NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Sections Affected	Rulemaking Action
R9-4-101	Amend
R9-4-102	Repeal
R9-4-201	Renumber
R9-4-201	New Section
R9-4-202	Renumber
R9-4-202	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. § 36-136(F)

Implementing statute: A.R.S. § 36-606

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 4267, November 5, 1999

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

Name: Patricia M. Arreola

Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control Services
3815 North Black Canyon Highway
Phoenix, Arizona 85015

Telephone: (602) 230-5943

Fax: (602) 230-5933

E-mail: parreol@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 West Adams, Room 102
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 542-1090

E-mail: kphilli@hs.state.az.us

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

The Department is amending the general definitions Section for the Chapter to conform to current rulemaking format and style requirements, to define a term previously undefined, and to define a term previously defined elsewhere. In addition, the Department is repealing the definitions Section pertaining specifically to the Pesticide Illness Article and replacing it with a new definitions Section within the Pesticide Illness Article that will provide clearer definitions of the terms used in the Article. The Department is also renumbering and amending the only Section previously in the Pesticide Illness Article, regarding pesticide illness reporting requirements, to conform to current rulemaking format and style requirements and to clarify the rule. The Department is eliminating the requirement to report race or ethnicity, is requiring that occupation be reported only if a documented pesticide exposure is related to the occupation, and is expressly allowing that reporting be done by a designated representative of the health care professional or poison control center medical director. The Department is otherwise not changing the reporting requirements of the rule.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed 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

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

The Department expects that this rulemaking will impose no economic burden other than the expense of the rulemaking process to the Department, the Office of the Secretary of State, and the Governor's Regulatory Review Council. The Department anticipates that the public will benefit from the clarification of the rules because the rules will be less confusing to apply.

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: Patricia M. Arreola

Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control Services
3815 North Black Canyon Highway
Phoenix, Arizona 85015

Telephone: (602) 230-5943

Fax: (602) 230-5933

E-mail: parreol@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 West Adams, Room 102
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 542-1090

E-mail: kphilli@hs.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has not scheduled any oral proceedings. Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to the individuals listed in

questions 4 and 9. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if it receives a written request for oral proceedings within 30 days after the 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:

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES NONCOMMUNICABLE DISEASES

ARTICLE 1. DEFINITIONS

Section
R9-4-101. Definitions, General
~~R9-4-102. Pesticide Illness~~ Repealed

ARTICLE 2. PESTICIDE ILLNESS

Section
R9-4-201. Definitions
~~R9-4-201.~~ R9-4-202. Pesticide Illness Reporting Requirements

ARTICLE 1. DEFINITIONS

R9-4-101. Definitions, General

In this Chapter, unless ~~the context~~ otherwise ~~requires~~ specified:

1. "Dentist" means ~~any person~~ an individual licensed under ~~the provisions of~~ A.R.S. Title 32, Chapter 11, Article 2.
2. "Department" means the Arizona Department of Health Services.
~~2~~ 3. "Hospital" means a health care institution licensed by the Department as a general hospital, a rural general hospital, or a special hospital under A.A.C. Title 9, Chapter 10.
4. "ICD-9-CM" means ICD-9-CM: International Classification of Diseases, 9th Revision, Clinical Modification (5th ed. 2000), incorporated by reference, on file with the Department and the Office of the Secretary of State, and available from Practice Management Information Corporation, 4727 Wilshire Boulevard, Suite 300, Los Angeles, CA 90010 and from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. This incorporation by reference contains no future editions or amendments.
~~3~~ 5. "Physician" means ~~any person~~ an individual licensed as a doctor of allopathic medicine under ~~provisions of~~ A.R.S. Title 32, Chapter 13 or as a doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17.

~~**R9-4-102. Pesticide Illness**~~ **Repealed**

~~In Article 2, unless the context otherwise requires:~~

~~1. "Case" means any person with an illness which has been determined by a health care professional to be a result of exposure to a pesticide, on the basis of patient history, signs, symptoms or presentation of illness, laboratory findings or results of treatment.~~
~~2. "Cluster illnesses" means two or more cases or suspect cases of pesticide illness which are or may be related.~~
~~3. "Documented" means supported by written information, such as applicator reports, patient statements, or medical records.~~
~~4. "Health care professional" means any physician, hospital intern or resident, surgeon, dentist, osteopath, chiropractor, podiatrist, county medical examiner, nurse or other professional having responsibility for the diagnosis, care or treatment of human illness.~~
~~5. "Pest" means any of the following organisms under circumstances that make it deleterious to man or the environment:~~
~~a. Any vertebrate animal other than man;~~
~~b. Any invertebrate animal, including any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;~~

~~c. Any plant growing where not wanted, including moss, alga, liverwort, or other plant of any higher order, and any plant part; or~~
~~d. Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs and cosmetics.~~
~~6. "Pesticide" means any substance or mixture of substances, including inert ingredients, intended for preventing, destroying, repelling or mitigating any pests, or any substance or mixture of substances intended for use as a plant growth regulator, defoliant or desiccant.~~
~~7. "Pesticide illness" means disturbance of function, damage to structure or illness in humans which results from the inhalation, absorption or ingestion of any pesticide.~~
~~8. "Poison control centers" means entities in the Arizona poison control network which engage in consultations concerning possible pesticide poisonings.~~
~~9. "Suspect case" means any person with a syndrome or signs and symptoms of illness which a health care professional believes, based on professional judgement, may be a result of exposure to one or more pesticides, but which does not meet the definition of case.~~

ARTICLE 2. PESTICIDE ILLNESS

R9-4-201. Definitions

In this Article, unless otherwise specified:

1. "Cluster illness" means that 1 pesticide exposure incident has caused or may be related to pesticide illness in 2 or more individuals, as determined by the history, signs, or symptoms of the illnesses; laboratory findings regarding the individuals; the individuals' response to treatment for the illnesses; or the geographic proximity of the individuals.
2. "Documented" means evidenced by written information such as pesticide applicator reports, statements of individuals with pesticide illness, or medical records.
3. "Health care professional" means a physician, a registered nurse practitioner, a physician assistant, or any other individual who is authorized by law to diagnose human illness.
4. "Medical director" means the individual designated by a poison control center as responsible for providing medical direction for the poison control center or for approving and coordinating the activities of the individuals who provide medical direction for the poison control center.
5. "Pest" has the same meaning as defined in A.R.S. Title 3, Chapter 2, Article 5 or as used in A.R.S. Title 3, Chapter 2, Article 6 and A.R.S. Title 32, Chapter 22.
6. "Pesticide" means any substance or mixture of substances, including inert ingredients, intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant, but does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning purposes.
7. "Pesticide illness" means any illness reasonably believed by a health care professional or medical director to be caused by or related to documented exposure to any pesticide, based upon professional judgment and the history, signs, or symptoms of the illness; laboratory findings regarding the individual; or the individual's response to treatment for the illness.
8. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
9. "Poison control center" means an organization that is a member of and may be certified by the American Association of Poison Control Centers.
10. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.

~~R9-4-201~~ R9-4-202.Pesticide Illness Reporting Requirements

~~Any~~ A health care professional or ~~poison control center, who~~ medical director who participates in the diagnosis of or identifies ~~a case of~~ an individual with pesticide illness~~, or determines that an illness may be related to documented exposure to a pesticide,~~ shall file a report of pesticide illness with the Department as follows:

1. ~~Reports of cases and suspect cases of pesticide illness shall be made~~ The health care professional or medical director shall report a pesticide illness within ~~five~~ 5 working days ~~of~~ from the date of ~~determining that an illness is or may be a result of documented exposure to a pesticide~~ diagnosis or identification, except:
   a. ~~Any case or suspect case which results in hospitalization or death shall be filed immediately or~~ The health care professional or medical director shall report a pesticide illness where the individual with pesticide illness is hospitalized or dies no later than ~~24 hours~~ 1 working day from the time of hospital admission or death~~.~~ ; and
   b. ~~Reports of cluster illnesses shall be filed immediately or~~ The health care professional or medical director shall report cluster illnesses no later than ~~24 hours~~ 1 working day from the time the ~~second case or suspected case~~ 2nd individual with pesticide illness is diagnosed or identified.
2. ~~Reports shall be made~~ The health care professional or medical director shall submit the report to the Department by telephone~~,~~ ; in person; ~~or~~ in a writing sent by fax, delivery service, or mail; or by an electronic reporting system if an electronic reporting system is developed by the Department. The report shall contain the following information:
   a. ~~Patient's~~ The name, address, and telephone number of the individual with pesticide illness;

b. ~~Date~~ The date of birth of the individual with pesticide illness;
~~c. Race or ethnicity;~~
~~d~~ c. ~~Gender~~ The gender of the individual with pesticide illness;
~~e~~ d. ~~Occupation~~ The occupation of the individual with pesticide illness, if the documented pesticide exposure is related to the occupation;
~~f~~ e. ~~Dates~~ The dates of onset of illness and of diagnosis or identification as pesticide illness;
~~g~~ f. ~~Name~~ The name of the pesticide, if known;
~~h~~ g. ~~Name~~ The name, business address, and telephone number of the ~~person~~ health care professional or medical director making the report;
h. A statement specifying whether the illness is caused by a documented pesticide exposure or is related to a documented pesticide exposure; and
i. The health care professional's or medical director's reason for believing that the illness is caused by or related to documented exposure to a pesticide.
~~j. Statement specifying whether the illness is caused by or related to a documented pesticide exposure.~~

3. The health care professional or medical director may designate a representative to make the report to the Department on behalf of the health care professional or medical director.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R15-2-1029	Repeal
R15-2-1030	Repeal
R15-2-1032	Repeal
R15-2-1127	New Section
R15-2-1129	New Section
R15-2-1130	New Section
R15-2-1169	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. §§ 43-1021, 43-1022, 43-1121, 43-1122, 43-1127, 43-1129, 43-1130, and 43-1169

3. List of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 1663, June 13,1997

Notice of Rulemaking Docket Opening: 5 A.A.R. 3232, September 17, 1999

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

Name: Jim Bilski, Tax Analyst

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

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

R15-2-1029, R15-2-1030, and R15-2-1032 are proposed for repeal because the underlying individual income tax statutes have been repealed.

R15-2-1127, R15-2-1129, and R15-2-1130 are new Sections that provide guidance to corporate taxpayers that claim subtractions for deferred exploration expenses, amortization of pollution control property, or amortization of child care facilities. The rules inform taxpayers on how to make an election to claim the subtractions and how to compute the allowable amounts of the subtractions. The rules are necessary to ensure consistent application of the related income tax statutes.

R15-2-1169 is a new Section that informs corporate taxpayers that claim a credit for an environmental technology facility of recordkeeping requirements. The rule also provides guidance to corporate taxpayers regarding the carryover of the credit to subsequent tax years. The rule is necessary to inform taxpayers what records are required to be kept in order to substantiate the allowable credit and to what extent carryover credits are allowed.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed 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

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

It is expected that the benefits of the new rules will be greater than the costs. Corporate taxpayers will benefit by being informed of how to elect and compute the various subtractions. Corporate taxpayers will also benefit by knowing what records to keep to substantiate the environmental technology facility credit and to what extent a carryover credit is allowed. Corporate taxpayers that claim the subtractions or credit are expected to incur minimal costs related to the new rules. Corporate taxpayers that elect a subtraction will incur the cost related to the election statement required to be attached to the income tax return. Corporate taxpayers that elect the credit will incur costs related to the retention of the required records. However, these rules only provide guidance in the application of the statutes—the statutes impose the tax, allow for subtractions and credits, require elections, and require taxpayers to maintain adequate records. The Department of Revenue, the Governor's Regulatory Review Council, and the Secretary of State's Office will incur costs associated with the rulemaking process.

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: Jim Bilski, Tax Analyst

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has not scheduled any oral proceedings. Written comments on the proposed rulemaking actions or preliminary economic, small business, and consumer impact statements may be submitted to the person listed above. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if 1 or more individuals file written requests for oral proceedings within 30 days after the publication of this Notice. A person may submit written comments regarding the proposed rulemaking action by submitting the comments no later than 5:00 p.m., April 24, 2000, to the person listed above.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

ARTICLE 10. INDIVIDUALS

Section
R15-2-1029. ~~Deferred exploration expenditures~~ Repealed
R15-2-1030. ~~Amortization of property used for atmospheric and water pollution control—general rule~~ Repealed
R15-2-1032. ~~Amortization of child care facilities~~ Repealed

ARTICLE 11. CORPORATIONS

Section
R15-2-1127. ~~Reserved~~ Deferred Exploration Expenses
R15-2-1129. Amortization of Property Used for Atmospheric and Water Pollution Control
R15-2-1130. Amortization of Child Care Facilities
R15-2-1169. Environmental Technology Facility Tax Credit

ARTICLE 10. INDIVIDUALS

R15-2-1029. ~~Deferred exploration expenditures~~ Repealed

~~**A.** The amount of exploration expenses added to Arizona gross income pursuant to Section 43-1021, subsection (B), paragraph (16), may be subtracted on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made for any taxable year shall be binding for such year.~~

~~**B.** The amount of the deduction allowable during the taxable year is an amount A that bears the same ratio to B (the total deferred discovery or exploration expenditures reduced by the amount of such expenditures deducted in prior taxable years) as C (the number of units of the produced ore or mineral sold during the taxable year) bears to D (the number of units of ore or mineral remaining as of the taxable year). The "number of units of ore or mineral remaining as of the taxable year" for the purposes of this proportion is the number of units of ore or mineral remaining at the end of the year to be recovered from the mines or deposits benefited by such expenditures including units recovered but not sold plus the number or units sold within the taxable year. The principles are applicable in estimating the number of units remaining as of the taxable year and the number of units sold during the year. The estimate is subject to revision in accordance with that section in the event it is ascertained as the result of further discovery, development, or operations that the remaining units are materially greater or less than the units remaining from a prior estimate.~~

~~**C.** If the taxpayer has paid or incurred expenditures of the character described herein, has made the election to defer such expenditures, and thereafter leases the mine or deposit benefited by such expenditures retaining a royalty interest therein, he shall be allowed the ratable deduction indicated in subsection (B).~~

~~**D.** The election to defer the exploration expenses up to $75,000.00 shall be made by a clear indication on the return or by a statement filed with the Department not later than 6 months after the filing on the return for the taxable year to which such election is applicable. In such statement, the taxpayer shall disclose the amount to be deferred, the name, location, extent, and nature of the mineral deposit to which the election relates. The election shall be binding for the taxable year relative to the election made.~~

R15-2-1030. ~~Amortization of property used for atmospheric and water pollution control—general rule~~ Repealed

~~**A.** General rule~~

~~1. Every taxpayer is entitled by election to a deduction pertaining to the amortization of the adjusted basis for determining gain of any device, machinery, or equipment for the collection at the source of atmospheric and water pollutants and contaminants. Amortization is to be based on a period of 60 months. The taxpayer with respect to such property may elect to begin the 60-month amortization period with the month following the month in which such property was completed or acquired. The date on which or the month within which such property is completed or acquired is to be determined on the facts in the particular case.~~

~~2. An amortization deduction shall not be allowed relative to such property for any taxable year until such property has been certified by the Arizona State Department of Health Services.~~

~~3. Generally, the amortization deduction relative to each month of the 60-month period that falls within the taxable year is an amount equal to the adjusted basis of the property at the end of such month divided by the number of months, including the particular month for which the deduction is computed, remaining in the 60-month period. The adjusted basis of the property at the end of any month shall be computed without regard to the amortization deduction with~~

~~respect to such property for such month. The total amortization deduction pertaining to such property for a particular taxable year is the sum of the amortization deductions allowable relative to such property for each month of the 60-month period that falls within such taxable year. The amortization deduction relative to such property taken for any month is in lieu of the deduction for depreciation that would otherwise be allowable pertaining to such property for such month.~~

~~**B.** Election of amortization~~

~~1. General rule. An election by the taxpayer to take amortization deductions pertaining to such property and to begin the 60-month amortization period either: with the month following the month in which such property was completed or acquired or with the taxable year in which the certification required by subsection (D) is made, whichever is later, the election shall be made by a statement to that effect in the return of the taxpayer for the taxable year in which falls the 1st month of the 60-month amortization period so elected.~~

~~2. Election not made in prescribed manner. If the statement of election is not made by the taxpayer as prescribed in subsection (B)(1) of this rule, it may in the discretion of the Department of Revenue and for good cause shown be made in such manner and form and within such time as may be approved by the Department of Revenue.~~

~~3. Other requirements and considerations. No method of making such election other than those prescribed in this regulation is permitted. Any statement of election should contain a description clearly identifying each piece of property for which an amortization deduction is claimed. A taxpayer that does not elect to take amortization deductions relative to such property in the manner prescribed in this regulation shall not be entitled to amortization deductions with regard to such property.~~

~~**C.** Election to discontinue amortization~~

~~1. If a taxpayer has elected to take amortization deductions regarding such property, it may after such election and prior to the expiration of the 60-month amortization period, discontinue the amortization deductions relative to such property for the remainder of the 60-month period. An election to discontinue the amortization deductions shall be made by an appropriate statement in the taxpayer's income tax return for the taxable year of discontinuance specifying the month as of the beginning of which the taxpayer elects to discontinue such deductions. If the taxpayer elects to discontinue the amortization deductions regarding such property, it shall not be entitled to any further amortization deductions with regard to such property.~~

~~2. A taxpayer that elects to discontinue amortization deductions regarding such property is entitled to a deduction for depreciation regarding the property if such property is depreciable. The deduction for depreciation shall begin with the 1st month when the amortization deduction is not applicable and shall be computed on the adjusted basis of the property as of the beginning of such month.~~

~~**D.** Certification requirements by the Arizona State Department of Health Services~~

~~1. When applying for certification of atmospheric and water pollution control devices, the prescribed application forms are to be mailed to the certifying authority. If the certifying authority determines that the equipment meets the requirements of the law, it will so certify and return 2 copies of the notice of certification of device to the applicant. The applicant is to attach the approved notice of certification of device form to the tax return for the 1st taxable year that he claims a deduction for amortization of atmospheric and water pollution control devices and retain the duplicate copy for his files.~~

~~Application forms may be obtained from the Arizona State Department of Health Services.~~

~~2. Property eligible for certification. Property used for the collection at source of atmospheric and water pollutants and contaminants means any device, machinery, or equipment used for such purpose, the acquisition of which occurred after December 31, 1967, and much of the construction, reconstruction, erection, or installation as occurred after such date as certified by Arizona State Department of Health but does not include any land or buildings thereon.~~

~~3. Time for filing applications. Applications for certification of acquired atmospheric and water pollution control devices must be filed within 6 months after such acquisition. However, when such devices are constructed, such applications may be filed at any time within 6 months before or 6 months after the completion of the devices.~~

R15-2-1032. ~~Amortization of child care facilities~~ Repealed

~~**A.** The following definitions apply for amortization of child care facilities:~~

~~1. "Child care facility" means a facility as defined under A.R.S. § 36-881.~~

~~2. "Property" means property of a character subject to depreciation that is specifically used as an integral part of the child care facility.~~

~~3. "Employee" means any person employed by a taxpayer who, as a separate entity or in conjunction with a group of entities, operates a child care facility.~~

~~4. "Primarily" means that at least eighty percent (80%) of the children continuously attending the facility are the dependent children of employees.~~

~~**B.** The employer shall use the following formula to determine the eligibility of child care facility property for purposes of the amortization period:~~

~~1. Compute the total sum of the employee children in attendance for all days in the tax reporting period.~~

~~2. Divide the sum in subsection (B)(1) by the sum of the total daily attendance for all days in the tax reporting period.~~
~~3. The fraction that is derived must be equal to or greater than .80 for the tax reporting period in order to qualify for the 24-month amortization treatment.~~

~~**C.** If the 24-month amortization period is elected for property or expenditures, the taxpayer must attach to his return, for the period for which the deduction is 1st elected, a written statement setting forth the following information:~~
~~1. For each item of property, or for each combined item of property:~~
~~a. A clear description of the property;~~
~~b. The date of expenditure of the period during which the expenditures were made for the property;~~
~~c. The date the property was placed in service;~~
~~d. The amount of the expenditure; and~~
~~e. The annual amortization deduction claimed with respect to the property.~~
~~2. If the 24-month amortization period is elected for property that was previously under amortization pursuant to § 188 or § 167 of the Internal Revenue Code, the taxpayer shall submit the information as required in subsection (C)(1) plus specifically set out the amount of the amortization previously taken under the Internal Revenue Code and the remaining unamortized amounts with respect to each item of property of expenditure.~~

~~**D.** The taxpayer shall treat as a separate item of property additions to or improvements to an existing item of amortized property except the taxpayer may treat 2 or more items of property as a single item of property if the items are placed in service within the same month.~~

~~**E.** A taxpayer may take deductions for depreciation of property in lieu of amortization deductions when the amortization election is terminated.~~
~~1. The amortization election made with respect to the item of property is terminated as of the earliest date on which:~~
~~a. The specific use of an item of property in connection with the operation of a child care facility is discontinued.~~
~~b. The child care facility no longer meets applicable requirements set forth in this rule.~~
~~2. Any subsequent deduction claimed for depreciation shall be computed on the adjusted basis of the property as of the termination date.~~

ARTICLE 11. CORPORATIONS

R15-2-1127. ~~Reserved~~ Deferred Exploration Expenses

A. A taxpayer may elect to subtract a ratable portion of deferred exploration expenses added to income under A.R.S. § 43-1121. To make the election, a taxpayer shall attach a statement to the return for the applicable taxable year. The statement shall disclose:
1. The amount of exploration expenses subject to the election, and
2. The name, location, and nature of the ore or mineral deposit to which the election relates.

B. A taxpayer may make an election under this Section at any time before the expiration of the period for filing a claim for credit or refund for the taxable year the election is to be effective. An election made under this Section shall be binding for the taxable year unless the taxpayer revokes the election to deduct exploration expenses under Internal Revenue Code § 617. If the taxpayer revokes the federal election, the taxpayer shall file Arizona amended income tax returns to reflect the changes in federal taxable income and Arizona taxable income that result from the revocation of the election.

C. Except as provided by subsection (D), a taxpayer shall compute the subtraction for a ratable portion of deferred exploration expenses by using the following formula:

$$A = B \times [C / (C + D)]$$

The above variables are defined as follows:
"A" is the deferred exploration expense subtraction allowable for the taxable year,
"B" is the total deferred exploration expenses reduced by the amount of deferred exploration expenses subtracted in prior taxable years,
"C" is the number of units of ore or mineral sold during the taxable year from the mine or deposit for which the deferred exploration expenses were incurred, and
"D" is the number of units of ore or mineral remaining at the end of the taxable year to be recovered and sold from the mine or deposit for which the deferred exploration expenses were incurred.

D. A taxpayer that has elected to recapture and capitalize exploration expenses under Internal Revenue Code § 617(b)(1)(A) shall reduce the amount computed under subsection (C) by the amount of the federal depletion deducted for the current taxable year that is allocable to the amount of Arizona deferred exploration expenses. A taxpayer shall not reduce the amount computed under subsection (C) to less than zero. A taxpayer shall compute the amount of the federal depletion deduction allocable to the Arizona deferred exploration expenses by multiplying the federal depletion deduction that relates to the mineral interest for which the exploration expenses were incurred by the ratio of the Arizona deferred exploration expenses to the total federal adjusted basis of the mineral interest before any depletion deduction. A taxpayer shall

make the computation under this subsection for each subsequent taxable year until the cumulative amount of subtractions for deferred exploration expenses for all taxable years equals the total amount of exploration expenses that were deferred. The amount of the federal depletion deduction allocable to the deferred exploration expenses shall be considered a subtraction of deferred exploration expenses for purposes of computing:

1. The variable B in the formula under subsection (C) for subsequent taxable years,
2. The Arizona adjusted basis under subsection (I), and
3. The cumulative amount of subtractions for deferred exploration expenses.

E. A taxpayer that has elected to recapture and capitalize exploration expenses under Internal Revenue Code § 617(b)(1)(A) and has elected not to defer up to $75,000 of exploration expenses under A.R.S. § 43-1121, shall add to Arizona gross income the amount of federal depletion deducted for the current taxable year that is allocable to the exploration expenses not deferred. A taxpayer shall compute the amount of the federal depletion deduction allocable to the exploration expenses not deferred by multiplying the federal depletion deduction that relates to the mineral interest for which the exploration expenses were incurred by the ratio of the exploration expenses not deferred to the total federal adjusted basis of the mineral interest before any depletion deduction. A taxpayer shall make the adjustment under this subsection for each subsequent taxable year until the cumulative adjustments for all taxable years equals the total amount of exploration expenses not deferred.

F. For purposes of computing the subtraction under subsection (C), a taxpayer shall estimate the number of recoverable units of ore or mineral according to an accepted industry method. The taxpayer shall revise the estimate if, prior to the close of the current taxable year, it is determined, as the result of further discovery, development, or operation, that the remaining units are materially greater or less than the units previously estimated. The revised estimate shall be used for the current taxable year and subsequent taxable years until it is determined that another revision is required.

G. A taxpayer that leases an ore or mineral deposit and retains a royalty interest therein may subtract the ratable portion of related deferred exploration expenses as computed under subsection (C).

H. If a taxpayer abandons an ore or mineral interest, the taxpayer may subtract the related unamortized deferred exploration expenses in the taxable year of abandonment. For purposes of this subsection, a taxpayer has abandoned an ore or mineral interest during the taxable year when the following conditions exist:

1. The taxpayer has discontinued all operations and activities with respect to the ore or mineral interest.
2. The taxpayer has no intention of exploring, developing, or otherwise using the ore or mineral interest in the future.
3. The taxpayer has no intention of selling, exchanging, or otherwise disposing of the ore or mineral interest.

I. A taxpayer that sells property for which exploration expenses were incurred shall report the difference between the federal adjusted basis of the property and the Arizona adjusted basis of the property in the year of the sale. If the Arizona adjusted basis exceeds the federal adjusted basis, then a subtraction from income for the excess is required. If the federal adjusted basis exceeds the Arizona adjusted basis, then an addition to income for the excess is required. The Arizona adjusted basis of the property is computed as follows:

1. The federal adjusted basis, plus
2. The exploration expenses added to income under A.R.S. § 43-1121, minus
3. The subtraction from income for the federal exploration expense recapture under A.R.S. § 43-1122, minus
4. The total subtractions from income for deferred exploration expenses allowed under this Section.

J. A taxpayer shall not include the amount of mine exploration expenses that were not deferred under A.R.S. § 43-1121 in computing the subtraction from income for the recapture of mine exploration expenses under A.R.S. § 43-1122.

K. Under A.R.S. § 43-1122, a taxpayer may elect to subtract a ratable portion of deferred exploration expenses related to oil, gas, or geothermal resources. A taxpayer shall make the election and compute the subtraction in the same manner as the election related to ore and mineral property.

R15-2-1129. Amortization of Property Used for Atmospheric and Water Pollution Control

A. A taxpayer may elect to amortize, over a 60-month period, the adjusted basis of any device, machinery, or equipment that is certified by the Arizona Department of Environmental Quality as property that collects and controls atmospheric and water pollutants and contaminants at their source. The amortization subtractions allowed for the 60-month period are in lieu of the federal depreciation and amortization related to the pollution control property. The related federal depreciation and amortization deducted in computing federal taxable income is an addition to income under A.R.S. § 43-1121. The adjusted basis for purposes of amortization is the basis for determining depreciation under Internal Revenue Code § 167 on the date the pollution control property is placed in service. The adjusted basis does not include land or buildings.

B. A taxpayer shall elect to amortize pollution control property by including a statement in the original or amended return for the taxable year of election. The statement shall identify each piece of property subject to the election, the month the property is placed in service, the adjusted basis of the property, and the date of certification by the Arizona Department of Environmental Quality.

C. The amortization period is 60 consecutive months beginning with the month the property is placed in service. If the property is disposed of or retired from service prior to the end of the 60-month period, the amortization period ends with the month of disposition or retirement. The monthly amortization allowable shall be computed by dividing the adjusted basis

of the property at the beginning of the amortization period by 60. The total amortization subtraction for a particular taxable year is the sum of the amortization for each month of the amortization period that falls within the taxable year.

D. A taxpayer may elect to discontinue the amortization election prior to the end of the 60-month amortization period.

1. A taxpayer shall include a statement in the original or amended return for the taxable year the election to discontinue amortization is to be effective. The statement shall identify each piece of property for which the election to discontinue amortization applies and the last month of amortization.
2. Generally, a taxpayer is not required to make the addition to income referred to in subsection (A) for the months following the election to discontinue amortization. However, an addition to income is required for the federal depreciation or amortization that exceeds the adjusted basis not previously recovered through depreciation or amortization. For example, a taxpayer elects to discontinue amortization after 48 months. If the property had an adjusted basis of $100,000 at the beginning of the amortization period, then the adjusted basis remaining to be recovered is $20,000 ($100,000 less the previous amortization of $80,000). If federal depreciation for the property is $10,000 per year for 10 years, then an addition to income of $10,000 per year is required beginning with the 3rd taxable year following the election to discontinue amortization.

R15-2-1130. Amortization of Child Care Facilities

A. The following definitions apply for purposes of amortization of child care facilities under A.R.S. § 43-1130 and this Section:

1. "Child care facility" means a facility as defined under A.R.S. § 36-881.
2. "Employee" means any person employed by a taxpayer that owns a child care facility.
3. "Property" means property of a character subject to depreciation that is specifically used as an integral part of a child care facility.

B. For purposes of qualifying for the 24-month amortization period under A.R.S. § 43-1130(B), a child care facility is considered to be primarily for the children of employees of the taxpayer if the required ratio is at least 80% for the taxable year during which the property is placed in service. The taxpayer shall maintain a required ratio of at least 80% for the subsequent taxable years that include part of the 24-month amortization period.

1. "Required ratio" means:
   a. The total daily attendance of employee children for the taxable year, divided by
   b. The total daily attendance of all children for the taxable year.
2. For purposes of computing the required ratio, the employees of all joint owners of a child care facility are considered to be employees of each of the joint owners.

C. To elect either the 24-month or the 60-month amortization period, a taxpayer shall attach to the income tax return for the taxable year during which the property is placed in service a written statement setting forth the following information:

1. A clear description of the property.
2. The date of expenditure or the period during which the expenditures were made for the property.
3. The date the property was placed in service.
4. The amount of the expenditure.
5. The amortization period elected.
6. The annual amortization deduction claimed with respect to the property.

D. A taxpayer may make an election under this Section at any time before the expiration of the period for filing a claim for credit or refund for the taxable year that the property is placed in service.

E. A taxpayer may revoke an election made under this Section at any time before the expiration of the period for filing a claim for credit or refund for the taxable year that the property is placed in service. A taxpayer shall revoke an election made under this Section by attaching a statement to an amended income tax return for the taxable year that the election was made. The statement shall identify the property for which the revocation is to be effective.

F. The amortization period begins with the month the property is placed in service. A taxpayer shall compute the monthly amortization allowable by dividing the cost of the property by the number of months in the amortization period. The total amortization subtraction for a particular taxable year is the sum of the amortization for each month of the amortization period that falls within the taxable year.

1. If the amortization election is terminated as provided under subsection (H), the taxpayer shall prorate the amortization for the month during which the termination occurs based on the ratio of the number of days in the month that are prior to the termination date to the total number of days in the month.
2. If a taxpayer qualified for the 24-month amortization in the preceding taxable year and fails to meet the 80% percent requirement under subsection (B) in the current taxable year, the last month of the preceding taxable year shall be the final month of amortization.

G. A taxpayer shall treat additions or improvements to an existing item of amortized property as a separate item of property. A taxpayer may treat 2 or more items of property as a single item of property if the items are placed in service within the same month.

H. The amortization election made with respect to the item of property is terminated as of the earliest date on which either of the following occur:
1. The specific use of an item of property in connection with the operation of a child care facility is discontinued.
2. The child care facility no longer meets applicable requirements set forth in this rule.

I. Under A.R.S. § 43-1121, a taxpayer that elects to amortize child care facility property shall add to Arizona gross income the related federal depreciation or amortization deducted under Internal Revenue Code § 167 or 188. If the Arizona amortization election is terminated, the taxpayer may recover the remaining unamortized cost of the property by reducing the addition to income required under A.R.S. § 43-1121.
1. The amount of the reduction for the taxable year of termination shall be the amount of the related federal depreciation and amortization allocable to the portion of the taxable year after the termination date.
2. The amount of the reduction for taxable years subsequent to the taxable year of termination shall be the amount of the related federal depreciation and amortization.
3. The taxpayer shall reduce the addition to income in the taxable year of termination and subsequent taxable years until the cumulative reductions equal the unamortized cost of the property.

R15-2-1169. Environmental Technology Facility Tax Credit

A. A taxpayer claiming a tax credit for a qualified environmental technology facility under A.R.S. § 43-1169 shall retain records as required by A.R.S. § 42-1105. In addition, a taxpayer shall retain the following records to substantiate the tax credit:
1. A copy of the completed application packet submitted to the Arizona Department of Commerce.
2. The certificate of qualification issued by the Arizona Department of Commerce.
3. A copy of the memorandum of understanding entered into with the Arizona Department of Commerce.
4. A copy of each of the environmental technology annual qualification reports filed with the Arizona Department of Commerce.
5. A schedule showing the amount of credit claimed for each taxable year and the amount utilized for each taxable year.
6. The source documents that support the amount and date of capital expenditures made in constructing a qualified environmental technology facility.

B. A taxpayer shall retain the records specified in subsection (A) for the period in which the Department may issue a deficiency assessment for any taxable year that the taxpayer claims a credit or a carryover credit. A taxpayer may retain source documents in a machine-sensible format or through microfilm or microfiche, provided that the information is retrievable on request by Department personnel.

C. In addition to the recapture of previously used credits required by subsections (G) and (H) of A.R.S. § 43-1169, a taxpayer shall reduce the amount of any unused carryover credit related to amounts spent to construct a qualified environmental technology facility as follows:
1. If, before the facility is placed in service, the taxpayer abandons construction or changes plans in such a manner as to no longer qualify as an environmental technology manufacturing, producing or processing facility under A.R.S. § 41-1514.02, then the total unused carryover credit shall be reduced to zero.
2. If, within 5 years after being placed in service, the facility ceases for any reason to operate as an environmental technology manufacturing, producing or processing facility as described in A.R.S. § 41-1514.02, then the total unused carryover credit shall be reduced by the applicable percentage in A.R.S. § 43-1169(H).

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

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

PREAMBLE

1.

Sections Affected	**Rulemaking Action**
R15-5-158	New Section
R15-5-2344	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. §§ 42-5061, 42-5155, and 42-5159

3. List of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 5 A.A.R. 3277, September 24, 1999

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

Name: Ernest Powell, Supervisor

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

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

The rules provide guidance in the application of transaction privilege tax and use tax to sales or purchases of postage stamps. The Department is proposing to add 2 new rules that make it clear that the sale or purchase of postage stamps for the purpose of transporting mail are not taxable under either transaction privilege tax or use tax. However, sales or purchases of postage stamps for any reason other than transporting mail remain taxable.

6. Reference to any study that the agency proposes to rely on and its evaluation of or justification for proposed 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

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 preliminary 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 amendment of these rules will benefit the public by making it clear when the sale or purchase of postage stamps is taxable. These rules only provide guidance in the application of the statute; the statute imposes the tax and establishes any deductions. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the addition of these rules.

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: Ernest Powell, Supervisor

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has not scheduled any oral proceedings. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statements may be submitted to the person listed above. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if 1 or more individuals files a written request for oral proceedings within 30 days after the publication of this Notice.

A person may submit written comments regarding the proposed rules by submitting the comments no later than 5:00 p.m., April 24, 2000, to the person above.

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

Not applicable

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

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
R15-5-158. Postage Stamps

ARTICLE 23. USE TAX

Section
R15-5-2344. Postage Stamps

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-158. Postage Stamps

A. A retailer's gross receipts from the sale of postage stamps are not included in the tax base under the retail classification if the stamps are sold for the purpose of transporting mail.

B. A retailer's gross receipts from the sale of postage stamps are included in the tax base under the retail classification if the stamps are sold for any purpose other than transporting mail.

C. The Department shall presume that a postage stamp is sold for a purpose other than transporting mail if the postage stamp is sold for at least 50% more than its face value. A retailer may overcome the presumption; however, the burden of proof will remain on the retailer.

D. A retailer's gross receipts from the sale of cancelled postage stamps are included in the tax base under the retail classification.

ARTICLE 23. USE TAX

R15-5-2344. Postage Stamps

A. The purchase of postage stamps is not subject to use tax if the stamps are purchased for the purpose of transporting mail.

B. The purchase of postage stamps is subject to use tax if the stamps are purchased for any purpose other than transporting mail.

C. The Department shall presume that a postage stamp is purchased for a purpose other than transporting mail if the postage stamp is purchased for at least 50% more than its face value. A purchaser may overcome the presumption; however, the burden of proof will remain on the purchaser.

D. The purchase of cancelled postage stamps is subject to use tax.