



HOUSE OF REPRESENTATIVES

HB 2111

transaction privilege tax changes

Sponsor: Representative Lesko

DP Committee on Ways and Means

DP Caucus and COW

X As Transmitted to Governor

OVERVIEW

HB 2111 makes statutory changes with the legislative intent of simplifying administration of transaction privilege tax (TPT).

HISTORY

Governor Brewer issued an executive order on May 11, 2012 to establish the Transaction Privilege Tax Simplification Task Force, which met weekly between July 23 and December 13 of 2012. The Task Force produced a final report, which can be found at http://www.azgovernor.gov/tpt/documents/Materials/TPT_121312_TaskForceFinalReport.pdf and which included the following recommendations:

- 1) State and local governmental entities, in cooperation with taxpayers, should aggressively work to standardize the tax base, definitions, and interpretations of taxable transactions to the maximum extent possible.
- 2) Any future proposed changes to the tax base by either the state or a municipality should be scrutinized and should not be enacted without a clear understanding of the potential impact of such a change on state and local standardization and budgets.
- 3) State law should provide for statewide TPT administration.
- 4) The state and the cities and towns should standardize TPT licensing.
- 5) When fully implemented, the online portal required by Laws 2012, Chapter 332 should be expanded to have all licenses be issued and all TPT tax returns filed through the portal.
- 6) State law should allow only a single audit, in accordance with existing statutory schedules, including a multi-jurisdictional audit, if applicable.
- 7) State governments, local governments, and taxpayers should continue to monitor and provide feedback to Arizona's congressional delegation regarding federal legislation allowing state taxation of online retail and remote sales.
- 8) The Arizona State Legislature should act to ensure Arizona is well-positioned to benefit from the taxation of online retail and remote sales by passing legislation clarifying that taxable transactions are sourced at the destination for both state and local taxes.
- 9) Economic analysis of the impact of taxation on online retail and remote sales should be continued.
- 10) The current tax structure for contracting activity is not desirable for many reasons, both practical and from a policy perspective; therefore, state and local governments should act aggressively to transition from the current practice to a tax on materials at the point of sale.

PROVISIONS

Online Portal

- Requires DOR to provide a coordinated electronic method of collecting state and municipal TPT.
- Requires, on or before January 1, 2015, DOR to modify the online portal so that taxpayers can pay any and all state, county, or municipality TPT and affiliated excise taxes online.
- Provides that DOR will administer the online portal and that cities and towns who do not have an intergovernmental contract or agreement with DOR as of January 1, 2013 will be responsible for the costs.
- Requires the portal to:
 - Contain a single point for licensing, filing a single tax return, and paying all TPT.
 - Consolidate data in a manner so that it is compatible with DOR data systems.
 - Capture data with sufficient specificity to meet taxing jurisdictions' needs.
 - Allow for proper identification of the correct taxing jurisdiction and tax rate.
- Allows taxpayers who are required to pay municipal TPT to a city or town without a DOR agreement to pay the tax through a DOR administered online portal.
 - Provides that a taxpayer who does not pay required taxes through the portal shall pay taxes to DOR, provided DOR has developed electronic and non-electronic means to capture data with sufficient specificity to meet taxing jurisdictions' needs.

Prime Contracting Classification

- Requires DOR to issue retail classification TPT exemption certificates to a contractor who meets the following conditions:
 - Is not working for the property owner.
 - Uses the certificate only for materials incorporated into a project subject to prime contracting TPT.
 - Submits documentation to DOR that requirements are met.
 - Does not have a delinquent tax balance.
- Exempts from retail TPT contractors who meet the following:
 - Present a DOR issued exemption certificate to the retailer.
 - Is working as a subcontractor to a prime contractor, not for the property owner, who is responsible for paying tax on the gross revenue, income, or receipts of the project.
 - Purchases tangible personal property to be incorporated or fabricated into the project.
 - Does not have a delinquent tax balance.
- Exempts service contractors who work directly for the property owner and whose work is limited to the maintenance, repair, or replacement of existing property, that does not include modification activities, from TPT under the prime contracting classification.
- Provides that a contractor who works directly for a property owner to maintain, repair, or replace existing property is subject to a retail tax on materials purchased as part of the service contract.
- Provides guidelines in determining the taxable situs of sales of manufactured buildings.
- Exempts from prime contracting TPT design phase and professional services if the contract is executed before modification begins and includes terms, conditions, and pricing stated separately from construction phase services.
- Clarifies that *modification* does not include alteration or repair.

Audits

- Provides that confidential information related to TPT collected by DOR from any jurisdiction may be disclosed, subject to statutory guidelines, to any county, city, or town tax official if it relates to a taxpayer who is subject to a DOR audit.
- Conforms language to the provision that stipulates taxpayers be subject to a single audit, eliminating possible subsequent or joint audits by cities and towns.
- Requires the DOR Director and cities and towns that levy TPT to enter into agreements with each other to provide for unified or coordinated licensing, collection, and auditing programs.
- Requires contracts or agreements to include denial criteria for city and town requests to audit multi-city taxpayers.
- Requires intergovernmental contracts or agreements to require:
 - All audits to be conducted in accordance with the DOR manual and performed by a DOR certified auditor.
 - All auditors be trained in accordance with DOR policies.
 - All audits to include all taxing jurisdictions, regardless of who conducts the audit.
 - Audits of multi-city taxpayers be conducted by DOR.
 - Cities and towns to have the option to audit single-city taxpayers and any other taxpayer authorized by DOR.
 - DOR to issue a single notice to a taxpayer of all audit assessments.
 - All audit appeals to go to DOR.
 - DOR to notify affected cities and towns before resolution relating to taxes levied by those cities and towns.

Miscellaneous

- Modifies provisions regarding sourcing of certain transactions involving tangible personal property.
- Provides that the sale of a motor vehicle to a nonresident delivered and intended for use outside of Arizona is exempt from state and municipal TPT.
- Removes retail TPT exemption for personal tangible property shipped or delivered directly to a location outside of the United States, to be used in that location.
- Provides that all county transportation excise taxes will be levied and collected at a rate not more than 10% of the rate described in A.R.S. 42-5352 (A).
- Allows DOR to adopt emergency rules necessary to administer the act.
- States the Legislative intent is to simplify administration of TPT and not to change the taxability of contractors engaged in modification of real property as part of a major remodel project.
- Requires the Joint Legislative Budget Committee to prepare a revenue impact analysis report on or before September 30, 2016.
- Contains an effective date of January 1, 2015.
- Makes technical and conforming changes.