

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. Register citations and dates for Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 10 A.A.R. 766, March 5, 2004
Notice of Rulemaking Docket Opening: 9 A.A.R. 3892, September 5, 2003
Notice of Rulemaking Docket Opening: 9 A.A.R. 5154, November 28, 2003

2. Sections Affected

Rulemaking Action

R15-5-150	Amend
Article 11	Amend
R15-5-1101	New Section
R15-5-1102	New Section
R15-5-1103	Repeal
R15-5-1104	Repeal
R15-5-1105	Repeal
R15-5-1106	Amend
R15-5-1107	Repeal
R15-5-1109	Repeal
R15-5-1111	Amend
R15-5-1112	Amend

3. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statutes (specific):

Authorizing statute: A.R.S. § 42-1005
Implementing statutes: A.R.S. §§ 42-5061, 42-5066

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

Name: Hsin Pai, Tax Analyst
Address: Tax Policy and Research Division
Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6851
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E-mail: paih@revenue.state.az.us

Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at www.revenue.state.az.us/tra/draftdoc.htm.

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

The Department is amending the rules to clarify the imposition of Arizona transaction privilege tax on businesses subject to tax under the retail and job printing classifications that engage in various sales of printing and photography. The amendments provide clarification to taxpayers on the scope of these business activities, including definitions for the terms "image developing," "job printing," and "photography," and explain the application of related exemptions found in Arizona Revised Statutes (A.R.S.) §§ 42-5061 and 42-5066.

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6. An explanation of the substantial change which resulted in the supplemental notice:

After reviewing internal and public comments received after publication of the Notice of Proposed Rulemaking, the Department believes that the following notable changes *in toto* are “substantial” such that a Notice of Supplemental Proposed Rulemaking is necessary:

a. The Department has amended proposed A.A.C. R15-5-150 and R15-5-1112 to provide for a more clearly segregated treatment of “image developing” activities (image copying or reproducing which, when performed by a printer, constitutes an activity subject to tax under the job printing classification) vis-à-vis “photography,” which involves both taking *and* supplying images to customers and is taxable under the retail classification. Whereas each rule in the previous version referenced both “image developing” and “photography,” the new version references only the activity that is subject to tax under the article of the A.A.C. in which the rule is located. This simplification of the rules minimizes the risk of confusion to a photographer that performs its own developing activities (*e.g.*, in-house) but is not otherwise in the business of job printing for others, who may otherwise believe that he or she must also report under the job printing classification.

b. The Department has clarified A.A.C. R15-5-1101(A), containing the definition of “image developing,” in several ways. The activities of “copying or reproducing” images performed by a printer replaces “processing or transferring,” thereby tailoring the definition to include only those business activities subject to tax under the job printing classification that are performed by a printer, a person engaged in business under the classification. The earlier version of the definition also specified that the image being developed be “pictorial” in nature: the distinction is erroneous because the image need not be pictorial, so the descriptor has been eliminated. Finally, the new provision explains that a printer’s copying or reproducing activity constituting “image developing” can be performed “by any means,” again reinforcing the Department’s position that such activities are medium- and technology-neutral in falling within the tax base of the job printing classification.

c. The Department has amended proposed A.A.C. R15-5-1101(B), containing the definition of “job printing,” to eliminate confusion raised during public comment on the Notice of Proposed Rulemaking. When drafting the earlier version of the proposed rules, the Department believed that the phrase “customer-provided documents or data” would implicitly include both direct and indirect forms of provision, thus including such documents or data obtained on the order or request of the customer. Responses received indicated that the term was not sufficiently clear. The provision has thus been amended to state that documents or data may be “directly or indirectly provided by the printer’s customer, including by another person at the customer’s direction.”

d. The Department has amended proposed A.A.C. R15-5-1101(D), containing the definition of “printer,” to further clarify the concept that a person engaged in a business subject to tax under the job printing classification is limited to one that “does not distribute the materials copied or reproduced on its own behalf.” To wit, a printer does not produce or generate the *substance* of the copied or reproduced products for its own purposes, but rather, on behalf of another party (typically, the printer’s customer). The distinction may be significant to distinguish a business subject to tax under the job printing classification from one that is taxable under another transaction privilege tax classification (*e.g.*, publication).

The Department notes that, during the April 5, 2004, oral proceeding held for the proposed rules as published in the Notice of Proposed Rulemaking, several attendees raised concerns about the Department’s use of medium- and technology-neutral terminology in explaining the application of Arizona transaction privilege tax. Nevertheless, the equal treatment of traditional and electronic forms of tangible personal property, reflected in the prior and present versions of the proposed rules, is consistent with the Department’s longstanding treatment of electronic goods, in accord with the statutory definition of “tangible personal property.” (A.R.S. § 42-5001(16) states that “[t]angible personal property’ means personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.”)

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:

Not applicable

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

There should not be any significant economic impact as a result of adopting the amended rules. Because the amendments clarify and more accurately explain the scope and nature of the imposition of or exemptions from transaction privilege tax for the aforementioned types of photography and printing sales, a minimal impact may occur for certain vendors due to increased compliance measures. The agency expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions will be greater than the costs.

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

Name: Hsin Pai, Tax Analyst
Address: Tax Policy and Research Division
Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007

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10. The time, place, and nature of the oral proceedings for the making, amendment, or repeal of the rules:

No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item #4 within 30 days after publication of this notice.

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. Any material incorporated by reference and its location in the text:

None

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section

R15-5-150. Sale of Photography

ARTICLE 11. SALES TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

Section

R15-5-1101. Definitions
R15-5-1102. Printer's Sale of Printing
R15-5-1103. Examples of printed articles Repealed
R15-5-1104. Definitions Repealed
R15-5-1105. Printing facilities located out of state Repealed
R15-5-1106. Sale of materials Materials to a Printer
R15-5-1107. Typesetting services Repealed
R15-5-1109. Interstate and Foreign Transactions Repealed
R15-5-1111. Cost of printing Miscellaneous Costs of a Printer Are Not Deductions
R15-5-1112. Photography Image Developing

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-150. Sale of Photography

- A. ~~The following definitions apply for purposes of this rule: In this Section,~~
1. ~~“Photographer” means a person who engages in the business of photography.~~
 2. ~~“Photography” “photography” means the operation process of taking, developing, processing, or printing pictures, prints, or and supplying images on or from to customers, using film, video, or other similar media another digital or analog storage medium.~~
- B. ~~Gross receipts derived from sales Gross income or gross proceeds of a sale of photography by a photographer are taxable subject to tax under the retail classification this Article when production activity associated with the photography does not indicate a level of service that qualifies the sale as an inconsequential element of a professional or personal service occupation or business under A.A.C. R15-5-104(C). Indications of the level of services that qualify the sale of photography as an inconsequential element include research, script consulting, location changes, director, crew and equipment charges, post- or preproduction charges, and music charges.~~
- C. ~~Developing of films and making of prints of pictures taken by others are taxable. Developing and printing for drugstores and other retailers are sales for resale. Gross income or gross proceeds of a sale of photography to a business that resells the supplied image as a retail sale of tangible personal property are not taxable under this Article.~~

ARTICLE 11. SALES TRANSACTION PRIVILEGE TAX – JOB PRINTING CLASSIFICATION

R15-5-1101. Definitions

- A. “Image developing” means the copying or reproducing by a printer of an image by any means from film, paper, video, or another digital or analog storage medium to photographic print paper or another storage medium that can visually display

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the image.

- B.** “Job printing” means the copying or reproducing by a printer of documents or data directly or indirectly provided by the printer’s customer, including by another person at the customer’s direction, for the ultimate purpose of producing a physical or electronic copy of the document or data. The document or data can be textual or pictorial, and may be received by the printer in physical or electronic form. Examples of job printing activities include: digital printing, dye sublimation, electrostatic printing, flexography, gravure, inkjet printing, laser printing, lithography, offset printing, optical scanning, photocopying, photofinishing, reprographic printing, screen printing, thermography, xerography, and similar means of duplication.
- C.** “Photography” means the process of taking and supplying images to customers, using film, video, or another digital or analog storage medium.
- D.** “Printer” means any person that copies or reproduces textual or pictorial material by any means, process, or method of job printing, engraving, embossing, or copying, but that does not distribute the copied or reproduced material on its behalf.
- E.** “Printing” means the finished product produced by the job printing, engraving, embossing, or copying activity of a printer that is held for sale by the printer.
- F.** “Qualifying health care organization” has the same meaning as prescribed in A.R.S. § 42-5001(10).
- G.** “Qualifying hospital” has the same meaning as prescribed in A.R.S. § 42-5001(11).

R15-5-1102. Printer’s Sale of Printing

- A.** Gross income or gross proceeds from all of a printer’s costs or expenses of filling a customer’s printing order are subject to tax under this Article. Examples of costs or expenses include charges for set-up, die cutting, embossing, folding, and binding operations.
- B.** Gross income or gross proceeds from an Arizona printer’s sale of printing within Arizona are subject to tax even when the printer conducts the job printing, engraving, embossing, or copying activity outside the state, unless the printing is shipped or delivered outside the state to be used outside the state.
- C.** If a shipment or delivery of printing is made by a printer to a common carrier for transportation to a location outside the state, the common carrier is deemed to be the agent of the printer for purposes of determining the printing’s shipment or delivery outside the state, regardless of who is responsible for payment of the freight charges.
- D.** Each of the following is a suitable record for substantiating a foreign or other out-of-state shipment:
 - 1. An internal delivery order, supported by receipts for expenses incurred in delivery of printing and signed on the delivery date by the person who delivers the printing;
 - 2. A common carrier’s receipt or bill of lading;
 - 3. A parcel post receipt;
 - 4. An export declaration;
 - 5. A receipt from a licensed broker; or
 - 6. Proof of export or import, signed by a customs officer.

R15-5-1103. Examples of printed articles Repealed

The printing or other reproduction of books, periodicals, magazines, business or professional stationery, and of any other articles copied or reproduced by printers, engravers, embossers, or copiers, is included under this classification.

R15-5-1104. Definitions Repealed

A printer is defined as any person who copies or reproduces an article by any means, process, or method. A printer is subject to the tax, even though conducting the actual printing outside the state, unless the end product is sold outside the state to out-of-state purchasers. Examples include: multigraphing, lithographing, photostating, multilithing, and other similar means of duplicating.

R15-5-1105. Printing facilities located out of state Repealed

A printer in this state is subject to the tax on his income from sales within this state even though the printing or reproduction equipment is located in another state.

R15-5-1106. Sale of materials Materials to a Printer

- A.** The income from sales made by a job printer of materials on which no printing or other reproduction is done is subject to tax under the retail classification (see Article 18 I).
- B.** The sale Sales to a printer of articles materials which that do not become a an ingredient or component part of the printed or reproduced item a printing is subject to tax fall under the retail classification (see Article 18 I) when sold to a user or consumer. Examples of such articles materials include: color process plates, electrotypes, color process plates, film processing chemicals, printing plates, and wood mounts. In contrast, sales by the printer of any such materials that are job printed, engraved, embossed, or copied by the printer for the printer’s customer constitute sales of printing and fall under this Article. An example is a printer’s sale to a customer of a printing plate upon which the printer has performed job printing, engraving, embossing, or copying activity for the customer.

R15-5-1107. Typesetting services Repealed

Casting and setting monotype, linotype, and photoplates for others are deemed to be services and are not subject to tax. Income

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from reproduction proofs furnished to a printer in connection with these services is not taxable. However, sales of reproduction proofs to non-printers are taxable.

R15-5-1109. ~~Interstate and Foreign Transactions Repealed~~

- ~~A. Gross receipts from sales of job printing, engraving, embossing or copying made in interstate or foreign commerce by a vendor within this state are deductible from the tax base if the vendor ships or delivers the job printing to a location outside of Arizona for use outside of Arizona.~~
- ~~B. In meeting the above requirement, if delivery is made by the vendor to a common carrier for transportation to a location outside Arizona, the common carrier is deemed to be the agent of the vendor for purposes of this rule regardless of who is responsible for payment of the freight charges.~~
- ~~C. Suitable records for substantiating out-of-state shipments may include:
 - 1. Internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;
 - 2. Common carrier's receipt or bill of lading;
 - 3. Parcel post receipt;
 - 4. Export declaration;
 - 5. Receipt from a licensed broker; or
 - 6. Proof of export or import signed by a customs officer.~~

R15-5-1111. ~~Cost of printing Miscellaneous Costs of a Printer Are Not Deductions~~

- ~~A. A job printer who sublets the printing or other reproduction of an article may not deduct the cost thereof shall not deduct the cost of subletting job printing, engraving, embossing, or copying activities.~~
- ~~B. A job printer may shall not take a deduction for deduct the cost of labor or materials employed in the job printing, engraving, embossing, or copying activity of another person.~~

R15-5-1112. ~~Photography Sale of Image Developing~~

- ~~A. Photography does not fall within this classification but is included under the retail classification (see Article 18). Gross income or gross proceeds of a sale of image developing in which the image developing is not part of a sale of photography are subject to tax under this Article.~~
- ~~B. Gross income or gross proceeds of a sale of image developing to a business that resells the image developing are nontaxable under this Article.~~
- ~~C. Gross income or gross proceeds of a sale of image developing either to a qualifying health care organization that uses the image developing solely to provide health and medical-related educational and charitable services or to a qualifying hospital are nontaxable under this Article. An example is image developing of x-ray film or photographs.~~