

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE GENERAL ADMINISTRATION

Editor's Note: The following Notice of Emergency Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1889.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 24, 2011.

[R11-138]

PREAMBLE

1. Sections Affected

Article 7
R15-10-702
R15-10-703
R15-10-704
R15-10-705
R15-10-706

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section

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

Authorizing statute: A.R.S. § 42-1004

Implementing statute: Laws 2011, First Regular Session, Ch. 28, § 11

3. The effective date of the rules:

August 31, 2011

Although rules normally are effective 60 days after filing with the Secretary of State, pursuant to A.R.S. § 41-1032(A), these rules are effective immediately upon filing with the Secretary of State in order to comply with the deadlines set forth in Laws 2011, First Regular Session, Ch. 28, § 11 and the need for an immediate effective date is not created due to the agency's delay or inaction.

4. Is this rulemaking a renewal of a previous emergency rulemaking?

No

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

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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The rules provide guidance and direction for the administration of the Arizona Tax Recovery Program. Laws 2011, First Regular Session, Ch. 28, § 11, states that the Department of Revenue may make emergency rules as necessary to administer the Program.
- 7. 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
- 8. The summary of the economic, small business, and consumer impact:**
Generally, it is expected that the benefits will outweigh the costs. Taxpayers will have shorter forms and less complicated tax computations under the program. Taxpayers will also pay a lower interest amount and no penalties will be applied rather than if they were to be audited and assessed tax, interest and penalties. The 15 Arizona counties will receive lower revenues due to the forgiveness of penalties and the allowance of a lower interest rate. The Department of Revenue will incur the costs of creating special forms and for making available past years' tax forms dating back to 2004. The Department of Revenue will also incur additional costs of processing the special returns.
- 9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable
- 10. Incorporations by reference and their location in the rules:**
None
- 11. An explanation of the situation justifying the rule's making as an emergency rule:**
The Legislature has authorized the adoption of emergency rules in Laws 2011, First Regular Session, Ch. 28, § 11, paragraph K, subparagraph 2 by providing that the Director of the Department of Revenue may adopt emergency rules pursuant to section 41-1026, as necessary to administer the program. These rules meet the emergency requirements because they are necessary to comply with deadlines imposed under the program and to avoid serious prejudice to the public interest or the interest of the taxpayers of Arizona.
- 12. The date of the Attorney General's approval of the emergency rule:**
August 30, 2011
- 13. The full text of the rules follows:**

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE
GENERAL ADMINISTRATION

ARTICLE 7. TAX RECOVERY PROGRAM

Section

- R15-10-702. General
- R15-10-703. Tax Periods Under Audit
- R15-10-704. Gross Income Tax Return
- R15-10-705. Interest Calculation for Payment with Tax Recovery Application
- R15-10-706. Application of Payments and Credits

ARTICLE 7. TAX RECOVERY PROGRAM

R15-10-701. Reserved

R15-10-702. General

- A.** The Arizona Department of Revenue has established a Tax Recovery Program for the period of September 1, 2011 through October 1, 2011, as required under Laws 2011, First Regular Session, Ch. 28, § 11.
- B.** The Tax Recovery Program applies to tax liabilities for the taxes listed in A.R.S. § 42-1101 including but not limited to:
 1. Income tax, including individual, corporate and fiduciary;
 2. Withholding tax;
 3. Luxury tax;
 4. Transaction privilege tax for the state of Arizona and the counties; and
 5. Arizona use tax.
- C.** "Tax liabilities" includes any payment of estimated tax, interest and penalties required by law.
- D.** The Tax Recovery Program does not apply to municipal privilege and use taxes.

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E. Any return or report filed under the Tax Recovery Program is subject to verification as provided in law.

R15-10-703. Tax Periods Under Audit

A. A taxpayer may apply for tax recovery for a tax period under audit only if the application for tax recovery contains all of the tax periods under audit that are within the liability period as defined by Laws 2011, First Regular Session, Ch. 28, § 11. The Department shall reject as incomplete an application that contains less than all of the tax periods under audit that are within the liability period. A taxpayer shall not include on an application for tax recovery any tax periods occurring before or after the liability period, even if included in the tax periods under audit.

B. For purposes of this Section, “tax periods under audit” means all of the tax periods:

1. That were included in:
 - a. Proposed assessments issued by the Department, that were mailed to the taxpayer at the same time;
 - b. Department requests for tax returns, that were mailed to the taxpayer at the same time;
 - c. Department requests for information that were mailed to the taxpayer at the same time; or
 - d. Department requests for scheduling an audit that were mailed to the taxpayer at the same time; and
2. For which the taxpayer continues to have administrative or judicial appeal rights.

R15-10-704. Gross Income Tax Return

A. An individual taxpayer that does not have sufficient information to fully complete the Arizona personal income tax return may file a gross income tax return. To file a gross income tax return, a taxpayer shall complete the form, Arizona Tax Recovery Application – Individual Gross Income Tax Return.

B. A taxpayer that files a gross income tax return shall use the following table to calculate the tax due. The tax rate is determined by locating the income range of the gross income for the tax year for which recovery is sought. The gross income for the year shall be multiplied by the tax rate listed under the income range for that tax year. For example, for 2004 if gross income is \$50,000, the tax due is \$975 (\$50,000 X .0195).

<u>Tax Year</u>	<u>If The Gross Income Is:</u>			
	<u>\$0 Through \$39,999</u>	<u>\$40,000 Through \$99,999</u>	<u>\$100,000 Through \$199,999</u>	<u>\$200,000 And Above</u>
	<u>Multiply It By:</u>			
<u>2004</u>	<u>.0121</u>	<u>.0195</u>	<u>.0255</u>	<u>.0399</u>
<u>2005</u>	<u>.0120</u>	<u>.0192</u>	<u>.0251</u>	<u>.0401</u>
<u>2006</u>	<u>.0113</u>	<u>.0179</u>	<u>.0233</u>	<u>.0374</u>
<u>2007</u>	<u>.0105</u>	<u>.0167</u>	<u>.0217</u>	<u>.0349</u>
<u>2008</u>	<u>.0102</u>	<u>.0167</u>	<u>.0216</u>	<u>.0336</u>
<u>2009</u>	<u>.0097</u>	<u>.0168</u>	<u>.0217</u>	<u>.0331</u>

R15-10-705. Interest Calculation for Payment with Tax Recovery Application

A. By October 1, 2011, taxpayers applying for tax recovery shall pay the tax liability and interest for all the tax periods included in the tax recovery application. Taxpayers shall determine the interest amount to be included in this payment by using the interest chart located in subsection (C) below. Interest is computed for total tax amounts due for each year. If there is more than one tax period included on a tax recovery application in a year, the total tax amount due for the year is determined by adding the total tax amount due for each tax period of the year.

B. For the purpose of this rule “total tax amount due for a tax period” is determined by subtracting from the total tax liability due all withholding, estimated payments and other payments made or credits applied prior to the due date of the return. The total tax liability due is calculated in accordance with the applicable statutes, rules and tax form instructions. Payments received subsequently and credits subsequently applied from overpayments for tax periods included in the recovery application shall not be used to reduce the total tax liability for purposes of calculating the interest amount for the October 1 payment.

C. For each year in which there is any tax period included in the tax recovery application, the taxpayer shall multiply the factor designated in the interest chart by the total tax amount due for that year. The product of this multiplication is the interest that is due for the year. For example, if for 2005 Mr. A has total tax due in the amount of \$500, the interest owed is \$90 (\$500 X .18). He must pay \$90 of interest along with the payment of tax due by October 1, 2011.

<u>Interest Chart</u>	
<u>Year</u>	<u>Factor</u>
<u>2004</u>	<u>.21</u>

<u>2005</u>	<u>.18</u>
<u>2006</u>	<u>.15</u>
<u>2007</u>	<u>.12</u>
<u>2008</u>	<u>.09</u>
<u>2009</u>	<u>.06</u>

R15-10-706. Application of Payments and Credits

- A.** Payments received pursuant to a tax recovery application shall be applied to the tax periods on the application starting with the oldest tax period and progressing chronologically until all the payments have been applied.
- B.** Tax periods for which the taxpayer is entitled to a refund or credit may be included on a tax recovery application. The credit shall be applied to other tax periods included in the application in the order described in subsection (A).
- C.** For purposes of determining the total tax and interest due from a taxpayer applying for tax recovery, credits from overpayment of other tax periods shall be applied as if a payment had been received on the 15th day of April of the year following the calendar year of the tax period of the overpayment. For example, a taxpayer has an overpayment of income tax for calendar year 2004 and an under payment of income tax for calendar year 2005. The credit from the overpayment in 2004 will be applied to the 2005 liability as if it were a payment made on April 15, 2005.
- D.** No refund shall be given to a taxpayer for payments made or credits applied prior to September 1, 2011 for any tax periods included in a tax recovery application. If a credit for overpayment in one or more of the tax periods contained in a tax recovery application exceeds the total tax and interest liabilities for all other tax periods contained in the application, the amount due shall be reduced to zero but no refund shall be paid.