to the individual taxpayer's representative*.
119 An example of an "other identification numbers" is a Social Insurance Number

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 4

120 held by a Canadian appointee or a unique identification number that the
121 representative may request from the Department's Taxpayer Information and
122 Assistance Section.

123
124 For additional information regarding what individuals can serve as authorized
125 taxpayer's representatives in submitting private taxpayer ruling requests to
126 the Department, refer to the "WHO CAN REQUEST A PRIVATE TAXPAYER
127 RULING ON BEHALF OF A TAXPAYER" subsection below.

- 129 2. A detailed description of the transaction, including the identification of all
130 interested parties and a complete statement of facts relating to the
131 transaction or series of transactions at issue in the private taxpayer ruling
132 request.
- 133
134 3. True and legible copies of all contracts, wills, deeds, agreements, and other
135 documents pertinent to the transaction. Taxpayers should not submit original
136 documents because they become part of the Department's files and will not
137 be returned.
- 138
139 4. An analysis of the material facts included in the documents and their bearing
140 on the issue or issues included in the request.
- 141
142 5. A statement regarding whether the issue or related issues of the private
143 taxpayer ruling request are subject to an existing audit, protest, appeal or
144 litigation concerning the taxpayer in any jurisdiction, and if the taxpayer is
145 submitting the request in the course of pursuing or entering into a voluntary
146 disclosure agreement with the Department.
- 147
148 6. A statement regarding whether a request for a ruling on the identical issue or
149 issues has been or will be submitted to another taxing authority within or
150 outside of Arizona for a ruling.
- 151
152 7. If the taxpayer advocates a particular conclusion, an explanation of the
153 grounds for the conclusion and the relevant legal authorities in support of the
154 conclusion. Relevant legal authorities may be controlling (e.g., Arizona and
155 federal statutes and administrative regulations, Arizona and federal Ninth
156 Circuit case law) or persuasive (e.g., treatises, statutes and regulations from
157 other states), but should not be cited to if they have been reversed, repealed,
158 overruled, or restricted, unless the taxpayer informs the Department of such
159 limitations.
- 160

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 5

161 The Department realizes that some taxpayers may not have sufficient access
162 to legal research references and tools to allow them to provide
163 comprehensive support for conclusions. The Tax Research and Analysis
164 Section reviews all requests for private taxpayer rulings on a case-by-case
165 basis, and taxpayers should explain their particular circumstances in their
166 requests if they are unable to provide relevant legal authorities.
167

168 8. If the taxpayer advocates a particular conclusion, the request must include a
169 statement of controlling (*i.e.*, Arizona) legal authorities contrary to the
170 taxpayer's views. If the taxpayer determines that there are no authorities
171 contrary to his or her views or is unable to locate such authorities, the request
172 must contain a statement to that effect.
173

174 9. A statement of proposed deletions that assists the Department in deleting
175 private and confidential information from a ruling before it is available for
176 public inspection. The taxpayer should submit the statement of proposed
177 deletions in a separate document that accompanies the request for a private
178 taxpayer ruling.
179

180 In the statement of proposed deletions, the requesting taxpayer must either
181 propose specific deletions or state that no information other than names,
182 addresses, and taxpayer identification numbers need be deleted. The
183 Department encourages taxpayers to submit proposed deletions by indicating
184 them with brackets or strikethroughs on a copy of the request for a private
185 taxpayer ruling and supporting documents.
186

187 **Confidentiality**
188

189 While the text of private taxpayer rulings, as issued to the taxpayer, will include the name
190 and address of the person requesting the ruling, the Department redacts certain identifying
191 information from the versions of these private taxpayer rulings that become open to public
192 inspection under A.R.S. § 42-2101(I) (see Appendix A of this procedure for the full text of
193 A.R.S. § 42-2101). The Department performs such deletions to protect the confidentiality
194 of the taxpayer and other parties to the transaction and to satisfy the confidentiality
195 requirements of A.R.S. Title 42, Chapter 2, Article 1. All private taxpayer rulings, however,
196 include relevant facts provided by the taxpayer in the request for a private taxpayer ruling.
197

198 The Department will rely on the statement of proposed deletions provided by the taxpayer
199 to fulfill its obligations to protect the taxpayer's confidentiality under A.R.S. Title 42,
200 Chapter 2, Article 1.
201

202 A taxpayer may notify the Department that it waives its confidentiality rights under A.R.S.

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 6

203 Title 42, Chapter 2, Article 1. The taxpayer must submit such notification in writing and
204 must delineate whether all rights are waived or if specific confidentiality rights are waived.

205

206 When the Department issues a private taxpayer ruling, a redacted copy of the ruling will be
207 provided to the taxpayer. The copy will indicate which deletions will be made in the version
208 of the ruling that is made available for public inspection. If the taxpayer wants additional
209 material to be deleted from the text of the ruling before it is made available to the public,
210 the taxpayer must submit the additional proposed deletions within 20 days of the date the
211 ruling was issued, to provide the Department with sufficient time to review and approve
212 additional deletions as needed.

213

214 **Who Can Request a Private Taxpayer Ruling on Behalf of a Taxpayer**

215

216 In addition to the requirements for a private taxpayer ruling request explained above, there
217 are certain limitations on who can submit a private taxpayer ruling request on behalf of a
218 taxpayer. In April 2005, the State Bar of Arizona issued an Unauthorized Practice of Law
219 Advisory Opinion (UPL 05-01) (see Appendix C of this procedure for the full text of UPL 05-
220 01), which concluded that "[t]he preparation of a request to the Arizona Department of
221 Revenue for a private taxpayer ruling or an information letter on behalf of another person
222 clearly constitutes the practice of law, as defined in Arizona Supreme Court Rule 31(a)2.A"
223 (see Appendix B of this procedure for the full text of Ariz. S. Ct. Rule 31). Nevertheless,
224 UPL 05-01 explains that Ariz. S. Ct. Rule 31(d)(13)* provides specific exemptions to
225 "certified public accountants and other federally authorized tax practitioners to represent a
226 taxpayer before . . . [ADOR]."

227

228 In UPL 05-01, the State Bar cited to Treasury Department Circular No. 230 Rev., Part 10 –
229 Practice before the Internal Revenue Service, to define what persons constitute federally
230 authorized tax practitioners:

231

232 a. Attorneys who are members in good standing of the bar of the highest court
233 of any State, territory, or possession of the United States, including a
234 Commonwealth, or the District of Columbia, and who are not currently under
235 suspension or disbarment from practice before the Internal Revenue Service;

236

237 b. Certified public accountants who are duly qualified to practice as a certified
238 public accountant in any State, territory, or possession of the United States,
239 including a Commonwealth, or the District of Columbia, and who are not
240 currently under suspension or disbarment from practice before the Internal
241 Revenue Service; and

* Effective December 1, 2005, subsection (c) of Arizona Supreme Court Rule 31 as referenced in UPL 05-01 has been renumbered as subsection (d).

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 7

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- c. Enrolled agents who have qualified to practice before the Internal Revenue Service ("IRS") in compliance with the requirements of Circular 230 and who are not currently under suspension or disbarment from practice before the Internal Revenue Service.

In addition to these three categories of qualified requesters, Ariz. S. Ct. Rule 31(d)(13) provides an additional exemption that allows any taxpayer to be represented by:

- d. Federally authorized tax practitioners, as defined in A.R.S. § 42-2069(D)(1).

Ariz. S. Ct. Rule 31(d)(13) also allows a legal entity, including a government entity, to be represented by:

- e. A full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Based on the above interpretations of applicable law, the Department allows representatives who fall into any one of the five categories of persons enumerated in this section to submit a request for a private taxpayer ruling on behalf of a taxpayer.

WHERE TO SEND A REQUEST FOR A PRIVATE TAXPAYER RULING:

A request for a private taxpayer ruling should be sent by mail to:

Arizona Department of Revenue
Tax Research & Analysis
1600 West Monroe, Rm. 810
Phoenix, AZ 85007-2650

Please include copies of the request and accompanying documents in electronic format whenever practicable in addition to hard copies. Electronic copies should be stored on recordable CD (CD-R) or rewritable CD (CD-RW) optical storage media, or on 3½-inch, PC-formatted floppy diskettes.

As an alternative to sending electronic documents by mail on recordable media, a taxpayer may choose to submit electronic copies by email to the appropriate Tax Research and

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 8

284 Analysis Section analyst after the analyst has received the hard copy of the request. The
285 Department takes reasonable steps such as maintaining secure servers to ensure that the
286 taxpayer's communications will reach the intended recipient and will be kept confidential.
287 Nevertheless, the Department cannot guarantee unauthorized interception or misuse of
288 electronic communications and shall not be held responsible in the event of such
289 unauthorized use.

290
291 Regardless of the method by which the Department receives electronic documents, a
292 taxpayer or taxpayer representative must send hard copies of all documents requiring
293 signature by mail.

294
295 The Department will acknowledge receipt of all requests for private taxpayer rulings. If a
296 request does not comply with the requirements of A.R.S. § 42-2101 and this procedure,
297 the Department will inform the taxpayer or the taxpayer's representative in writing of which
298 additional requirements must be met.

299
300 A taxpayer may obtain information regarding the status of the taxpayer's private taxpayer
301 ruling request by contacting the analyst whose name and telephone number are shown on
302 the letter acknowledging receipt of the request for the private taxpayer ruling.

303
304 The Department will attempt to issue private taxpayer rulings within 45 days after receiving
305 the written request and on receiving the facts that are relevant to the ruling. Although a
306 taxpayer who needs a request processed in an expeditious manner may request special
307 handling in a ruling request by explaining the need for the special handling and the time
308 frame in which it would like a private taxpayer ruling to be issued, the Department cannot
309 guarantee that a private taxpayer ruling can be processed by the time requested.
310 Accordingly, taxpayers are encouraged to submit their requests well in advance of
311 prospective transactions at issue in their requests.

312 313 **WITHDRAWAL OF PRIVATE TAXPAYER RULING REQUEST:**

314
315 A taxpayer may withdraw a request for a private taxpayer ruling within 2 weeks of the date
316 of the letter acknowledging receipt of the request. To expedite the initial private taxpayer
317 ruling request, the taxpayer may include a waiver of the option to withdraw in the request.
318 If a request is withdrawn, all correspondence and exhibits will be retained by the
319 Department.

320 321 **CONFERENCES:**

322
323 Conferences may be held at the Department's discretion to discuss the issues involved in a
324 request for a private taxpayer ruling. The taxpayer or the taxpayer's representative may
325 request a conference with the Department either verbally or in writing.

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 9

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AREAS IN WHICH THE DEPARTMENT WILL NOT ISSUE PRIVATE TAXPAYER RULINGS:

There are certain subject areas in which the Department ordinarily will not issue private taxpayer rulings. Additionally, the Department may decline to issue a ruling because of the factual nature of the problem involved or for other reasons. When the Department declines to issue a ruling, it will issue an information letter or statement of general guidance to the taxpayer. (For additional information on information letters and statements of general guidance, see *Arizona General Tax Ruling GTR 07-__*.)

Generally, the Department will not issue a private taxpayer ruling if:

1. The request is missing the taxpayer's name or taxpayer identification number.
2. The question involves an issue that is the subject of an existing audit, appeal, protest, or refund claim with respect to the taxpayer requesting the ruling. The Department will not decline to issue a ruling if the taxpayer submitted the request in the course of pursuing or entering into a voluntary disclosure agreement.
3. The question involves an issue which is currently being litigated in court or is on appeal.
4. The request involves an area in which the IRS has announced that it will not issue advance rulings. This includes a request that involves alternative plans of proposed transactions or hypothetical situations.
5. The person requesting the private taxpayer ruling is a professional preparer or representative acting on behalf of a taxpayer and has not provided an individual identification number for the preparer or representative or proof that the person is an authorized agent of the taxpayer (see "PROCEDURE FOR REQUESTING A PRIVATE TAXPAYER RULING" section above).
6. The person requesting the private taxpayer ruling is a professional preparer or representative acting on behalf of a taxpayer and has not provided any legal analysis or conclusion with the request.
7. The person requesting the private taxpayer ruling is a professional preparer or representative acting on behalf of a taxpayer and has failed to provide any of the following:

ARIZONA GENERAL TAX PROCEDURE

GTP 07-__

(This procedure supersedes and rescinds GTP 01-3)

DRAFT (6/4/07): FOR REVIEW AND COMMENT PURPOSES ONLY

Page 10

- 368 (a) a statement of authorities contrary to the taxpayer's views;
- 369
- 370 (b) a statement that no legal authorities exist that are contrary to the
- 371 taxpayer's views; or
- 372
- 373 (c) a statement that the professional preparer or representative is unable
- 374 to locate such authority.
- 375
- 376 8. The issue concerns an area where state treatment relies on the federal law.
- 377 In such a case, the federal authority is the appropriate governmental entity
- 378 from which to request information.
- 379
- 380 9. The question involves a fact intensive issue, such as whether a unitary
- 381 business exists, whether a taxable nexus exists, or the value of property on a
- 382 certain date.
- 383
- 384 10. The private taxpayer ruling is requested by an industry, trade association, or
- 385 similar group on behalf of its members.
- 386

387 The Department welcomes any request by an organization or an individual for a general
388 ruling or procedure. See GTR 07-__ for more information regarding other documents
389 issued by the Arizona Department of Revenue.

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.

**APPENDIX A TO ARIZONA TAX GENERAL PROCEDURE GTP 07- :
A.R.S. § 42-2101**

42-2101. Private taxpayer rulings; request; revocation or modification; definition

- A. The department may issue private taxpayer rulings to taxpayers and potential taxpayers on request. Each request shall be in writing and shall:
1. State the name, address and, if applicable, taxpayer identifying number of the taxpayer or potential taxpayer who requests the ruling.
 2. Describe all facts that are relevant to the requested ruling.
 3. State whether, to the best knowledge of the taxpayer or potential taxpayer, the issue or related issues are being considered by the department in connection with an active audit, protest or appeal that involves the taxpayer or potential taxpayer and whether the same request has been or is being submitted to another taxing authority for a ruling.
 4. Be signed by the taxpayer or potential taxpayer who makes the request or by an authorized representative of the taxpayer or potential taxpayer.
- B. A private taxpayer ruling may be revoked or modified by either:
1. A change or clarification in the law that was applicable at the time the ruling was issued, including changes or clarifications caused by legislation, adopted administrative rules and court decisions.
 2. Actual written notice by the department to the last known address of the taxpayer or potential taxpayer of the revocation or modification of the private taxpayer ruling.
- C. With respect to the taxpayer or prospective taxpayer to whom the private taxpayer ruling was issued, the revocation or modification of a private taxpayer ruling shall not be applied retroactively to tax periods or tax years before the effective date of the revocation or modification and the department shall not assess any penalty or tax attributable to erroneous advice that it furnished to the taxpayer or potential taxpayer in the private taxpayer ruling if:
1. The taxpayer reasonably relied on the private taxpayer ruling.
 2. The penalty or tax did not result either from a failure by the taxpayer to provide adequate or accurate information or from a change in the information.
- D. A private taxpayer ruling may not be relied upon, cited nor introduced into evidence in any proceeding by a taxpayer other than the taxpayer who has received the private taxpayer ruling.
- E. A taxpayer may apply for an administrative hearing to determine the propriety of a retroactive application of a revoked or modified private taxpayer ruling by filing a written petition with the department pursuant to section 42-1251 within forty-five days after receiving written notice of the department's intent to retroactively apply a revoked or modified private taxpayer ruling.
- F. A private taxpayer ruling constitutes the department's interpretation of the law or rules only as they apply to the taxpayer making, and the particular facts contained in, the request.
- G. A private taxpayer ruling may be issued only if no tax has accrued with respect to the transactions, events or facts contained in the request. The department may

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issue a private taxpayer ruling addressing a taxpayer's ongoing business activities, except that the ruling applies only to transactions that occur or tax liabilities that accrue from and after the date the taxpayer receives the ruling.

- H. The department shall attempt to issue private taxpayer rulings within forty-five days after receiving the written request and on receiving the facts that are relevant to the ruling. If the ruling is expected to be delayed, the department shall notify the requestor of the delay and the proposed date of issuance.
- I. Within thirty days after being issued, the department shall maintain the private taxpayer ruling as a public record and make it available at a reasonable cost for public inspection and copying. The text of private taxpayer rulings is open to public inspection subject to the confidentiality requirements prescribed by article 1 of this chapter.
- J. In this section, "private taxpayer ruling" means a written determination by the department issued on or after September 21, 1991 that interprets and applies one or more statutes contained in this title or title 43 and any applicable administrative rules that the department has adopted to the specific prospective facts described in the request for a private taxpayer ruling.

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APPENDIX B TO ARIZONA GENERAL TAX PROCEDURE GTP 07-__ :
Ariz. Sup. Ct. R. 31

Arizona Supreme Court Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. Jurisdiction. Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.
2. Definitions.
 - A. "Practice of law" means providing legal advice or services to or for another by:
 - (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
 - (2) preparing or expressing legal opinions;
 - (3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
 - (4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
 - (5) negotiating legal rights or responsibilities for a specific person or entity.
 - B. "Unauthorized practice of law" includes but is not limited to:
 - (1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or
 - (2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.
 - C. "Legal assistant/paralegal" means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.
 - D. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, signed by all disputants, to mediate a dispute.

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- (b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.
- (c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.
- (d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:
 1. In any proceeding before the Department of Economic Security, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.
 2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.
 3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.
 4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.
 5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.
 6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona

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Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.
8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.
9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.
10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.
11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such

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- person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.
12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.
 13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.
 14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).
 15. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.
 16. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).
 17. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).
 18. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

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19. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.
20. Nothing in these rules shall prohibit the preparation of tax returns.
21. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.
22. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.
23. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the Arizona Code of Judicial Administration.
24. Nothing in these rules shall prohibit a mediator as defined in these rules from facilitating a mediation between parties, preparing a written mediation agreement, or filing such agreement with the appropriate court, provided that:
 - (A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or
 - (B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.In all other cases, a mediator who is not a member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of judicial Administration, Part 7, Chapter 2, Section 7-208.
25. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.
26. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

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**APPENDIX C TO ARIZONA GENERAL TAX PROCEDURE GTP 07- :
UPL 05-01**

UPL ADVISORY OPINION

***UPL 05-01
(April 2005)***

Tax Payer Representative's Requests

This is an Advisory Opinion regarding Rule 31 of the Rules of the Supreme Court of Arizona regarding whether an attorney practicing outside the State of Arizona, who is not a licensed Arizona attorney, or CPA or IRS agent, is engaged in the unauthorized practice of law by submitting a request to the Arizona Department of Revenue for private tax payer ruling or information letter on behalf of an out-of-state client.

Issues:

Is (i) an attorney practicing outside the State of Arizona and not admitted to practice law in Arizona, (ii) a Certified Public Accountant, or (iii) an enrolled agent before the Internal Revenue Service, who submits a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of an out-of-state client engaged in the unauthorized practice of law in Arizona? No, as long as the attorney, CPA, or enrolled agent is not suspended or disbarred from practicing before the United States Internal Revenue Service.

Facts:

The Arizona Department of Revenue (the "**Department**") may issue a private taxpayer ruling ("**PTR**") or an information letter ("**IL**"). A PTR interprets and applies Arizona tax laws to a particular set of facts set forth by the taxpayer requesting the ruling, and is issued only to that taxpayer with respect to a specific fact situation. An IL is a letter that responds to a written inquiry from a taxpayer, a taxpayer's representative, or a business, trade, or industrial association or similar group. An IL is issued if: (a) the inquiry indicates a need for general information that requires written assistance or advice on tax principles or applications; or (b) the inquiry does not meet the requirements for issuance of a PTR, but the Department determines that written assistance or advisement is appropriate.

A request for a PTR must include: the requesting taxpayer's identifying information; (b) the signature of the requesting taxpayer or the taxpayer's representative; (c) if the request is submitted by a representative, proof that the person is an authorized agent of the taxpayer; (d) a detailed description of the facts with respect to which the PTR is sought, including identification of all interested parties; (e) an analysis of the material facts included in any accompanying documents and their bearing on the issues raised in the request; and (f) if the taxpayer is advocating a particular conclusion, an explanation of the grounds for the

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taxpayer's proposed conclusion and the relevant legal authorities in support of the conclusion. Given the nature of an IL, similar requirements are not imposed for the issuance of an IL.

Relevant Authority:

Arizona Supreme Court Rule 31:

Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent

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words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

....

(b) Authority to Practice. Except as hereinafter provided in section (c), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar, and no member shall practice law in this state or represent in any way that he or she may practice law in this state, while suspended, disbarred, or on disability inactive status.

(c) Exceptions. Notwithstanding the provisions of section (b):

....

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest, and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

....

Arizona Revised Statutes section 42-2069(D)(1):

1. "Federally authorized tax practitioner" means an individual who is authorized under federal law to practice before the United States internal revenue service if the practice is subject to federal regulation under 31 United States Code § 330. Federally authorized tax practitioner includes any person who is engaged in practice with one or more federally authorized tax practitioners and who is subject to

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the same standards of practice and ethics requirements as a federally authorized tax practitioner.

31 United States Code section 330:

- (a) Subject to section 500 of title 5, the Secretary of the Treasury may -
 - (1) regulate the practice of representatives of persons before the Department of the Treasury; and
 - (2) before admitting a representative practice, require that the representative demonstrate -
 - (A) good character;
 - (B) good reputation;
 - (C) necessary qualifications to enable the representative to provide the persons valuable service; and
 - (D) competency to advise and assist persons in presenting their cases.
- (b) After notice and opportunity for a proceeding, the Secretary may suspend or disbar from practice before the Department a representative who -
 - (1) is incompetent;
 - (2) is disreputable;
 - (3) violates regulations prescribed under this section; or
 - (4) with intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented.

Treasury Department Circular No. 230 Rev., Part 10 – Practice before the Internal Revenue Service.

Section 10.0. Scope of Part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing taxpayers before the

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Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service

. . . .

Section 10.2. Definitions.

As used in this part, except where the text clearly provides otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

. . . .

(e) *Practitioner* means any individual described in paragraphs (a), (b), (c), or (d) of § 10.3.

. . . .

Section 10.3. Who may practice.

(a) **Attorneys.** Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

(b) **Certified public accountants.** Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the party or parties on whose behalf he or she acts.

(c) **Enrolled agents.** Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

. . . .

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Discussion:

Is (i) an attorney practicing outside the State of Arizona and not admitted to practice law in Arizona, (ii) a Certified Public Accountant, or (iii) an enrolled agent before the Internal Revenue Service, who submits a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of an out-of-state client engaged in the unauthorized practice of law in Arizona? No, as long as the attorney, CPA, or enrolled agent is not suspended or disbarred from practicing before the United States Internal Revenue Service.

Any inquiry into what legal services may or may not be provided by a person not admitted to practice law in the State of Arizona must begin with reviewing the Arizona Supreme Court's 2003 definition of what is "the practice of law" as set forth in Arizona Supreme Court Rule 31(a)2.A. In brief, "practicing law" in Arizona includes preparing any document through any medium for filing before any administrative agency for a specific person or entity. Only members of the State Bar of Arizona and certain specific categories of non-lawyers are authorized by the Supreme Court to practice law in Arizona.

The preparation of a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of another person clearly constitutes the practice of law, as defined in Arizona Supreme Court Rule 31(a)2.A. However, 26 exemptions from the general restriction of the right to practice law in the State of Arizona to members of the State Bar of Arizona are set forth in Arizona Supreme Court Rule 31(c), including an exemption in paragraph 13 of Rule 31(c) for certified public accountants and other federally authorized tax practitioners to represent a taxpayer before, amongst others, the Arizona Department of Revenue.

Federally authorized tax practitioners are defined in Treasury Department Circular No. 230 Rev., Part 10 – Practice before the Internal Revenue Service, which is promulgated pursuant to the authority granted to the United States Secretary of the Treasury by section 330 of Title 31 of the United States Code, to include:

(a) attorneys who are members in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service;

(b) certified public accountants who are duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service; and

(c) enrolled agents who have qualified to practice before the Internal Revenue Service in compliance with the requirements of Circular 230 and who are not currently

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under suspension or disbarment from practice before the Internal Revenue Service.

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