

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 2. DEPARTMENT OF ECONOMIC SECURITY EMPLOYMENT AND TRAINING

PREAMBLE

- | 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R6-2-101 | Amend |
| R6-2-102 | Amend |
| R6-2-103 | Amend |
| R6-2-104 | New Section |
| R6-2-201 | Repeal |
| R6-2-201 | New Section |
| R6-2-202 | Repeal |
| R6-2-202 | New Section |
| R6-2-203 | Repeal |
| R6-2-203 | New Section |
| R6-2-204 | Repeal |
| R6-2-204 | New Section |
| R6-2-205 | Repeal |
| R6-2-206 | Repeal |
| R6-2-207 | Repeal |
| R6-2-208 | Repeal |
| R6-2-209 | Repeal |
| R6-2-210 | Repeal |
| Article 3 | Repeal |
| R6-2-301 | Repeal |
| R6-2-302 | Repeal |
| R6-2-303 | Repeal |
| R6-2-304 | Repeal |
| R6-2-401 | Repeal |
| R6-2-402 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 41-1954(A)(3) and 46-134(12)
Implementing statutes: A.R.S. §§ 23-645 and 23-648
- 3. The effective date of the rules:**
June 18, 1999
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 4 A.A.R. 4043, December 4, 1998.
Notice of Proposed Rulemaking 4 A.A.R. 4221, December 28, 1998
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

R6-2-101 defines terms used in Title 6, Chapter 2, Articles 2 through 4 of the Arizona Administrative Code. R6-2-102 and R6-2-103 incorporate by reference the federal rules containing detailed provisions concerning the complaint process and the procedures the Department must follow to exclude an employer who submits substandard work orders from further participation in the employment service program.

The Department will amend R6-2-101 through 103 to make minor grammatical changes, update the dates of the rules incorporated by reference, and conform incorporation language to current style and form requirements.

Although R6-2-201 through 210 and R6-2-301 through 304 are consistent with the statutes and other rules promulgated by the Department, the Department is not satisfied with the rules. When last amended in 1994, clarity and conciseness were improved, and the language was brought into conformity with GRRC stylistic requirements. However, the information in the rules is poorly organized, and there is a great deal of information contained in the rules that is only Department internal procedure. The Department intends to repeal the 10 rules in Article 2 and to propose 4 new rules. The new rules will separately organize employer and worker services, and delete internal procedure.

The Department intends to repeal the 4 rules in Article 3 and to incorporate the material not deemed internal procedure with the 4 new rules that will be set up in Article 2. The Department believes the processes and procedures by which workers and employers may obtain services should not be separated from a listing of the types of services provided.

The Department plans to make minor changes in the language of R6-2-402 dealing with incorporation by reference to bring language up to current standards.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, an analysis of the study and other supporting material:

Not applicable.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business, and consumer impact:

The rules will have a positive but intangible economic impact on small business and consumers. The rules are being updated and amended to improve clarity, and the underlying substantive requirements are unchanged.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

The Department made 1 change to the final rules from those that were proposed.

R6-2-101(2). Deleted, "meets criteria for receipt of services described in R6-2-301(A)."

R6-2-101(2). Added, "is a United States citizen or a non-citizen who is legally authorized to work in the United States."

The Department made 2 technical changes in the Notice of Final Rulemaking due to personnel changes. Mr. Doug Peterson replaces Mr. Rudy Campas, and Ms. Beth Broeker replaces Ms. Sarah Youngblood.

The Department changed the dates of the materials incorporated by reference because the dates listed used an inaccurate month for the 1998 CFR updates of the referenced titles.

The Department made minor grammatical and stylistic changes at the suggestion of GRRC staff.

11. **A summary of the principal comments and the agency response to them:**

No comments were made during the designated period.

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

Not applicable

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

<u>Incorporation</u>	<u>Location</u>
29 CFR 29.5	R6-2-101(3)
26 U.S.C. 51	R6-2-101(34)
20 CFR 658.400 through 658.416	R6-2-102
20 CFR 658.417 and 658.418	R6-2-103
29 CFR 29.2(o)	R6-2-402
29 CFR 29	R6-2-402

14. **Was this rule previously adopted as an emergency rule.**

The rules were not previously adopted as emergency rules.

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

TITLE 6. ECONOMIC SECURITY

**CHAPTER 2. DEPARTMENT OF ECONOMIC SECURITY
EMPLOYMENT AND TRAINING**

ARTICLE 1. GENERAL PROVISIONS

Sections

- R6-2-101. Definitions
- R6-2-102. Complaints
- R6-2-103. Hearings and Appeals
- R6-2-104. Policy of Nondiscrimination; Schedule of Services

ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT

Sections

- R6-2-201. ~~Employment Testing~~ Worker Services
- R6-2-202. ~~Employment Counseling~~ Employer Services
- R6-2-203. ~~Employer Job Referral Services~~ America's Job Bank
- R6-2-204. ~~Worker Job Referral Services~~ Use of Employment Testing Materials by Other Nonprofit Agencies
- R6-2-205. ~~Impartiality~~ Repealed
- R6-2-206. ~~Provision of Employment Testing Materials~~ Repealed
- R6-2-207. ~~Industrial Analysis Services~~ Repealed
- R6-2-208. ~~Geographic Labor Clearance~~ Repealed
- R6-2-209. ~~Disadvantaged Worker Groups~~ Repealed
- R6-2-210. ~~Cooperative Efforts~~ Repealed

ARTICLE 3. OBTAINING EMPLOYMENT SERVICES

Sections

- R6-2-301. ~~Worker Services: Eligibility and Application~~ Repealed
- R6-2-302. ~~Worker Classification~~ Repealed

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- R6-2-303. ~~Employer Job Orders~~ Repealed
R6-2-304. ~~Job Referral and Placement~~ Repealed

ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS

Sections

- R6-2-401. ~~Targeted Jobs Tax Credit Program (TJTC)~~ Repealed
R6-2-402. Apprentice Program Services

ARTICLE 1. GENERAL PROVISIONS

R6-2-101. Definitions

The following definitions apply to this chapter:

1. "America's Job Bank" means a nationwide computer database linking more than 1800 local Employment Service offices. The services of America's Job Bank are available to job seekers and employers via the Internet.
- ~~2.1.~~ "Applicant" means a person who has applied to the Department for worker services and who is a United States citizen or a non-citizen who is legally authorized to work in the United States. ~~meets the criteria for receipt of services described in R6-2-301(A).~~
- ~~3.2.~~ "Apprentice" means a worker who is at least age 16, or older if at last 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade under standards of apprenticeship which that meet the requirements of 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) ~~29 CFR 29.5 July 1, 1994, which is incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona, and on file with the Secretary of State's Office.~~
- ~~4.3.~~ "Apprenticeship agreement" means a written agreement between an apprentice and an employer, or a committee acting on behalf of an employer, and containing the terms and conditions for employment of an apprentice.
- ~~5.4.~~ "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, ~~including such matters as the requirement for a written apprenticeship agreement.~~
- ~~6.5.~~ "Apprenticeship program registration" means the acceptance and centralized recording of an apprenticeship program by the ESA which that meets the basic standards and requirements established for such apprenticeship programs as established under federal law.
- ~~7.6.~~ "Apprenticeship program sponsor" means a ~~any~~ person, association, committee, or organization operating an apprenticeship program and in whose name the program is ~~or will be~~ registered and approved.
- ~~8.7.~~ "BFOQ" or "bona fide occupational qualification" means ~~that an employment decision or request based on age, sex, national origin, or religion is based on~~ a finding by an employer that such age, sex, national origin, or religion is a characteristic is necessary to ~~the an~~ individual's ability to perform the job.
- ~~9.8.~~ "Department" means the Arizona Department of Economic Security.
- ~~10.9.~~ "DOT" or "Dictionary of Occupational Titles" means the reference work published by the United States Employment Service, which contains brief, non-technical definitions of job titles, distinguishing numeric codes, and worker trait data.
- ~~11.10.~~ "Disabled veteran" means:
 - a. A veteran who is entitled to compensation under laws administered by the United States Secretary of Veterans Affairs; or
 - b. A person who ~~was~~ is discharged or released from active military duty because of a service-connected disability.
- ~~12.11.~~ "Employer job referral services" means Department activities ~~that which~~ help an employer obtain workers with the occupational qualifications needed by the employer.
- ~~13.12.~~ "Employment counseling" means formulation of a vocational plan ~~that which~~ is consistent with ~~the a~~ person's vocational skills and interests, and advice on appropriate measures for implementation of that plan.
- ~~14.13.~~ "Employment test" means a standardized method or device for measuring a person's possession of, interest in, or ability to acquire job skills and knowledge.
- ~~15.14.~~ "ESA" or "Employment Security Administration" means the administrative unit ~~program~~ within the Department's Division of Employment and Rehabilitation Services with responsibility for all worker and employer services.
- ~~16.15.~~ "Essential functions of a job" means the fundamental job duties of a particular employment position.
- ~~17.16.~~ "Geographic labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between geographical areas.
- ~~18.17.~~ "Industrial analysis services" means Department activities ~~to which~~ assist employers and labor organizations in determining the cause of worker resource problems in a particular business, and provision of information developed by the USES for resolving such problems.

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- ~~19.~~~~18.~~“Job bank” means a computerized list of all currently available jobs and employment opportunities listed with the Department.
- ~~20.~~~~19.~~“Job development” means the process by which the Department obtains a job or interview with an employer for a specific applicant for whom the local ESA office has no suitable job opening on file.
- ~~21.~~“Job order” means a request by an employer for the referral of job seekers made available to job seekers via the Department's Job Bank.
- ~~22.~~~~20.~~“JTPA” means the federal Job Training Partnership Act found at 29 U.S.C. 1501 et seq.
- ~~23.~~~~21.~~“Labor market area” means a geographic area consisting of a central city or group of cities, and the surrounding territory within a reasonable commuting distance.
- ~~24.~~~~22.~~“Major life activities” means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- ~~25.~~~~23.~~“Occupational labor clearance” means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between occupations occupational and industry industrial types lines.
- ~~26.~~~~24.~~“Older worker” means a person age 40 or older above who is working or who is unemployed and wishes to work.
- ~~27.~~~~25.~~“Person with a disability” or “disabled worker” means a person who:
- a. Has a physical or mental impairment ~~which~~ that substantially limits ~~one~~ 1 or more of that person's major life activities;
 - b. Has a record of such impairment; or
 - c. Is regarded as having such an impairment.
- ~~28.~~~~26.~~“Physical or mental impairment” means:
- a. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting ~~one~~ 1 or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
 - b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- ~~29.~~~~27.~~“Placement” means ~~that the hiring, by a public or private employer has hired, of an applicant that the Department has referred to the employer for a job or interview.~~
- ~~30.~~“Qualified worker” means a worker who possesses the skills, knowledge, and abilities to perform the essential functions of a job.
- ~~31.~~~~28.~~“Reasonable accommodation” means a modification of, or an adjustment to a process, position, or term of employment, ~~which~~ that will permit a disabled worker to enjoy the same benefits and privileges of employment as those enjoyed by persons without disabilities.
- ~~32.~~~~29.~~“Substandard work order” means a work order:
- a. Containing employment terms that ~~which~~ violate employment-related laws; or
 - b. Offering work at wages or conditions that ~~which~~ are substantially inferior to those generally prevailing in the labor market area for the same or similar work.
- ~~33.~~~~30.~~“Substantially limits” when used in reference to a disability, means:
- a. Unable to perform a major life activity that the average person in the general population can perform; or
 - b. Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
- ~~34.~~~~31.~~“Targeted Jobs Tax Credit” means an income tax credit available to businesses ~~that~~ ~~which~~ hire persons whom ESA has certified as meeting certain criteria described in 26 U.S.C. 51 (Office of the Federal Register, National Archives and Records Administration, as amended August 10, 1993), which is incorporated ~~herein~~ by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona, and on file with the Secretary of State's Office.
- ~~35.~~~~32.~~“USES” means the United States Employment Service, which is the unit in the United States Department of Labor's Employment and Training Administration designed to promote a national system of public job service offices.
- ~~36.~~~~33.~~“Veteran” means a person who served in the active military, ~~naval, or air~~ service, and who was discharged or released ~~therefrom~~ from service under conditions other than dishonorable.
- ~~37.~~~~34.~~“Vocational plan” means a plan developed jointly by an ESA counselor or counselor-trainee and an applicant ~~and~~ ~~which~~ that describes:
- a. The applicant's short-range and long-range occupational goals; and
 - b. The actions to be taken to implement the plan.
- ~~38.~~~~35.~~“Worker” means a U.S. citizen or a non-citizen who is legally authorized to work in the United States and person who is employed or unemployed and wishes to work.

~~39.36:~~ "Worker services" means the functions the Department performs for the benefit of applicants and workers, including, ~~without limitation:~~ employment counseling, employment testing, preparation of a vocational plan, and referral for employment opportunity.

~~40.37:~~ "Worker job referral services" means Department activities ~~to which~~ help ~~a worker~~ workers promptly obtain ~~a job~~ jobs for which the ~~worker is~~ workers are occupationally qualified.

~~41.38:~~ "Youth worker" means a ~~person~~ worker ~~younger than~~ under the age of 22, ~~who is working or is unemployed and wishes to work.~~

R6-2-102. Complaints

The Department shall process all complaints related to the provision of employment services ~~under pursuant to 20 CFR 658, Subpart E, 20 CFR 658.400 through 658.416 (Office of the Federal Register, National Archives and Records Administration, April 1, 1994 April 1, 1998), which are incorporated herein by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona, and on file with the Secretary of State's Office.~~

R6-2-103. Hearings and Appeals

The Department shall conduct any hearing or appeal to which an employer, applicant, or worker may be entitled under applicable state or federal employment service laws, ~~and 20 CFR 658.417 and 658.418 (Office of the Federal Register, National Archives and Records Administration April 1, 1998) pursuant to 20 CFR 658, Subpart E, §§ 658.417 through 658.418, (April 1, 1994) which are incorporated herein by reference and on file with the Secretary of State's Office, and A.R.S. § 41-1991 et seq. in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.~~

R6-2-104. Policy of Nondiscrimination; Schedule of Services

In the administration of the state employment office, the Department shall:

- A. Not discriminate against any applicant or employer because of age, race, sex, color, religious creed, national origin, disability or political affiliation or belief unless a BFOQ exists;
- B. Actively promote employment opportunities for disadvantaged workers and encourage employers to hire workers on the basis of objective qualifications; and
- C. Use the following priority schedule to select and refer qualified applicants for work:
 - 1. Disabled veteran applicants;
 - 2. Other veteran applicants;
 - 3. Other applicants.

ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT

~~R6-2-201. Employment Testing Repealed~~

- ~~A. The Department shall conduct employment tests on an applicant when the following two conditions are met:
 - 1. The applicant requests such tests, and
 - 2. The Department deems such tests necessary to provide the applicant with employment services.~~
- ~~B. The Department shall use only employment tests and related techniques approved by the USES, in accordance with the standards designated for such tests.~~
- ~~C. The Department shall conduct testing activities, as needed, in ESA local offices. If a particular local office lacks the resources or personnel to administer or interpret an employment test, the Department may refer the applicant to another local office for testing services.~~
- ~~D. The Department shall not release the results of any employment testing without the consent of the person tested.~~

R6-2-201. Worker Services

- A. As permitted by available resources, the Department shall provide services to a worker who is a United States citizen or a non-citizen authorized to work in the United States. The services include but are not limited to the following:
 - 1. Employment counseling;
 - 2. Aptitude testing;
 - 3. Apprenticeship training; and
 - 4. Job referral services.
- B. A worker applying for services shall file an application with the Department. The application shall include the worker's:
 - 1. Name, address, telephone number, social security number, and date of birth;
 - 2. Prior work experience, including information on salary, job duties, and any past military service;
 - 3. Educational background, including technical or other vocational training the worker has completed;
 - 4. Career goals, hobbies, and volunteer work;
 - 5. Availability for work, including willingness to travel or relocate, desire for full or part-time employment, and desired working hours; and

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- 6. Special skills or proficiencies, including a language other than English or the use of equipment.
- C.** The Department shall obtain information about a worker's disability as is necessary to provide the worker with appropriate services. This information may include asking the worker whether the worker can perform the essential functions of a particular job, with or without reasonable accommodation.
- D.** When the Department conducts employment testing, the Department shall:
 - 1. Use only standardized tests and techniques approved by the United States Employment Service; and
 - 2. Not release the results of the tests without the written consent of the tested worker.

R6-2-202. Employment Counseling Repealed

- A.** The Department shall provide employment counseling services to any applicant who requests such services or when counseling is necessary to provide the applicant with job referral services. If an employment counselor is not available in the applicant's local ESA office, ESA may refer the applicant to an office where such services are available.
- B.** The Department shall:
 - 1. Advise persons who may benefit from employment counseling of the availability of such counseling;
 - 2. Provide counseling services which take into account the interrelationship of vocational problems and psychosocial problems;
 - 3. Provide applicants with information about, and referrals to, training or services offered by other agencies and community resources;
 - 4. Permit applicants to make their own decisions about employment and career plans and goals; and
 - 5. Provide veterans and disabled veterans with employment counseling services in accordance with applicable requirements of state and federal law.

R6-2-202. Employer Services

- A.** The Department shall require the following information from an employer who places a job order:
 - 1. A description of the essential functions of the job in sufficient detail to permit the Department to ascertain the qualifications a worker needs to satisfactorily perform the work, with or without reasonable accommodation;
 - 2. An employer's hiring requirements, including the type of license or certification needed, or the type of equipment or tools the worker must supply;
 - 3. The terms and conditions of work, including hours, salary, benefits, promotional opportunities, and travel requirements; and
 - 4. The job location and instructions for arranging a job interview.
- B.** The Department shall refer workers to the employer who most closely match the requirements in the job order. If qualified workers are not available from the Department's files and, if resources are available, the Department shall recruit qualified workers to fill the employer's order.
- C.** The Department shall not accept a job order from an employer for processing if:
 - 1. The employer's requirements are discriminatory based on age, sex, national origin, or religion, unless the discriminatory characteristic is a bona fide occupational qualification necessary to perform the job. An example of a bona fide occupational qualification that is not discriminatory is the requirement for a female worker in a female intimate apparel retail outlet.
 - 2. The terms and conditions of work are substandard under A.R.S. § 23-776(C)(2).
 - 3. The position is vacant due directly to a strike, lockout, or other labor dispute or conflict between employers and workers, including wage disputes and collective bargaining efforts.
 - 4. A worker is required to pay a fee for the job.
- D.** If an employer refuses to modify a job order deemed unacceptable by subsection (C), the Department shall notify the employer in writing of discontinuance of services. The notification shall include the employer's right of appeal.

R6-2-203. Employer Job Referral Services Repealed

- A.** The Department shall market the availability of its job referral services to employers.
- B.** The Department shall accept job orders from employers in accordance with the provisions of applicable federal and state law.
- C.** The Department shall make the following services, facilities, and information available to employers on a first come, first serve basis:
 - 1. Office space in local ESA offices, for the purposes of conducting job interviews;
 - 2. Objective information concerning labor market conditions, needs, and trends, and legislation affecting employment.
- D.** Notwithstanding subsection (B), the Department shall not accept for processing:
 - 1. Discriminatory job orders unless the stated discriminatory requirement is a BFOQ, or
 - 2. Substandard work orders.
- E.** Upon receipt of a discriminatory or substandard work order, the Department shall:
 - 1. Orally advise the employer that the Department cannot accept the work order with its present terms;
 - 2. Advise the employer of the defects in the work order and how those defects can be cured; and,
 - 3. Upon the employer's consent to modify the work order in accordance with the Department's suggestions, the Department shall make the necessary modifications and process the work order.
- F.** If the employer refuses to modify the work order, the Department shall retain the work order.

~~G. When the Department cannot process the work order as provided in subsection (E), the Department shall send the employer written notice of the intent to discontinue services and the appeal processes available to the employer as provided in R6-2-102.~~

R6-2-203. America's Job Bank

- ~~A. The Department shall recommend that an employer doing business in Arizona be denied access to America's Job Bank if:~~
- ~~1. The employer is delinquent in the payment of unemployment insurance taxes; or~~
 - ~~2. The position the employer is attempting to fill is vacant due directly to a strike, lockout, or other labor dispute or conflict between employers and workers, including wage disputes and collective bargaining efforts.~~
- ~~B. An employer that is denied access to America's Job Bank may appeal the denial under R6-2-103.~~

R6-2-204. Worker Job Referral Services Repealed

~~The Department shall:~~

- ~~1. Register applicants for work;~~
- ~~2. Select and refer qualified applicants for work, based on the following priority schedule:~~
 - ~~a. Disabled veterans—highest priority;~~
 - ~~b. All other veterans—second priority;~~
 - ~~c. All other applicants—third priority;~~
- ~~3. Use best efforts to refer and place applicants in jobs which utilize the applicants' highest skills.~~
- ~~4. Make no referrals to interviews or jobs which will result in costs or charges to the applicant referred.~~

R6-2-204. Use of Employment Testing Materials By Other Nonprofit Agencies

~~Upon written request, the Department shall make employment testing materials approved by the United States Employment Service available to nonprofit vocational guidance and placement agencies and organizations, provided the agency or organization:~~

- ~~A. Has personnel trained in the administration and interpretation of the tests;~~
- ~~B. Provides the Department with written verification of the agency's or organization's nonprofit status; and~~
- ~~C. Signs a release agreeing to the proper use of the testing materials and test results.~~

R6-2-205. Impartiality Repealed

~~The Department shall not participate or take sides in any labor dispute or conflict between employers and employees or workers, including, without limitation, wage disputes and collective bargaining efforts.~~

R6-2-206. Provision of Employment Testing Materials Repealed

- ~~A. When so permitted by USES, the Department shall make USES approved testing materials available to nonprofit vocational guidance and placement agencies and organizations, including, without limitation, the Department's Job Opportunity and Basic Skills (JOBS) and JTPA programs, the Department's Rehabilitation Services Administration (RSA), the Bureau of Indian Affairs (BIA), public and private high schools, and other similar nonprofit educational institutions.~~
- ~~B. Notwithstanding subsection (A), the Department shall not authorize the release of test materials unless the person or organization has been trained in administration and interpretation of such tests.~~
- ~~C. Any person or agency that wishes to obtain testing materials shall submit a request to the Department.~~
- ~~D. Upon receipt of a request, the Department shall determine that the person or agency requesting the testing material is a person or organization qualified under subsection (A) and has the skills described in subsection (B). The Department may require the person or agency to provide the Department with written verification of nonprofit status.~~
- ~~E. Prior to authorizing the release of testing materials, the Department shall obtain a signed release agreement which details the proper use of USES testing materials and test results.~~

R6-2-207. Industrial Analysis Services Repealed

- ~~A. Upon request by an employer or a labor organization, and to the extent that Department resources are available, the Department shall assist employers and labor organizations in analyzing the causes of labor force problems in a particular business establishment.~~
- ~~B. The Department shall provide employers and labor organizations with information and technical advice on methods for resolving and avoiding the circumstances which result in labor force problems. All such information and advice shall be based on information approved by the USES.~~

R6-2-208. Geographic Labor Clearance Repealed

- ~~A. The Department shall not implement geographic labor clearance procedures until the Department has exhausted all reasonable means of recruiting qualified workers from local sources.~~
- ~~B. The Department shall not extend, for interstate labor clearance, an employer job order unless such order:~~
 - ~~1. Specifies that the employer will pay workers the minimum wage or above, and~~
 - ~~2. Specifies the date and location of employment.~~

R6-2-209. Disadvantaged Worker Groups Repealed

- ~~A. The Department shall provide information and conduct training for the purpose of educating employers, labor organizations, and the community about the employability of groups which have historically been at a disadvantage for employment opportunities, including, without limitation:~~
 - ~~1. Workers with a disability;~~

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2. Youth workers;
3. Female workers;
4. Minority workers, and
5. Older workers.

B. The Department shall actively promote employment opportunities for disadvantaged workers and encourage employers to hire workers on the basis of objective qualifications.

R6-2-210. Cooperative Efforts Repealed

In the performance of all its services and duties, the Department shall cooperate with federal, state, and local entities and organizations to:

1. Maximize employment opportunities for all workers;
2. Foster exchange of information on employment services, on the job training programs, labor market conditions and trends, personnel management methods, and current legislation involving labor issues;
3. Avoid duplication of services; and
4. Develop and standardize improved employment tests.

ARTICLE 3. OBTAINING EMPLOYMENT SERVICES Repealed

R6-2-301. Worker Services, Eligibility and Application Repealed

- A.** Worker services are available to any United States citizen and any alien who is legally authorized to work in the United States.
- B.** A person who wishes to obtain worker services from the Department shall first apply to the Department through a local ESA office, on a form provided by the Department.
- C.** The application form shall request the following information:
1. Identifying information on the applicant, including: name, address, phone number, social security number, and date of birth;
 2. The applicant's prior work history, including any past military service;
 3. The applicant's prior salary history;
 4. The applicant's educational background, including any technical or other vocational training the applicant has completed;
 5. The applicant's personal interests, hobbies, and career goals;
 6. The applicant's availability for work, including willingness to travel or relocate, desire for full or part-time employment, and desired working hours;
 7. Any special skills or limiting traits the applicant may possess, including, without limitation, inability to speak, read, or write English, proficiency in a language other than English, or proficiency in using particular types of equipment;
 8. Whether the applicant has been referred to ESA by another Department program or administration; and
 9. Any other information the Department reasonably deems necessary to provide the applicant with services, including formulation of a vocational plan that will result in appropriate employment.
- D.** When an applicant is disabled, the Department shall obtain only such information about the applicant's disability as is reasonably necessary to provide the applicant with appropriate worker services, which may include asking the applicant whether the applicant can perform the essential functions of a particular job, with or without reasonable accommodation.
- E.** Applicants shall notify the Department of any changes in the information submitted on the application form.
- F.** The Department shall not provide worker services to a person until the Department has received a completed application form from such person.

R6-2-302. Worker Classification Repealed

- A.** Upon receipt of a completed application, the Department shall evaluate the applicant's occupational qualifications based on the applicant's work experience, training, and personal characteristics, skills, preferences, and goals.
- B.** Following the evaluation described in subsection (A), the Department shall assign an occupational title in accordance with DOT.

R6-2-303. Employer Job Orders Repealed

An employer who wishes to place a job order with the Department shall provide the Department with the following information about the available work or position:

1. A description of the essential functions of the job in sufficient detail to permit the Department to ascertain the qualifications an applicant needs to satisfactorily perform the work, with or without reasonable accommodation;
2. Any hiring requirements the employer has established, including, without limitation, the following:
 - a. The requirement that candidates must supply their own equipment; or
 - b. The requirement that candidates must possess a particular form of license or certification;
3. Information about the terms and conditions of work, including, without limitation, travel requirements, salary, promotional opportunities, and benefits; and
4. Instructions on how the applicant should arrange for an employment interview.

R6-2-304. Job Referral and Placement Repealed

- A.** Upon receipt of a job order, the Department shall review its applicant files and shall refer applicants to the employer according to the priority schedule contained in R6-2-204.

- B. The Department shall refer applicants who most clearly match the requirements specified by the employer. If the Department has more applicants available for referral than are needed or requested by the employer, the Department shall give preference to applicants who:
 - 1. Have registered with ESA for the longest period of time;
 - 2. Have maintained regular contact with ESA to request job referral;
 - 3. Have provided ESA with a current address and phone number to permit ESA to promptly contact such applicants upon receipt of a job order; and
 - 4. Are most readily available to respond to the interview or placement schedule specified in the job order.
- C. If the Department receives a job order for which it does not already have registered, qualified applicants, the Department shall recruit applicants to fill the order

ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS

R6-2-401. Targeted Jobs Tax Credit Program (TJTC) Repealed

- A. ESA shall serve as the designated local agency responsible for certification of persons who are eligible to participate in the targeted jobs tax credit program.
- B. A person who wishes to participate in the TJTC program shall apply at any local ESA office on an application form provided by the Department.
- C. An employer may request that the Department certify a person the employer wishes to hire. The employer shall specify the reason why the employer believes the potential employee will be eligible for the TJTC.
- D. ESA shall not certify any potential employee as eligible:
 - 1. Until the employee submits a completed application; and
 - 2. Unless the employee is a member of one of the target groups described in 26 U.S.C. 51(d)(as amended August 10, 1993), which is incorporated herein by reference and on file with the Secretary of State's office.

R6-2-402. Apprentice Program Services

- A. ESA shall serve as the recognized state apprenticeship agency as described in ~~29 CFR 29.2(e)~~ 29 CFR 29.2(o) (Office of the Federal Register, National Archives and Records Administration, July 1, 1994 July 1, 1998), which is incorporated herein by reference and on file in the Secretary of State's Office in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona. ~~and~~ ESA shall administer the state's apprenticeship program in accordance with ~~29 CFR 29~~ 29 CFR 29 (Office of the Federal Register, National Archives and Records Administration, July 1, 1994 July 1, 1998), which is incorporated herein by reference and on file in the Secretary of State's Office in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
- B. In its capacity as the recognized agency, ESA shall:
 - 1. Approve apprenticeship program standards;
 - 2. Review apprenticeship agreements to determine whether if the agreements should be approved;
 - 3. Assist in developing apprenticeship program standards;
 - 4. Review apprenticeship program standards to determine if whether they should be approved;
 - 5. Review the wages paid to participants in an apprenticeship program; and
 - 6. Maintain a statewide registration system for apprenticeship programs.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R15-2-342	Repeal
R15-2-347	Repeal
R15-2-534	Repeal
R15-2-702	Repeal
R15-2-704	Repeal
R15-2-705	Repeal
R15-2-821	Repeal
R15-2-822	Repeal

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R15-2-823	Repeal
R15-2-1022	Repeal
R15-2-1215	Repeal
R15-2-1217	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 statutes: A.R.S. §§ 42-1104, 42-1108, 42-1111, 42-1125, 42-1251, 42-2061, 42-2062, 43-325, 43-341 through 43-343, 43-1021, 43-1022, 43-1215, 43-1217, and 43-1242.
3. **The effective date of the rules:**
June 16, 1999
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 537, February 19, 1999.
Notice of Proposed Rulemaking: 5 A.A.R. 794, March 19, 1999.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Jaimie Lee, Tax Analyst

Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
These rules deal with the administration of the income tax. As a result of legislative changes, the Department is repealing these rules because they are repetitive of or contrary to other rules or statutory provisions.
7. **Reference to any study that the agency proposes to rely on and its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
Not applicable.
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
9. **The summary of the economic, small business, and consumer impact:**
The repeal of these rules will benefit the public by eliminating repetitive and obsolete rules which no longer serve their intended purpose. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the repeal of these rules.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
None.
11. **A summary of the principal comments and the agency response to them:**
The Department did not receive any written or verbal comments on the rule action after the publication of the rule-making in the Notice of Proposed Rulemaking.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.
13. **Incorporations by reference and their location in the rules:**
None.
14. **Was the rule previously adopted as an emergency rule?**
No.

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 2. INCOME AND WITHHOLDING TAX SECTION

ARTICLE 3. RETURNS

Sections

- R15-2-342. ~~Returns by exempt organizations~~ Repealed
R15-2-347. ~~Time for filing certain information returns~~ Repealed

ARTICLE 5. PAYMENT AND COLLECTION OF TAX

Sections

- R15-2-534. ~~Period of limitation for proposing deficiency assessments~~ Repealed

ARTICLE 7. JEOPARDY ASSESSMENTS; BANKRUPTCY; RECEIVERSHIP

Sections

- R15-2-702. ~~Demand for return and payment of tax where collection of tax in jeopardy~~ Repealed
R15-2-704. ~~Finality of jeopardy assessment~~ Repealed
R15-2-705. ~~Action on petition for jeopardy assessment; hearing with Department~~ Repealed

ARTICLE 8. INTEREST AND PENALTIES

Sections

- R15-2-821. ~~Penalty in case of failure to file return~~ Repealed
R15-2-822. ~~Penalty in case of failure to file upon demand~~ Repealed
R15-2-823. ~~Penalty for failure to furnish information~~ Repealed

ARTICLE 10. INDIVIDUALS

Sections

- R15-2-1022. ~~Subtractions and Additions from Arizona Gross Income~~ Repealed

ARTICLE 12. TAX EXEMPT ORGANIZATIONS

Sections

- R15-2-1215. ~~Denial of tax exempt status~~ Repealed
R15-2-1217. ~~Disallowance of certain charitable or other deductions~~ Repealed

ARTICLE 3. RETURNS

R15-2-342. ~~Returns by exempt organizations~~ Repealed

~~Requirement of annual returns. Every organization exempt from tax under Section 43-1201 having gross income in excess of \$25,000 irrespective of whether it is chartered by, affiliated, or associated with any central, parent, or other organization except organizations specifically exempted from filing annual returns by Section 43-1242 shall file with the Department annually a return of information specifically stating the items of gross income, receipts, and disbursements, and other such information as may be prescribed by the Department in the instructions on the form or issued by it therewith. Returns shall be on the basis of the established annual accounting period of the organization. When the organization does not have such established accounting period, such returns shall be on the basis of the calendar year. Every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the Department for the purpose of inquiring into its exempt status.~~

R15-2-347. ~~Time for filing certain information returns~~ Repealed

- ~~**A.** Annual information returns are required to be filed for common trust funds (Section 43-341) and for every trust claiming a charitable deduction (Section 43-343). Such information returns must be filed on or before April 15 following the close of the calendar year or on or before the 15th day of the fourth month following the close of a fiscal year.~~
- ~~**B.** Exempt organizations under Section 43-1201 are required to file an information return, unless specifically exempted from filing a return under the provisions of Section 43-1242. Such information returns must be filed on or before May 15 following the close of the calendar year or on or before the 15th day of the fifth month following the close of a fiscal year.~~
- ~~**C.** Annual information returns for certain payments to taxpayers of:~~
- ~~1. \$300 or more (Section 43-344);~~
 - ~~2. patronage dividends of \$100 or more (Section 43-345) and~~
 - ~~3. income on securities (Section 43-346) are required to be filed on or before February 16 following the close of the calendar year.~~

ARTICLE 5. PAYMENT AND COLLECTION OF TAX

R15-2-534. ~~Period of limitation for proposing deficiency assessments~~ Repealed

- A.** The statutory periods of A.R.S. § 42-113 are applicable to the mailing dates of the notices proposing to assess a deficiency. The statutory periods shall only be extended by written agreement made before the expiration of these statutory periods or any previously agreed upon extensions.
- B.** If a notice proposing to assess a deficiency is mailed within the prescribed period of limitation, the demand for payment may occur at any time after the assessment becomes final.

ARTICLE 7. JEOPARDY ASSESSMENTS; BANKRUPTCY; RECEIVERSHIP

R15-2-702. ~~Demand for return and payment of tax where collection of tax in jeopardy~~ Repealed

If the Department believes that the collection of any tax for any period for which a return has not been filed will be jeopardized by delay, it may demand that the tax for such period be paid immediately regardless of whether or not the return for the period is due and regardless of whether or not the period covers a full taxable year of 12 months. Furthermore, in such an event, the Department is authorized to estimate the income of the taxpayer for such period on the basis of any available information and to assess the tax.

R15-2-704. ~~Finality of jeopardy assessment~~ Repealed

- A.** On the filing of a petition for reassessment and a bond of the character described within ten days after the date of notice and demand for payment of the amount assessed, the collection of so much thereof as is covered by the bond or other security will be stayed. The taxpayer may at any time waive the stay of collection of the whole or any part of the amount covered by the bond or other security.
- B.** If any part of the amount covered by the bond or other security is paid as a result of such waiver, or if any portion of the jeopardy assessment is abated by the Department, the bond or other security shall at the request of the taxpayer be proportionately reduced. If the Department determines that the amount assessed is greater than the correct amount of the tax, the bond or other security also will be proportionately reduced at the request of the taxpayer.

R15-2-705. ~~Action on petition for jeopardy assessment; hearing with Department~~ Repealed

- A.** Any hearing and decision provided for by Section 43-705 shall be conducted in the manner set forth in R15-10-101 through R15-10-121.
- B.** After the Department has rendered the decision, it will send notice and demand for the unpaid portion of the amount determined by it to be due, the collection of which has been stayed by the bond or other security. The Department will include in the notice and demand for the unpaid portion, interest at the rate of 12 percent per annum from the date of the jeopardy notice and demand to the date of the notice and demand referred to in this subsection. If the amount of the jeopardy assessment is in excess of the amount determined by the Department, the unpaid portion of such excess will be abated. If any part of the excess amount has been paid, it will be credited or refunded to the taxpayer as provided.

ARTICLE 8. INTEREST AND PENALTIES

R15-2-821. ~~Penalty in case of failure to file return~~ Repealed

- A.** Penalty for failure to file
 1. If a return is filed after the time prescribed for filing the return or after the time as extended by the Department, five percent of the remaining tax shall be added to the tax remaining due for each month or any fraction of a month elapsing between the due date of the return and the date on which it is filed, unless the failure to file the return within the prescribed time was due to reasonable cause. The cumulative penalty shall never exceed 25 percent of the tax.
 2. The penalty for late filing of a return applies to the tax remaining due as disclosed by the return and to any deficiencies or additional amounts that are assessed. The notice and demand for the penalty shall be mailed at the same time as the notice and demand for the deficiency.
- B.** If an extension of time for filing a return is granted, the return shall be considered due as of the end of the period for which the extension is granted and penalties shall be computed accordingly.
- C.** If a taxpayer who files a late return wishes to request that the penalty be waived, the return shall be accompanied by:
 1. a remittance of the full amount of tax shown on the return together with interest; and
 2. a signed statement under penalty of perjury setting forth all the facts alleged as a reasonable cause for failure to file the return on time. If the return is not accompanied by such a statement, the penalty, the tax and the accrued interest shall be paid at the time the return is filed.
- D.** The late filing penalty is calculated only on the tax or additional tax that is remaining due.

R15-2-822. ~~Penalty in case of failure to file upon demand~~ Repealed

If a return has not been filed within the time prescribed, the Department may send the taxpayer a demand that the return be filed. If the return is not filed within the time specified in the demand, the taxable amount and resulting tax liability of the taxpayer may be estimated and the tax assessed on the basis of any available information. A penalty of 25 percent in addition to any other penalties assessed shall be added to the tax so assessed. — If the return is filed within the time prescribed in the

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demand, it shall be accompanied by the tax, accrued interest, and either the penalties determined or a signed statement under penalty of perjury setting forth the facts alleged as a reasonable cause for failure to file the return on time.

R15-2-823. ~~Penalty for failure to furnish information~~ **Repealed**

The Department may request information from taxpayers in order to determine their tax liability. If any taxpayer fails to furnish the information which has been requested in writing by the Department within the time specified by the Department, a penalty of 25 percent of any additional tax assessed by the Department shall be imposed by the Department, unless the taxpayer establishes that such failure was due to reasonable cause.

ARTICLE 10. INDIVIDUALS

R15-2-1022. ~~Subtractions and Additions from Arizona Gross Income~~ **Repealed**

A. Federal adjusted gross income, computed according to the Internal Revenue Code, is the starting point in calculating Arizona adjusted gross income. In order to arrive at Arizona adjusted gross income, additions or subtractions shall be made to Arizona gross income pursuant to A.R.S. §§ 43-1021 and 43-1022.

B. See the following rules for treatment of the indicated provisions not described as part of the R15-2-1022 rules which are also applicable to subtractions:

1. ~~R15-2-1021.01 Beneficiary's share of trust or estate income;~~
2. ~~R15-2-1021.05 Partnership income or loss;~~
3. ~~R15-2-1021.06 Income producing property—different basis;~~
4. ~~R15-2-1021.07 Pollution control devices;~~
5. ~~R15-2-1021.08 Child care facilities; and;~~
6. ~~R15-2-1021.09 Individual net operating losses.~~

ARTICLE 12. TAX EXEMPT ORGANIZATIONS

R15-2-1215. ~~Denial of tax exempt status~~ **Repealed**

Organizations described in Section 43-1215, paragraphs (1) through (5) will not be subject to the denial of tax exempt status under this Article.

R15-2-1217. ~~Disallowance of certain charitable or other deductions~~ **Repealed**

A. A gift or contribution which would otherwise be allowable as a charitable or other deduction shall not be allowed as a deduction if made to an organization which at the time the gift or contribution is made is not exempt under Section 43-1201 by reason of the provisions of Section 43-1211.

B. If an organization that receives a gift or contribution is not exempt under Section 43-1201 because it engaged in a prohibited transaction involving a part of the income or corpus of the organization with the purpose of diverting the income or corpus from the exempt purposes, and if the taxable year of the organization when the gift or contribution transaction occurred is the same as it was before the transaction occurred, then a deduction by the donor relative to the gift or contribution shall not be disallowed under subsection (A) of this Section unless the donor was a party to such prohibited transaction.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE

LUXURY TAX SECTION

PREAMBLE

1. Sections Affected

Rulemaking Action

R15-3-301	Amend
R15-3-302	Repeal
R15-3-303	Repeal
R15-3-304	Amend
R15-3-305	Amend
R15-3-306	Repeal
R15-3-307	Amend
R15-3-308	Amend
R15-3-309	Repeal
R15-3-310	Amend
R15-3-311	Amend

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R15-3-312	Amend
R15-3-314	Amend
R15-3-315	Amend
R15-3-316	Amend

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

Authorizing statutes: A.R.S. §§ 42-1005; 42-3003, 42-3004 (formerly §§ 42-105 and 42-1202, respectively)

Implementing statutes: A.R.S. §§ 42-3001 through 3010; 42-3051 through 3053; 42-3151 through 3154; 3201 through 3209 (formerly §§ 42-1201 through 1218 and 1231, respectively)

3. The effective date of the rule:

June 15, 1999

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 2 A.A.R. 885, February 2, 1996.

Notice of Proposed Rulemaking: 4 A.A.R. 3085, October 23, 1998.

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

Name: Christie Comanita

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The rules provide guidance in the application of the Arizona luxury tax to distributors of cigarettes and other tobacco products. As a result of the Department's 5-year review of Article 3, the Department is proposing to repeal and amend antiquated and repetitive rules.

7. Reference to any study that the agency proposes to rely on in its evaluation of or justification for final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business, and consumer impact:

Identification of the Rulemaking:

As a result of the Department's 5-year review of Article 3, the Department is proposing to repeal and amend antiquated and repetitive rules. Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

The benefits of the rules are greater than the costs. The repeal and amendment of these rules will benefit the public by eliminating repetitive and obsolete rules that no longer serve their intended purpose. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the repeal and amendment of these rules.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Upon a final review, the Department discovered that R15-3-313, Common Bond, contained inaccurate information. Therefore, this rule has been removed from the package and will be resubmitted at a later date.

In addition, nonsubstantive grammatical and formatting changes were made on the suggestion of the Governor's Regulatory Review Council staff.

11. A summary of the principal comments and the agency response to them:

The Department did not receive any written or oral comments on the rules after the publication of the rules in the Notice of Proposed Rulemaking.

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

None.

13. Incorporations by reference and their location in the rules:

None.

14. Was the rule previously adopted as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE

LUXURY TAX SECTION

ARTICLE 3. TOBACCO

Sections

- R15-3-301. ~~Licensing procedure—change in ownership~~
- R15-3-302. ~~Licensing procedure—display of license~~ **Repealed**
- R15-3-303. ~~Licensing procedure—notification to Department of more than one place of business~~ **Repealed**
- R15-3-304. ~~Change of Business Name Licensing procedure—change of business name~~
- R15-3-305. ~~Change of Business Location or Mailing Address Licensing procedure—change of business location~~
- R15-3-306. ~~Licensing procedure—change of mailing address only~~ **Repealed**
- R15-3-307. ~~Cancellation of License Licensing procedure—cancellation of license~~
- R15-3-308. ~~Revocation of License Licensing procedure—suspension or revocation of license~~
- R15-3-309. ~~Licensing procedure—Indian Reservation~~ **Repealed**
- R15-3-310. Vending ~~Machine Identification and Inspection machine identification and inspection~~
- R15-3-311. Cigarette ~~Distributor's Monthly Report distributor's monthly report~~
- R15-3-312. Purchase of ~~Stamps stamps~~
- R15-3-314. Sales in ~~Interstate interstate or Foreign Commerce foreign commerce~~
- R15-3-315. Credit ~~Purchases purchases of Revenue Stamps revenue stamps~~
- R15-3-316. Sale of ~~Unstamped Cigarettes unstamped cigarettes~~

ARTICLE 3. TOBACCO

R15-3-301. ~~Licensing procedure—change in ownership~~

- A. ~~The department issues a tobacco distributor's license is issued to a specific person. The licensee shall and therefore is not transfer the tobacco distributor's license to a new owner transferable when selling the a-business. A The new owner-person shall obtain a tobacco distributor's license before engaging in business as a tobacco distributor.~~
 - B. ~~Court appointed trustees, receivers, and others in the case of both liquidation, insolvency, or and operational bankruptcy where the business continues to be operated, that sell who are selling tobacco products luxuries-subject to tax shall taxation are required to obtain a tobacco distributor's license in their own name.~~
 - C. ~~A licensee that changes its legal entity shall apply for a new tobacco distributor's license. A licensee that changes its form of business shall apply for a new tobacco distributor's license. For example: A licensee that operates as a sole proprietorship incorporates the business. A corporation is a different form of business. The licensee shall apply for a new tobacco distributor's license.~~
- ~~In cases where a license is issued to a partnership, any change in ownership requires the obtaining of a new license.~~
- D.** A licensee shall obtain a tobacco license for each business location.
 - E.** A licensee shall display the tobacco distributor's license in a conspicuous place at each business location.

R15-3-302. ~~Licensing procedure—display of license~~ **Repealed**

~~Persons maintaining a public place of business shall display the luxury tax license in a location conspicuous to the public.~~

R15-3-303. ~~Licensing procedure—notification to Department of more than one place of business~~ **Repealed**

~~When a seller maintains more than one place of business, the seller shall notify the Department and obtain a duplicate license for each business location.~~

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R15-3-304. ~~Change of Business Name Licensing procedure—change of business name~~

~~A licensee that changes~~ When a change is made in the name under which the business is operating, even though the ownership remains the same, the taxpayer operates shall notify the Department in writing within 30 days of the name change and request a reissuance of ~~the its tobacco distributor's~~ license for each business location.

R15-3-305. ~~Change Licensing procedure—change of Business Location business location or Mailing Address~~

A. A licensee ~~changing location of the licensed business~~ shall notify the Department in writing within 30 days of a the change in the physical location of the business and request a reissuance of ~~the its tobacco distributor's~~ license for each business location.

B. A licensee shall notify the Department in writing within 30 days of a change in mailing address. The licensee shall specify whether the change is for the mailing address only.

R15-3-306. ~~Licensing procedure—change of mailing address only Repealed~~

~~The A licensee shall notify the Department in writing within 30 days of any change in mailing address. The licensee shall specify that the change is for mailing purposes only.~~

R15-3-307. ~~Cancellation Licensing procedure—cancellation of License license~~

~~If a business is sold or terminated. When a licensee has sold or otherwise terminated the licensed business the licensee shall notify the Department in writing within 30 days of the sale or termination of the business, in writing, giving the date the business was sold or terminated. The department shall cancel the license as of the date of sale or termination of the business.~~

R15-3-308. ~~Revocation of License Licensing procedure—suspension or revocation of license~~

A. The department may revoke a license for violation of the provisions of A.R.S. Title 42, Chapter 3 or this Article.

BA. The Department shall give written notice of the revocation to a the licensee 30 20 days prior to suspending or revoking the effective date of the revocation a luxury tax license by delivering the such notice to the licensee by certified mail, return receipt requested, at the licensee's place of business.

CB. ~~A licensee Licensee shall have has 30 20 days after the notice is mailed to appeal the such suspension or revocation, in writing, to the Department. If the licensee does not file an appeal within the 30 20-day period days, the Department's determination of the Department shall be becomes final upon expiration of that period.~~

D. If the licensee ~~does files a timely an appeal within that period, the Department shall request a hearing by the Office of Administrative Hearings. shall, within 20 days of the filing of the appeal, hold a hearing and hear such evidence presented by as the licensee may present. The Department shall issue a final determination within 20 days of the hearing date.~~

E. If the licensee appeals the revocation, the Department shall suspend action until the final order of the Department has been issued under A.A.C. R15-10-131. ~~A license suspended by the Department may be reinstated upon application of licensee and a showing that the non-compliance for which the suspension was initiated has been corrected.~~

R15-3-309. ~~Licensing procedure—Indian Reservation Repealed~~

A. Every person, other than an Indian or Indian Tribal Enterprise, selling or offering for sale to non-Indians any cigarettes or other tobacco products within an Indian Reservation shall apply for and obtain a Tobacco Distributor's License from the Department prior to commencing business.

B. No person shall be exempt from the licensing requirement unless such person meets if the following qualifications:

1. Such person is an Indian or Indian tribe as defined in R15-3-201(H) or (I), and
2. The person so exempted possesses majority ownership and control of the unlicensed business and a majority of all benefits thereof accrue to the benefit of such person.

R15-3-310. ~~Vending Machine Identification and Inspection machine identification and inspection~~

A. ~~A licensee shall ensure that the Department's agents are able to inspect all cigarettes that are being distributed through or by vending machines are subject to inspection by agents of the Department. The licensee All such machines shall visibly display cigarettes in all vending machines so in such a manner that the Department's agents agents of the Department can inspect the cigarettes in the machines to verify that the required cigarette tax stamps are properly affixed, unless the option authorized in subsection (B) of this section applies is selected.~~

B. If the cigarettes cannot be visually inspected in a vending machine, the person in possession of the machine shall ~~must~~ have access to the cigarettes in the machine contained therein and shall permit agents of the Department to ~~visually~~ inspect the cigarettes visually therein.

C. ~~The Department shall issue a decal to be affixed to all vending machines or mobile vehicles selling cigars, cigarettes or tobacco products. The decal shall be affixed to each of these units recording the name of the licensee, the business location, and the number of the retail license authorizing such tobacco sales.~~

R15-3-311. ~~Cigarette Distributor's Monthly Report distributor's monthly report~~

A. ~~Every On forms provided by the Department, every distributor selling cigarettes subject to the luxury tax taxable under A.R.S. Title 42, Chapter 3 the Arizona Luxury Privilege Tax Laws shall file with the Department a "Cigarette Distributor's Monthly Report" on the 20th of each month with the Department showing:~~

1. ~~The for the immediately preceding calendar month, the quantity of cigarettes and cigarette tax stamps purchased and sold or otherwise disposed of during such the calendar month immediately preceding the month in which the report is filed;~~
2. ~~The quantity of cigarettes and stamps on hand at the beginning and at the end close of the each such month; and~~
3. ~~any other information as the Department shall require and deems relevant for the purpose of determining whether the provisions of the Luxury Tax Laws are being met.~~

~~B. Any Luxury Tax, shortage payment disclosed with the filing of these monthly reports shall be paid made at the time of filing the report.~~

R15-3-312. Purchase of Stamps stamps

~~A. A licensed tobacco distributor shall obtain cigarette tax stamps from the Department. No licensee nor any other person shall sell, give or lend any cigarette tax stamps nor shall any licensee or any other person purchase, accept, receive or borrow any cigarette stamps from any licensee or any other person. Authority for all sales and transfer of such cigarette stamps shall be solely that of the Department.~~

~~B. A distributor shall not sell, lend, give, or otherwise transfer cigarette tax stamps to another person.~~

R15-3-314. Sales in Interstate interstate or Foreign Commerce foreign commeree

~~A. Sales Cigarettes or other tobacco products made sold by licensed distributors to purchasers located outside situated with out the state are exempt from the tax imposed by this A.R.S. Title 42, Chapter 3, Article 1. In order to qualify as an exempt sale, if the following conditions must be are met:~~

1. ~~The exempt luxury cigarettes or other tobacco products are must be shipped or delivered by the distributor to a location outside without the state for use outside the state; and~~
2. ~~The On forms prescribed by the Department, the distributor files shall file a "Cigarette Distributor's Monthly Report" or a "Monthly Return of Cigars or Other Tobacco Products Purchased", as applicable, indicating the amount of designating exempt or out-of-state sales in the appropriate section and the party to whom the sales were made, and:~~
 - a. ~~Submits submit 1 one copy of the return or report return/report to the Arizona Department of Revenue;~~
 - b. ~~Submits submit 1 one copy of the return or report to the taxing authority of the state of destination of the cigarettes or other tobacco products exempt luxury; and~~
 - c. ~~Retains retain 1 one copy of the return or report for 2 two years following the close of the calendar year in which the sale is made.~~

~~B. Sales made in foreign commeree are exempt from tax if the sale qualifies for exemption from the applicable federal tax.~~

R15-3-315. Credit Purchases purchases of Revenue Stamps revenue stamps

~~Any A distributor may increase their its credit limit for with respect to revenue cigarette tax stamp purchases by increasing the amount of the bond on file with the Department.~~

R15-3-316. Sale of Unstamped Cigarettes unstamped cigarettes

~~A The distributor shall file a Form 800-20 or Form 800-25, Distributor's Monthly Report, furnish evidence satisfactory to with the Department showing that the distributor has purchased a sufficient number of stamps to be affixed to all cigarettes it distributes in this state during the period, sold were affixed with the required stamps. If the distributor does not provide this information satisfactory evidence is not furnished, the Department shall presume that the distributor sold unstamped cigarettes were sold. In that case, the Department shall determine the amount of unstamped cigarettes sold by the distributor and shall issue an a proposed deficiency assessment for any luxury tax found due. The proposed deficiency assessment becomes final unless the distributor protests the assessment within 45 days under A.R.S. § 42-1108 and A.A.C. Title 15, Chapter 10, Article 1.~~