

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE – Transaction Privilege and Use Tax

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R15-5-1708 Gratuities (Tips)	Amend
R15-5-2204 Change of Business Location or Mailing Address	Repeal

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general), the implementing statute (specific):

Authorizing statute: A.R.S. § 42-1005(A)(1)

Implementing statutes: A.R.S. § 42-5074

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule.

None.

4. The agency’s contact person who can answer questions about the rulemaking:

Name: Lisa Querard

Address: 1600 W. Monroe St., Mail Code 1300, Phoenix, AZ 85007

Telephone: (602) 716-6813

Fax: (602) 716-7996

E-mail: LQuerard@azdor.gov

Web site: <http://www.azdor.gov>

5. An agency's justification and reason when a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.A.C. R15-5-1708. Current rule A.A.C. R15-5-1708 does not permit gratuities to be deducted unless the full amount of the gratuity listed on the bill or statement is distributed to the employees, regardless of whether processing fees were associated with liquidating the gratuity. A.A.C. R15-5-1708 is being amended based on the restaurant industry recommendations to reflect the reality of credit card processing charges related to gratuities. The amendment to the rule would allow restaurants to deduct the full amount of a gratuity even though the amount distributed to the relevant employees is reduced by the credit card fees associated with processing the gratuity. The amendment will bring the rule in line with current industry standards as well as the federal Fair Labor Standards Act.

A.A.C. R15-5-2204. A.R.S. § 42-5005(G) provides that a transaction privilege tax (TPT) license is not transferable on a change of location of the business. Thus, if a business changes its location, the business must obtain a new TPT license. See A.R.S. § 42-5005(H). Since this requirement is already in statute, A.A.C. R15-5-2204 is being repealed because it is redundant.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable.

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

Not applicable.

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

The amendment to A.A.C. R15-5-1708 would allow restaurants to deduct the full amount of a gratuity even though the amount distributed to the relevant employees is reduced by the credit card fees associated with processing the gratuity. The industry has indicated that this amendment would better reflect the current reality and the way the gratuities are treated for income tax purposes. Although not currently quantifiable, the department expects to experience time and cost savings because the restaurants are already using this method for income tax purposes and so there will likely be less audit issues if the rule is implemented for TPT purposes. The department does not expect to incur any other costs apart from the costs associated with filing the amendment to the rules.

Current and prospective holders of transaction privilege and affiliated excise tax licenses that operate under the restaurant classification will likely be affected by this rulemaking. The rule as currently written only allows a restaurant to deduct gratuities if the entire amount is distributed to the employee. If any amount is withheld as recoupment for processing fees, the entire gratuity is taxable. Overall, it will result in less potential penalties being assessed against businesses for improperly accounting for or improperly deducting gratuities. In addition, it will result in minimal costs to restaurants since the industry already deducts processing fees from gratuities for income tax purposes.

There is no economic impact in relation to the repeal of A.A.C. R15-5-2204 as the requirement to obtain a new license on a change of business location is already in statute. See A.R.S. § 42-5005.

9. The agency's contact person who can answer questions about the preliminary summary

of the economic, small business and consumer impact of the proposed expedited rule:

Name: Lisa Querard
Address: 1600 W. Monroe St., Mail Code 1300, Phoenix, AZ 85007
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10. The time, place and nature of the proceedings to make, amend, repeal or renumber the rule or, if no proceeding is scheduled, where, when, and how persons may request and oral proceeding on the proposed rule:

Persons may submit questions or comments in writing to the contact person listed in section 4 of this Notice of Proposed Rulemaking within 30 days after publication hereof.

11. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additional matters shall include but are not limited to:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no applicable federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact of the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No such analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. §41-1028 and its location in the rules:

Not applicable.

13. The full text of the rules follows:

TITLE 15. REVENUE

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

ARTICLE 17 RESTAURANT CLASSIFICATION

R15-5-1708 Gratuities (Tips)

ARTICLE 22 TRANSACTION PRIVILEGE TAX - ADMINISTRATION

R15-5-2204 ~~Change of Business Location or Mailing Address~~ Repealed

TITLE 15. REVENUE

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

ARTICLE 17 RESTAURANT CLASSIFICATION

R15-5-1708 Gratuities (Tips)

- A.** A restaurant’s gross receipts from gratuities that are separately stated on the check or bill are not included in the restaurant’s tax base if:
1. The exact amount charged on a check or bill for gratuities and any amounts attributable to credit card fees for gratuities, ~~is~~ are segregated on the seller’s records for the account of the employees actually providing the services; and
 2. The amounts so segregated less any amounts attributable to credit card fees for gratuities, are distributed directly to the employees providing the services for which the charges were made;
- B.** If a restaurant cannot specifically segregate the charges for gratuities and amounts, if any, attributable to credit card fees or if any portion of the amounts charged for gratuities less amounts attributable to credit card fees, is not distributed to the employees ~~involved~~, the total gross receipts from the gratuities including any amounts attributable to credit card fees, are included in the tax base under the restaurant classification.

ARTICLE 22 TRANSACTION PRIVILEGE TAX - ADMINISTRATION

R15-5-2204. ~~Change of Business Location or Mailing Address~~ Repealed

- ~~**A.** The taxpayer shall apply for a new transaction privilege tax or use tax license if the physical location of the business changes.~~
- ~~**B.** The taxpayer shall notify the Department of a change in mailing address by submitting a form prescribed by the Department or through AZTaxes.gov.~~