

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 first 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 Register after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

PREAMBLE

- 1. Sections Affected**

R13-5-304	Amend
R13-5-307	Amend
R13-5-316	Amend
R13-5-503	Amend
R13-5-513	Amend
- 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. § 41-1830.12(A)(3)
Implementing statutes: A.R.S. §§ 41-1714, 41-1830.11, 41-1830.12, 41-1830.13, and 41-1830.14
- 3. The effective date of the rules:**

November 7, 2000
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 2733, July 21, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 2837, August 4, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Commander C. H. Johnston, Business Manager
Address: Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, Arizona 85005
Telephone: (602) 223-2286
Fax: (602) 223-2096
E-Mail: Cjohnston@dps.state.az.us
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Law Enforcement Merit System Council (LEMSC) is proposing to amend the rules listed in order to clarify the intent of and simplify the application of the rules. On May 10, 2000 the LEMSC completed a 4-year project to rewrite their administrative rules. These rules had not been updated in over 30 years and did not meet the proper format for administrative rules. This is the first attempt at fine-tuning the rules since they were FILED WITH THE Secretary of State on May 10, 2000.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the 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 rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

Notices of Final Rulemaking

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

It is anticipated that the change in R13-5-304 will make it easier for an agency to recruit and employ quality applicants. This will result in a financial saving to the agency. The change in R13-5-307 and R13-5-316 will have no appreciable economic impact on the state, the agency or the citizens. The change in the annual and sick leave accrual for a part-time employee will result in a cost saving for an agency employing a part-time employee. It will make it more cost-effective for an agency to employ a part-time employee without providing benefits to the part-time employee. This is more consistent with the other state agencies and with private industry.

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

There are no substantive changes between the proposed rules and the final rules. Minor technical and grammatical changes have been made at the suggestion of the GRRC staff.

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

The Notice of Proposed Rulemaking was published in the Register on August 4, 2000. No comments were received and there was no request for a public hearing. Therefore, the record was closed, as noticed in the Notice of Proposed Rulemaking, on September 4, 2000.

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:

None

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

No

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ARTICLE 3. EMPLOYMENT

- R13-5-304. Employment
- R13-5-307. Reinstatement
- R13-5-316. Probation

ARTICLE 5. EMPLOYEE LEAVE

- R13-5-503. Annual Leave
- R13-5-513. Sick Leave

ARTICLE 3. EMPLOYMENT

R13-5-304. Employment

- A. No change.
- B. Establishing a list in case of ties. If 2 or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If ~~it~~ a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- C. No change.
- D. No change.
- E. Duration of an eligibility list. The business manager shall establish each new or merged list for 1 year from its effective date. Before a list expires, the Council may extend the duration of or cancel a list. The Council may extend a list for no more than 1 6-month period. The maximum duration of a list shall be 18 months except in the event there is a court order placed on the list preventing promotions from the list by the agency.
 - 1. Restoring a list. If a need arises and a current list is not available, the Council may restore a list that expired or was canceled within the past 6 months.
 - 2. Merging a list. Except for the classifications described in R13-5-304(E)(3) if ~~it~~ 3 or fewer candidates remain on an existing list, Human Resources may establish a new list and merge the existing list with the new list. When the merged list is established, Human Resources shall rearrange the names in descending order of the candidates' final scores and notify each candidate of the candidate's relative ranking. Human Resources shall remove a candidate's name from the new list on the expiration date of the candidate's original list.

3. Conducting continuous or periodic testing. If the Council determines that a classification requires continuous or periodic testing, the business manager may authorize Human Resources to conduct examinations regardless of the existence of an employment list in that classification. The names of candidates tested will then be merged with names on the existing employment list for that classification in the manner described in R13-5-304(E)(2).

43. Retesting a merged candidate. If another examination for the same classification is held before the prior list expires, a merged candidate from the prior list may take the examination. If the candidate passes the test, Human Resources shall place the candidate on the list according to the new score. The candidate shall remain on the list for its duration.

- F. No change.
 - 1. No change.
 - 2. No change.
 - 3. No change.
- G. No change.

R13-5-307. Reinstatement

- A. Reinstatement list. An A permanent status employee who separates from an agency may apply for reinstatement within 1 year. Upon approval of the agency head, Human Resources shall place the former employee's name on a reinstatement list for the last classification held by the employee and any previous or closely related classifications for which the employee is qualified.
- B. No change.
- C. No change.

R13-5-316. Probation

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
 - 1. No change.
 - 2. No change.
 - 3. No change.
 - 4. No change.
- K. No change.
- L. No change.
- M. Probation for a returning employee. If a separated employee is reinstated to a classification previously held with permanent status, the agency head may require the employee to serve a ~~an initial~~ probationary period. When a separated employee is recalled or reinstated into a classification different from any classification previously held with permanent status, the employee shall serve a probationary period. If an employee is separated from an agency while serving an initial probation, the employee will be required to serve an initial probation upon being recalled or reinstated.
- N. No change.

ARTICLE 5. EMPLOYEE LEAVE

R13-5-503. Annual Leave

- A. No change.
- B. Accruing annual leave. An employee in pay status for half of a month shall accrue annual leave. A part-time employee scheduled to work ~~20~~ ~~40~~ or more hours in a week shall accrue annual leave based on the percentage of full-time hours specified in the appointment. A part-time employee scheduled to work less than ~~20~~ ~~40~~ hours in a week shall not accrue annual leave. A full-time employee shall accrue annual leave under the following schedule:

Beginning	Completion	Monthly accrual rate
1st year	5th year	10 hours
6th year	10th year	12 hours
11th year	20th year	14 hours
21st year		16 hours

- C. No change.
- D. No change.
- E. No change.

F. No change

R13-5-513. Sick Leave

A. No change.

1. No change
 - a. No change.
 - b. No change.
 - c. No change.

B. Accruing sick leave.

1. A full-time employee shall receive 10 hours of sick leave for each month of service.
2. A part-time employee working more than 20 ~~40~~ hours per week shall receive sick leave based upon the proportion of full-time hours worked.
3. The following employees are not eligible for sick leave:
 - a. A part-time employee working less than 20 ~~40~~ hours in a week,
 - b. An Intern, and
 - c. An Intermittent employee.
4. An eligible employee shall receive sick leave credit if the employee is in pay status for at least one half of the employees' working days in that month.
5. Sick leave may be accrued without limit.

C. No change.

1. No change.
2. No change.
3. No change.

D. No change.

E. No change.

F. No change.

G. No change.

H. No change.

I. No change.

J. No change.

1. No change.
2. No change.
3. No change.

K. No change.

NOTICE OF FINAL RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. Sections Affected

R14-4-104
R14-4-126

Rulemaking Action

Amend
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. §§ 44-1821 and 44-1848
Implementing statutes: A.R.S. §§ 44-1842, 44-1843, and 44-1844
Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

3. The effective dates of the rules:

November 7, 2000

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

Notice of Rulemaking Docket Opening: 6 A.A.R.796, February 25, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 2076, June 9, 2000

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

Name: Cheryl T. Farson, General Counsel

Address: Arizona Corporation Commission
Securities Division
1300 West Washington, Third Floor
Phoenix, Arizona 85007-2996

Phone: (602) 542-4242

Fax: (602) 594-7476

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

The rulemaking amends A.A.C. R14-4-104 and R14-4-126 ("rule 104" and "rule 126," respectively).

A.A.C. R14-4-104 ("rule 104") requires dealers and salesmen to register with the Arizona Corporation Commission ("Commission") prior to engaging in transactions otherwise exempt under A.R.S. §§ 44-1843 and 44-1844. The rule is amended to remove a redundant registration requirement, to add a class of transactions that is otherwise exempt from dealer and salesman registration requirements, and to edit the language and reorganize the subsections to clarify the scope and application of the rule.

The rulemaking eliminates subsection (4) from rule 104. Subsection (4) requires registration of dealers and salesmen that participate in selling securities issued by nonprofit organizations engaged in the construction or operation of certain types of health care facilities. Under A.R.S. § 44-1843(A)(6), dealers and salesmen are not required to register prior to engaging in transactions involving securities issued by certain charitable organizations. Specifically excluded from the exemption, however, are transactions in securities issued by nonprofit organizations that are engaged in the construction or operation of various health care facilities. Thus, dealers and salesmen must register in connection with those transactions. Rule 104(4) duplicated the registration requirement for dealers and salesmen prior to selling securities issued by nonprofit organizations engaged in the construction or operation of these health care facilities. The amendment removes this unnecessary restatement of the registration requirement for dealers and salesmen.

The rulemaking adds a new subsection (7) to rule 104 requiring dealer and salesman registration prior to participation in sales of securities listed on the National Association of Securities Dealers Small Cap automated quotation system ("NASDAQ"). The purpose of the amendment is to ensure consistent application of dealer and salesman registration requirements. The amendment eliminates an inadvertent difference under the Arizona Securities Act between the treatment of dealers and salesmen who execute orders in NASDAQ securities and the treatment of dealers and salesmen who execute orders in securities designated or approved for designation on the national market system of a national securities association ("NMS").

A.R.S. § 44-1843(A)(7) provides an exemption from registration for securities designated or approved for designation on NMS. Rule 104 requires dealer and salesman registration in connection with transactions in NMS securities. After the promulgation of rule 104, subsection (A)(18) was added to A.R.S. § 44-1844, which provides an exemption for NASDAQ securities. A.R.S. § 44-1848 specifically authorizes the Commission to require dealer or salesman registration before the sale of securities exempt under A.R.S. § 44-1844(A)(18).

The amendment to rule 104 creates parity between the treatment of dealers and salesmen of securities listed on NASDAQ, which are considered to be more speculative investments, and the treatment of dealers and salesmen of NMS securities, which are considered to be less speculative investments.

Rule 126 is amended to correct a reference to the amended rule 104.

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

The rules do not diminish a previous grant of authority of a political subdivision of this state.

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

The economic, small business, and consumer impact statement for rules 104 and 126 analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. The impact of the amendments on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the office of the attorney general is minimal. The benefits provided by the amendments are nonquantifiable. The amendments should benefit the Commission's relations with the regulated public by creating unambiguous dealer and salesman registration requirements for stated transactions. The public should benefit from the ensured registration and regulation of dealers and salesmen engaging in clearly specified transactions.

Arizona Administrative Register
Notices of Final Rulemaking

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

None

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

The Commission did not receive comments to the rules.

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

None

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

None

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.

Not applicable

14. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-104. Registration Required of Dealers and Salesmen Otherwise Exempt Under A.R.S. §§ 44-1843 and 44-1844

R14-4-126. Limited Offerings; Definitions

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-104. Registration Required of Dealers and Salesmen Otherwise Exempt Under A.R.S. §§ 44-1843 and 44-1844

No dealer or salesman as defined in A.R.S. § 44-1801 shall engage in the following transactions unless such dealer or salesman is registered pursuant to Article 9 of this Chapter. Notwithstanding A.R.S. §§ 44-1843 and 44-1844, a dealer or salesman shall register under A.R.S. Title 44, Chapter 12, Article 9, before engaging in transactions in any of the following:

1. Securities exempt from registration under A.R.S. § 44-1843(A)(1), except a dealer or salesman shall not be required to register before engaging in transactions in securities issued or guaranteed by the United States. Transactions involving securities exempt from registration pursuant to A.R.S. § 44-1843(7) being securities listed, or approved for listing upon the issuance thereof upon the New York stock exchange, the American stock exchange, Midwest stock exchange and any other national securities exchanges registered under the Securities Exchange Act of 1934 as may hereafter from time to time be designated by order of the Commission and securities designated or approved for designation on notice of issuance on the National Market System of the National Securities Association registered under the Securities Exchange Act of 1934, and all securities senior or equal in rank to any securities so listed or approved for listing, designated or approved for designation, or represented by subscription rights or warrants which have been so listed, designated or approved for listing and any warrant or right to purchase or subscribe to any of the foregoing. No dealer or salesman shall, however, be required to register for the purpose of selling or offering to sell that portion of an offering of securities so listed, designated or approved for listing which is directed to securities holders or employees of an issuer when the offering is made by the issuer, or is made by a dealer or salesman acting without compensation other than a reasonable standby charge applicable to such securities by virtue of a distribution agreement relating to any balance of the offering remaining unsubscribed by existing securities holders or employees of the issuer.
2. Securities exempt from registration under A.R.S. § 44-1843(A)(7). However, a dealer or salesman shall not be required to register before engaging in transactions directed to existing securities holders, to employees of the issuer, or to employees of a wholly owned subsidiary of the issuer if the subsidiary was not created to avoid the registration provisions of the Securities Act, and in which either of the following apply:
 - a. The offering is made by the issuer.
 - b. The offering is made by a dealer or salesman acting without compensation, other than a reasonable standby charge authorized under the distribution agreement concerning any remaining balance of the offering not purchased or subscribed by existing securities holders or employees of the issuer or its wholly owned subsidiary.

Arizona Administrative Register
Notices of Final Rulemaking

~~Transactions involving securities exempt from registration pursuant to A.R.S. § 44-1844(4), being securities sold in an isolated transaction by or on behalf of the bona fide owner thereof. No dealer or salesman shall, however, be required to register for the purpose of acting without compensation as an agent for an owner or owners in an isolated transaction which is not made directly or indirectly for the benefit of the issuer or underwriter, and which dealer or salesman does not engage in or offer to engage in repeated and successive transactions of a similar character. Repeated and successive transactions of a similar character are deemed to include transactions by a dealer or salesman acting as agent for, or dealing in the securities owned by, 1 or more owners, whether the securities are of the same or different issuers, in transactions recurring within such intervals of time as to reasonably indicate continuity or an association of acts.~~

3. ~~Securities exempt from registration under A.R.S. § 44-1843(A)(9). Transactions involving securities exempt from registration pursuant to A.R.S. § 44-1844(11), being securities theretofore sold and distributed to the public and concerning which information appears in a recognized manual of securities at the time of sale.~~
4. ~~Securities transactions exempt from registration under A.R.S. § 44-1844(A)(1), R14-4-126(E), or R14-4-126(F) if the dealer or salesman is engaged principally and primarily in the business of making a series of private offerings. For the purposes of this Section, "series" means in excess of 4 private offerings within, from, or outside Arizona in any consecutive 12-month period. Transactions involving securities issued by a nonprofit organization which is engaged in or intends to engage in the construction, operation, maintenance, or management of a hospital, sanitarium, rest home, clinic, medical hotel, cemetery or mausoleum, pursuant to the provisions of A.R.S. § 44-1843(6).~~
5. ~~Securities transactions exempt from registration under A.R.S. § 44-1844(A)(4) if the dealer or salesman receives compensation or engages or offers to engage in repeated or successive transactions of a similar character. "Repeated or successive transactions of similar character" include transactions that occur sufficiently close in time to reasonably indicate continuity or association, whether the transactions are made on behalf of 1 or more securities owners, and whether the securities are of the same or different issuers. Transactions involving securities issued or guaranteed by any state or territory, or any political subdivision of such state or territory, or by the District of Columbia, or by any agency or instrumentality of 1 or more of any of the foregoing.~~
6. ~~Securities transactions exempt from registration under A.R.S. § 44-1844(A)(11). Transactions involving securities issued or guaranteed by any foreign government or by a political subdivision of a foreign government.~~
7. ~~Securities transactions exempt from registration under A.R.S. § 44-1844(A)(18). Transactions involving securities exempt from registration pursuant to A.R.S. § 44-1844(1), being transactions by an issuer not involving any public offering. No dealer or salesman, however, shall be required to register unless such dealer or salesman is engaged principally and primarily in the business of making a series of private offerings. For the purposes of this paragraph "series" means in excess of 4 private offerings in any consecutive 12-month period occurring after the effective date of this rule.~~

R14-4-126. Limited Offerings; Definitions

- A. No change.
 1. No change.
 2. No change.
 3. No change.
 - a. No change.
 - b. No change.
 - c. No change.
- B. No change.
 1. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - h. No change.
 2. No change.
 3. No change.
 4. No change.

Arizona Administrative Register
Notices of Final Rulemaking

5. No change.
 - a. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
 - iv. No change.
 - b. No change.
 - c. No change.
 6. No change.
 7. No change.
 8. No change.
 - a. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - i. Relating to dealers under the Securities Act (See ~~R14-4-104(A)(7)~~ R14-4-104 with respect to dealer registration in Arizona), and
 - ii. No change.
 - f. No change.
 - g. No change.
- C.** No change.
1. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
 - iv. No change.
 - v. No change.
 2. No change.
 - a. No change.
 - b. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
 - iv. No change.
 - v. No change.
 - c. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
 - iv. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - g. No change.
 - h. No change.
 3. No change.
 - a. No change.
 - b. No change.
 4. No change.
 - a. No change.
 - b. No change.
 - c. No change.

Arizona Administrative Register
Notices of Final Rulemaking

- D.** No change.
 - 1. No change.
 - a. No change.
 - b. No change.
 - 2. No change.
 - 3. No change.
 - 4. No change.
 - 5. No change.
 - 6. No change.
 - a. No change.
 - b. No change.
 - 7. No change.
- E.** No change.
 - 1. No change.
 - 2. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - 3. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
 - e. No change.
 - f. No change.
 - i. No change.
 - ii. No change.
 - iii. No change.
- F.** No change.
 - 1. No change.
 - 2. No change.
 - i. No change.
 - ii. No change.
- G.** No change.
 - 1. No change.
 - 2. No change.
 - 3. No change.
 - a. No change.
 - b. No change.
 - c. No change.
- H.** No change.
 - 1. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - 2. No change.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER C. INDIVIDUALS

PREAMBLE

- 1. Sections Affected**

R15-2C-604	<u>Rulemaking Action</u>
R15-2C-605	New Section
	New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-1005
Implementing statute: A.R.S. § 43-1091
- 3. The effective date of the rules:**

R15-2C-604 is effective January 1, 2001
R15-2C-605 is effective November 7, 2000
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 2961, August 11, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 3029, August 18, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Patricia Trent, Supervisor
Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007
Telephone: (602) 542-4672
Fax: (602) 542-4680
E-Mail: trentp@revenue.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

A.R.S. § 43-1091 provides that for individual income tax purposes the Arizona gross income of nonresidents includes only that portion of the federal adjusted gross income that represents income from sources within Arizona. A.A.C. R15-2C-604 provides guidance to nonresident members of professional athletic teams regarding the method to be used in determining the portion of their compensation that is from sources in Arizona. This rule is similar to a rule proposed by the Federation of Tax Administrators in 1994, which has been adopted by 14 states. A.A.C. R15-2C-605 provides similar guidance to nonresident athletes that are not part of a team and whose income is event oriented.

In addition, Laws 2000, Ch. 372, Sec. 12 adds A.R.S. § 43-209 that requires the Department to adopt and enforce rules for the collection of tax under Title 43 on income earned for services rendered in Arizona by professional athletes and employees of professional sport franchise organizations. This Section is repealed from and after November 30, 2000 if a majority of qualified electors reject the levy of a surcharge on car rentals and a tax on hotels. However, even if Laws 2000, Ch. 372, Sec. 12 is repealed, the rules will still be needed and the Department will still have the authority to make the rules.
- 7. Reference to any study that the agency relied 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, any analysis of the study and other supporting material:**

None
- 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

Arizona Administrative Register
Notices of Final Rulemaking

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

It is expected that the benefits of the rules will be greater than the costs. The addition of these rules will benefit the nonresident athletes and the Department by providing a standardized method for determining income attributable to Arizona. These rules only provide guidance in the application of the statute; the statute imposes the tax. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

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

A.A.C. R15-2C-604(E) was added to state that the rule is effective on January 1, 2001. Because almost all individual taxpayers file on a calendar year, this effective date is added so that taxpayers will not need to change their method of allocation mid-year. This change is not substantial under A.R.S. § 41-1025.

In A.A.C. R15-2C-605 language was added to clarify that the expenses allocable to the Arizona source income must be allowable in arriving at federal adjusted gross income before they can be deducted. This change is not substantial under A.R.S. § 41-1025.

Based on the review performed by the staff of the Governor's Regulatory Review Council, the Department made various nonsubstantive grammatical and formatting changes.

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

Written comments were received from Stephen Kidder representing the National Hockey League Players Association and the Major League Baseball Players Association; Peter Schmidt representing Major League Baseball, the National Hockey League, the National Basketball Association and the National Football League; and from Craig Perl, partner in the accounting firm of Deloitte & Touch LLP, Phoenix, Arizona. An oral proceeding was held on September 18, at which no one attended.

1. The proposed rule singles out athletes for discriminatory tax treatment as opposed to visiting businessmen and other classes of employees. (Stephen Kidder letter) Attempts by individual states to collect taxes from nonresident athletes while other nonresidents remain free of tax constitutes selective enforcement. (Peter Schmidt letter).

A.R.S. § 43-1091 specifies that Arizona gross income includes that portion of federal adjusted gross income which represents income from sources within Arizona. In addition, A.A.C. R15-2-602(g), which has been in place for almost twenty years, requires income from personal services performed in this state by nonresident salesmen, actors, singers, performers, entertainers, wrestlers, boxers, attorneys, physicians, accountants, engineers, employees, etc. to be reported to this state. The Department is not singling out professional athletes or any other particular class of nonresidents for selective enforcement. The proposed rule seeks to clarify apportioning of income to Arizona by a group of nonresidents who have inherently unique arrangements for working and being paid. Enacting a rule for one class of taxpayers does not mean that enforcement is limited to that class of taxpayers; other Administrative Rules may be proposed in the future, as necessary, to deal with other special circumstances.

2. The proposed rule deviates from the rule proposed by the Federation of Tax Administrators (FTA) by excluding preseason training days and preseason exhibition games from the apportionment formula. (Stephen Kidder letter) Athletes would be penalized because the proposed allocation formula does not account for time spent in training and playing games prior to the start of the regular season. This inappropriately increases the percentage of Arizona allocated income of an athlete who trains outside the state. (Peter Schmidt letter) The Department should include preseason training days and preseason exhibition days in the duty days calculation.

The Department considered including preseason training and preseason exhibition games in the apportionment calculation. However, the Department determined that the preseason activities are ancillary to the actual income producing activities performed during the regular season. If the Department were to include preseason training and preseason exhibition days in the apportionment, it could cause some major inequities.

For example: some major league baseball teams have spring training in Arizona, but do not play any regular season games in Arizona. If a pitcher spends six weeks in Arizona for spring training, he would have approximately 19.1% (42 out of 220 duty days) of his salary allocated to Arizona, although he did not play a single regular season game in Arizona. This would be similar to the Department taxing a nonresident boxer on income earned from a prizefight in Nevada because the boxer trained in Arizona.

Arizona Administrative Register
Notices of Final Rulemaking

Although, the exclusion of preseason training and exhibition games from the apportionment calculation may cause some distortion of income, the Department believes that the distortion will be minimal compared to that which would be caused by including the preseason training and exhibition games in the calculation. In *Container Corporation of America v. Franchise Tax Board*, 463 US 159, 103 S Ct 2933, 77 L Ed 2d 545, the United States Supreme Court, in addressing the apportionment of income of a unitary corporation, acknowledged the fact that, in apportioning income between taxing authorities, there may be a number of reasonable approaches that could be equally acceptable to the Court. If an approach reflects a reasonable method of determining income, perfection in apportioning income is not required.

3. The proposed rule fails to provide a simplified system for composite return filings which places an undue burden on the players in requiring them to file as many as 10 different state income tax returns, as well as numerous city and county returns. (Steve Kidder letter)

Arizona statutes require nonresidents to file Arizona income tax returns to report income from sources in this state. The proposed rule merely provides guidance in how to apportion that income. However, the Department is currently studying the feasibility of drafting a rule that would specifically address nonresident professional athletes filing composite returns. This would be properly addressed in a separate rule since an alternative method of filing a return is a separate topic from how to apportion income.

4. The adoption of the rule will not result in material revenue to the state and will result in significant administrative costs to the state and to the individual players, coaches and trainers. For example, a major league player who spends 3 days of a 220-duty day season in Arizona and has a salary of \$1,000,000 will allocate only \$13,636 in income to Arizona and owe \$193 in Arizona income tax. (Peter Schmidt letter)

The proposed rule imposes no additional filing burden on nonresident members of athletic teams that play in Arizona. It merely provides a method of apportioning income among the several states in which the team member has sources of income from playing for the team. The administrative burden is imposed by statute and is no different from that imposed on all other multistate income earners. In addition, A.R.S. 43-301 establishes *de minimus* filing requirements. If a nonresident has less than \$15,000 in Arizona gross income and less than \$11,000 (married filing jointly) in Arizona adjusted gross income, that nonresident is not required to file an Arizona income tax return. The Department cannot by rule establish a lower threshold for filing than the legislature has already established by statute. A nonresident will need a method to apportion income in order to determine if the *de minimus* filing requirements apply.

5. Because states do not share a uniform method of taxing nonresident athletes, the risk of double taxation arises. In addition, a travel day spent partially in each of two states could result in the allocation of that day's income to both states. (Peter Schmidt letter)

Every state with an income tax, except Hawaii and Tennessee, offers a credit for taxes paid to other states on the same income. (Tennessee imposes its income tax only on interest and dividends.) Therefore, the majority of nonresident athletes taxed by Arizona will receive a credit for taxes paid to another state either from their home state or from Arizona. The travel days allocation in subsection (B) of the proposed rule is the same as the FTA's proposed rule. Travel days are not allocated to Arizona unless the team has a game, practice, team meeting, promotional caravan, or similar team event in Arizona on that day. It seems unlikely that a team would have two such events on the same day in two different states.

6. Adopting the proposed rule would result in subjecting Arizona athletes to retaliatory taxation by other states. In addition, credits for taxes paid to other states would eliminate any tax benefit gained from adoption of the rule. (Peter Schmidt letter)

The proposed rule does not change the taxable status of nonresident members of professional athletic teams. Therefore, any retaliatory provisions in the statutes of other states are already in effect due to Arizona's statutes. In addition, both Arizona statutes and Arizona tax forms clearly provide for a credit for taxes paid to other states in order to prevent double taxation.

7. The Department should consider an apportionment formula that would not include any preseason activity days in the numerator but the denominator should include all preseason activity days. (Peter Schmidt letter)

This approach is rationally inconsistent. Either preseason training and exhibition games are sources of income or are ancillary to the actual performance of the services that are rendered for compensation elsewhere for all the teams in a given sport. Either approach has arguments in its favor. Under the *Container Corporation* Supreme Court decision a state would be able to justify taking either approach. However, an approach that says preseason training and exhibition games are sources of income and belong in the apportionment ratio denominator for all states, but are ancillary for Arizona and should be excluded from the numerator of the apportionment factor is logically inconsistent. Moreover, if a player is a member of a team based in one of the fourteen states that have adopted the FTA's proposed rule, this approach could result in income not being allocated to any state. The state in which the team is based will allocate the income to Arizona and Arizona will allocate the income to the state in which the team is based.

8. The proposed rule does not go far enough in assuring compliance with the law. The Department should propose an additional rule that will require the individual sports franchise to report the Arizona portion of its nonresident employees' incomes to the State of Arizona. In particular the Department should provide guidance for employers as to how they are to assist in the collection of tax on income of nonresident professional athletes. The rule should require each sports franchise to calculate the actual duty day percentage for each of its nonresident athletes and to provide the athlete and the State of Arizona with the information at the time of filing the employees' Forms W-2. (Craig Perl letter)

The Department will consider this proposal, but it would be properly addressed in a different rule since it deals with a different subject. The rule deals with apportionment of income by the athletes and the proposal deals with reporting by the employer.

9. Including days on the disability list that the employee is conducting rehabilitation activities at a team facility but not other disability days is an arbitrary limitation. Duty days should include days that a disabled player is in Arizona under the supervision of the team. Whether or not the rehabilitation activities take place at team facilities or whether the player is even engaged in rehabilitation activities at all should not be relevant. Since disabled days are included in the denominator of the duty days calculation, the only relevant consideration for the numerator is what state the athlete is in on any given day. (Craig Perl letter)

Including days on the disability list in both the numerator and the denominator is a reasonable argument if the player is in Arizona on those days. However, unless the player is at a team facility, it can also be argued that the player is not engaged in any official team activity and is, therefore, not producing any Arizona source income. In addition, it is easier for both the teams, the Department, and probably the players to track days spent in rehabilitation at team facilities. The Department opted to take the approach proposed in the FTA's rule for clarity, ease of administration, and consistency.

10. The signing bonus is a significant part of a players initial salary package and for that reason the rule should clearly indicate that it is to be included in total compensation in all but rare situations. For many teams the signing bonus is conditional upon the player reporting to the team's facility. For this reason, reporting to the facility for training should be included in the list of conditions in R15-2C-604(C)(6)(b)(i) that require the bonus to be included in total compensation. (Craig Perl letter)

This is another issue that has valid arguments both for the approach taken by the Department and for the approach suggested in the public comments. One may reason that the player does not get the bonus unless he reports to the team so the income is properly apportioned to the state in which the team is based or is training. Alternatively, one may reason that this income is ancillary and, if the three conditions stated in the proposed rule are met, a nonresident player has not performed the services upon which the total compensation is based. The Department has opted to follow the FTA's proposal for clarity and consistency regarding this issue.

11. In R15-2C-605, the reference to "expenses" with no attempt to define what is meant by the term will promote abuse of the rule. The rule should be expanded to define deductible expenses to include only those expenses allowable in arriving at current federal adjusted gross income and that are directly related to Arizona income. (Craig Perl letter)

Although the Department believes that most taxpayers affected by the rule would apply the rule correctly as written, the Department agrees to add language to clarify that the expenses must be allowable expenses in arriving at federal taxable income before they are allocable to the Arizona source income.

12. Since some athletes' income is paid through a personal service corporation, the rule should specify that the personal service corporation is required to source income to Arizona. (Craig Perl letter)

The Department agrees that this issue should be addressed. However, the Department believes that it would be properly addressed in another rule because sourcing of income by a corporation is another subject and would be in Subchapter D rules pertaining to corporations.

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. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION
SUBCHAPTER C. INDIVIDUALS

ARTICLE 6. NONRESIDENTS

R15-2C-604. Nonresident Members of Professional Athletic Teams

R15-2C-605. Nonresident Professional Athletes Who are Not Team Members

ARTICLE 6. NONRESIDENTS

R15-2C-604. Nonresident Members of Professional Athletic Teams

- A.** The Arizona source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of the professional athletic team during a taxable year which the number of duty days spent within Arizona rendering services for the team in any manner during the taxable year bears to the total number of duty days spent both within and without Arizona during the taxable year. Duty days shall be included in the taxable year in which they occur.
- B.** Travel days that do not involve a game, practice, team meeting, promotional caravan or other similar team event in Arizona are not considered duty days spent in Arizona. However, these travel days shall be considered in the total duty days spent both within and without Arizona.
- C.** For purposes of this Section:
- 1.** The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.
 - 2.** The term "member of a professional athletic team" includes employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and perform services for a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, trainers, and broadcasters.
 - 3.** The term "duty days" includes:
 - a.** All days during a taxable year from the beginning of a professional athletic team's 1st regular game of the season through the last game in which the team competes or is scheduled to compete except:
 - i.** If a person joins a team during the period described in subsection (C)(3)(a), the person's duty days shall begin on the day the person joins the team. Conversely, if a person leaves a team during the period described in subsection (C)(3)(a), the person's duty days shall end on the day the person leaves the team. If a person switches teams during the taxable year, a separate duty day calculation shall be made for the period the person is with each team.
 - ii.** Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member is suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.
 - b.** Days that do not fall within the period described in subsection (C)(3)(a) on which a member of a professional athletic team renders a service for a team, except practice days and exhibition games before the 1st regular game of the season (for example, participation in instructional leagues, the "Pro Bowl," or promotional events). Rendering a service includes conducting training after the 1st regular game of the season and rehabilitation activities, but only if conducted at the team facilities.
 - c.** Game days (except exhibition games, practice days, and days spent at team meetings after the 1st regular game of the season), promotional events, and days served with the team through all post-season games in which the team competes or is scheduled to compete.
 - d.** Days on the disability list. However, days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at team facilities in Arizona and is not otherwise rendering services for the team in Arizona, shall not be considered duty days spent in Arizona.
 - e.** The provisions of this subsection can be illustrated by the following examples:

Arizona Administrative Register
Notices of Final Rulemaking

Example 1: Player A, a member of a professional athletic team, is a nonresident of Arizona. Player A's contract for the team requires A to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract that covers seasons that occur during year1/year2 and year2/year3. Player A's contract provides that A receives \$500,000 for the year1/year2 season and \$600,000 for the year2/year3 season. Assuming player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year1/year2 season and \$300,000 for one-half the year2/year3 season), the portion of the compensation received by player A for taxable year 2, attributable to Arizona, is determined by multiplying the compensation player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Arizona during taxable year 2 (attributable to both the year1/year2 season and the year2/year3 season) and the denominator of which is the total number of player A's duty days spent both within and without Arizona for the entire taxable year.

Example 2: Player B, a member of a professional athletic team, is a nonresident of Arizona. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a team facility, but is located in Arizona, B's team travels to Arizona for a game. The number of days B's team spends in Arizona for practice, games, meetings, and other activities, while B is present at the clinic, are not considered duty days spent in Arizona for B for that taxable year for purposes of this Section, but the days are included within total duty days spent both within and without Arizona.

Example 3: Player C, a member of a professional athletic team, is a nonresident of Arizona. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the team facilities in Arizona as well as at personal facilities in Arizona. The days C performs rehabilitation exercises in the team facilities are duty days spent in Arizona for C for that taxable year for purposes of this Section. However, days C spends at personal facilities in Arizona are not duty days spent in Arizona for C for the taxable year for purposes of this Section, but these days are included within total duty days spent both within and without Arizona.

Example 4: Player D, a member of a professional athletic team, is a nonresident of Arizona. During the season, D travels to Arizona to participate in the annual all-star game as a representative of D's team. The number of days D spends in Arizona for practice, the game, meetings, etc., are duty days spent in Arizona for D for the taxable year for purposes of this Section, as well as being included within total duty days spent both within and without Arizona.

Example 5: Assume the same facts as given in example 4, except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Instead D is travelling to and attending the game solely as a spectator. The number of days D spends in Arizona for the game are not duty days spent in Arizona for purposes of this Section. However, these days are included within total duty days spent both within and without Arizona.

4. The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year. Total compensation includes compensation received for services that are rendered during the taxable year on a date that does not fall within this period (for example, participation in instructional leagues, the "Pro Bowl," or promotional events).
5. For purposes of subsection (C)(4) total compensation includes, but is not limited to, salaries, wages, bonuses as described in subsection (C)(6), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed during the year. Total compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered for the team.
6. For purposes of this Section, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in subsection (A) are:
 - a. Bonuses earned as a result of play (for example, performance bonuses) during the season, including bonuses paid for championship, playoff or "bowl" games played by the team, or for selection to all-star league or other honorary positions; and
 - b. Bonuses paid for signing a contract, unless all of the following conditions are met:
 - i. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;
 - ii. The signing bonus is payable separately from the salary and any other compensation; and
 - iii. The signing bonus is nonrefundable.

D. If it is demonstrated that the method provided under this Section does not fairly and equitably apportion compensation, the Department may allow the member of a professional athletic team to apportion and allocate compensation under an alternative method prescribed by the Department as long as the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion compensation if the nonresident member demonstrates that the method provided under this Section does not fairly and equitably apportion compensation. The proposed method must be fully explained in the nonresident member's Arizona nonresident personal income tax return.

E. This Section is effective January 1, 2001.

R15-2C-605. Nonresident Professional Athletes Who Are Not Team Members

Individual nonresident professional athletes who are not members of a professional athletic team and whose income is event-oriented (for example, golfers, tennis players, boxers, and jockeys) shall allocate to Arizona income earned in Arizona and expenses allowable in arriving at federal adjusted gross income that are allocable to the Arizona source income.

Example: A professional golfer comes into Arizona to compete in a tournament. The golfer wins \$150,000 prize money based on success in the tournament. The golfer must report the \$150,000 to Arizona as Arizona income. The golfer may subtract expenses that are allowable in arriving at federal adjusted gross income and that are incurred in winning the \$150,000.