

**ARIZONA TAX: THE AMUSEMENTS CLASSIFICATION OF THE  
ARIZONA TRANSACTION PRIVILEGE (SALES) TAX**

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**1. THE AMUSEMENTS CLASSIFICATION – A.R.S. § 42-5073**

The amusements classification is comprised of the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, certain tennis courts, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement or entertainment, including the operation or sponsorship of events by a Tourism and Sports Authority (“TSA”--Cardinals Stadium). Admission or user fees include, but are not limited to, any revenues derived from any form of contractual agreement for rights to or use of premium or special seating facilities or arrangements.

**2. EXCLUSIONS:**

A.R.S. § 42-5073. The amusements classification does not include:

1. Activities or projects of bona fide religious or educational institutions.
2. Private or group instructional activities. For purposes of this paragraph, “private or group instructional activities” include, but is not limited to, performing arts, martial arts, gymnastics and aerobic instruction.
3. The operation or sponsorship of events by the Arizona coliseum and exposition center board or county fair commissions.
4. A musical, dramatic or dance group or a botanical garden, museum or zoo that is qualified as a non-profit charitable organization under sections 501(c)(3) of the United States internal revenue code and if no part of its net income inures to the benefit of any private shareholder or individual.
5. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under sections 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with major league baseball teams, or a national touring professional golfing association and no part of the organization’s net earnings inures to the benefit of any private shareholder or individual.

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6. Operating or sponsoring rodeos featuring primarily farm and ranch animals in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under sections 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
7. Sales of admissions to intercollegiate football contests if the contests are operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. The event must also not be held in a multipurpose facility that is owned or operated by the tourism and sports authority, pursuant to title 5, chapter 8. As a historical note, this exemption was expanded to cover the 1996 National Football League Super Bowl.
8. Activities and events of, or fees and assessments received by, a homeowner organization from persons who are members of the organization or accompanied guests of members. "Homeowner organization" means a mandatory membership organization comprised of owners of residential property within a specified residential real estate subdivision development or similar area and established to own property for the benefit of its members. The organization must be a nonprofit organization and its primary purpose must be to provide for the acquisition, construction, management, maintenance or care of organization property.
9. Activities and events of, or fees received by, a nonprofit organization that is exempt from taxation under § 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.
10. Arranging an amusement activity as a service to a person's customers if that person is not otherwise engaged in the business of operating or conducting an amusement themselves or through others. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement. [Note: This provision was added in 2005 by Laws 2005, chapter 62(SB 1439); a copy of which is attached].

### 3. ***DEDUCTIONS.***

The tax base for the amusement classification is the gross proceeds of sales or gross income derived from the business, except that the following are deducted from the tax base:

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1. The gross proceeds of sale or gross income derived from memberships, including initiation fees, which provide for the right to use a health or fitness establishment or a private recreational establishment, or any portion of an establishment, including tennis and other racquet courts at that establishment, for participatory purposes for 28 days or more and fees charged for use of the health or fitness establishment or private recreational establishment by bona fide accompanied guests of members; excluded from this deduction are additional fees, other than initiation fees, charged by a health or fitness establishment or a private recreational establishment for purposes other than memberships which provide for the right to use a health or fitness establishment or private recreational establishment, or any portion of an establishment, for participatory purposes for 28 days or more and accompanied guest use fees.
2. Certain pari-mutuel wagering proceeds.
3. The gross proceeds of sale or gross income derived from membership fees, including initiation fees, that provide for the right to use a transient lodging recreational establishment, including golf, tennis and other racquet courts at that establishment, for participatory purposes for 28 days or more, except that this paragraph does not include additional fees, other than initiation fees, that are charged by a transient lodging recreational establishment for purposes other than memberships and that provide for the right to use a transient lodging recreational establishment or any portion of the establishment for participatory purposes for 28 days or more.
4. The gross proceeds of sales or gross income derived from sales to persons engaged in the business of transient lodging classified under § 42-5070, if all of the following apply:
  - (a) The persons who are engaged in the transient lodging business sell the amusement to another person for consideration.
  - (b) The consideration received by the transient lodging business is equal to or greater than the amount to be deducted.
  - (c) The transient lodging business has provided an exemption certificate to the person engaging in the amusement activity.
5. The gross proceeds of sales or gross income derived from:
  - (a) Business activity that is properly included in any other business classification and that is taxable to the person engaged in that classification, but the gross proceeds to be deducted shall not exceed the consideration paid to the person conducting the activity.
  - (b) Business activity that is arranged by the person who is subject to tax under the amusement classification that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under the amusement classification or § 42-5062, but the gross proceeds of sales or

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gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

- (c) Business activity that is arranged by a person who is subject to tax under the amusement classification and that is taxable to the person who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

## **4. DEFINITIONS:**

1. “Health or fitness establishment” means a facility whose primary purpose is to provide facilities, equipment, instruction or education to promote the health and fitness of its members and at least eighty percent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees which provide for the right to use the facility, or any portion of the facility, under the terms of the membership agreement for participatory purposes for 28 days or more.
2. “Private recreational establishment” means a facility whose primary purpose is to provide recreational facilities, such as golf, tennis and swimming, for its members and where at least eighty percent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees which provide for the right to use the facility, or any portion of the facility, for participatory purposes for 28 days or more.
3. “Transient lodging recreational establishment” means a facility whose primary purpose is to provide facilities for transient lodging, that is subject to taxation under this chapter and that also provides recreational facilities, such as tennis, golf and swimming, for members for a period of 28 days or more. A.R.S. § 42-5073.C.

## **5. HAYRIDES**

Until December 31, 1998, the revenues from hayrides and other animal-drawn amusement rides, from horseback riding and riding instruction and from recreational tours using motor vehicles designed to operate on and off public highways are exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from hayrides and other animal-drawn amusement rides, from horseback riding and from recreational tours using motor vehicles designed to operate on and off public highways are subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the taxes will be returned to the customer. A.R.S. § 42-5073.D.

**6. BOOKS AND RECORDS.**

If a person is engaged in the business of offering both exhibition, amusement or entertainment and private group instructional activities, the person's books shall be kept to show separately the gross income from exhibition, amusement or entertainment and gross income from instructional activities. If the books do not provide this separate accounting, the tax is imposed on the person's total gross income from the business. A.R.S. § 42-5073.E.

**7. CASES**

The sales tax under the amusements classification does not apply to river rafting trips down the Colorado River. (*Wilderness World, Inc. v. Arizona Dep't of Revenue*, 182 Ariz. 196, 895 P.2d 108 (1995)).

In *McElhaney v. Arizona Dep't of Revenue*, Arizona Board of Tax Appeals, Division Two, No. 704-89-S (May 15, 1990), one issue the Board dealt with was the application of the transaction privilege tax to golf lessons given by professional golfers at the golf and pro shop's driving range. The court held that because the instructional fee for golf lessons does not provide access or admission to nonpublic portions of the golf course, the instruction fee is not an admission fee for instruction, and thus, is not subject to the transaction privilege tax.

**8. PRIVATE TAXPAYER RULINGS**

LR95-005. The department rules that entry fees for participation in automobile racing, which are placed in a separate account and paid out only as prize money or awards are not subject to tax under the amusement classification (A.R.S. §42-1310.13). The department also rules that membership fees paid by drivers which are separate and are returned to drivers only in the form of prizes and awards are not subject to tax under the amusement classification. In addition, the department rules that the entry fees and membership fees paid by drivers are not subject to tax under the rental classifications (A.R.S. §42-1310.09 or 42-1310.11).

LR03-009. The department rules that the exhibition events at issue are not sponsored by a nonprofit organization, such that Taxpayer's gross proceeds derived from the events are thus not exempt under A.R.S. §42-5073(A)(5) (event's sponsored by nonprofit organizations are exempt).

LR05-013. The department rules that admission fees for use of an indoor arena by a private group is taxable.

**9. 2006 LEGISLATION DEVELOPMENTS -- NO 2007 DEVELOPMENTS**

House Bill 2132, chapter 171. Cities are precluded from taxing the Arizona State Fair on ride ticket sales at the annual state fair.