

2005 LEGISLATIVE TPT SUMMARIES

The following is intended to give a brief summary of the 2005 transaction privilege tax-related legislation impacting the Department of Revenue (DOR) and not intended to discuss the details of any specific enactment. Please refer to the particular legislation for more definitive information.

The general effective date for legislation is August 12, 2005. All legislation will have this effective date unless otherwise noted in the summary.

House Bill 2155 (Chapter 11):

2005 Tax Corrections Act

HB 2155 makes technical, conforming and clarifying changes to Arizona tax statutes.

- The bill repeals a statute allocating a portion of luxury tax revenue on sales of Arizona-produced wine to the Arizona Wine Promotional Fund, because the statutes governing the Arizona Wine Commission were repealed on January 1, 2005.
- A use tax exemption for property used for mentally or physically handicapped persons was brought into conformity with changes made by Laws 2004, Ch. 61, § 2 to the complementary TPT retail exemption.
- A.R.S. § 42-3251 and A.R.S. § 42-5160 were corrected to provide one version instead of two.
- Corrects a bill from 2004 which was intended to allow taxpayers that filed their 1st or 2nd year credits for periods prior to 2002 on amended returns to be able to claim a 2nd or 3rd year credit in 2002 or later despite a previous change that provided that 2nd and 3rd year credits would only be allowed if the 1st or 2nd year was claimed on an original return. However, the change in 2004 only made the change retroactive to years beginning from and after December 31, 2003 which rendered the change meaningless since it would have been too late to claim the 2nd or 3rd year credits. This new provision makes the 2004 change retroactive to years beginning after December 31, 2001.

Senate Bill 1439 (Chapter 62):

Lodging Sales Tax; Application

SB 1439 relates to the taxation of transient lodging (hotel/resort) businesses, and the various services and activities that are provided.

Transporting Classification

SB 1439 exempts from the transporting classification entities arranging transportation as a convenience or service to its customers if that entity is not otherwise engaged in the business of transporting person, freight or property for hire. Exemption is not extended to those businesses that dispatch vehicles upon customer request, send billings and receive payments.

Telecommunication classification

A person that is engaged in a transient lodging business subject to taxation under the transient lodging classification and provides telephone, fax, or internet access services to its customers at an additional charge, and the amounts are separately stated on the customer invoice, revenue is considered to be taxable under the telecommunication classification.

Transient Lodging classification

Tax base for transient lodging excludes from gross proceeds;

- 1) Transactions or activities that would not be taxable to that person if engaged in that business activity and are not limited to transients.
- 2) Transactions or activities that would not be taxable under the transporting or amusement classification due to an exclusion, exemption or deduction and are limited to transients.
- 3) Certain commission payments.

Amusements;

Arranging an amusement activity as a service for another person is not taxable under the transient lodging activity. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive payments.

The bill has a general effective date for some of the provisions. The sections relating to amusements and transportation are retroactive to July 1, 1993, the same retroactive date that was used in HB 2427 (1999 session), and by SB 1002 in the second special session (1999 session) relating to destination services.

House Bill 2035 (Chapter 237):

Stadium, Tax-Funded; Expanded Use

HB 2035 provides the Tourism and Sports Authority (TSA) with statutory authority to contract with a "professional football league" (i.e., the NFL) and nonprofit intercollegiate sports organizations (i.e., the NCAA) to refund Arizona transaction privilege taxes paid on admission to their championship games. TSA would also waive any "facility user fees" (e.g., ticket sale fees), game day expenses relating to the 2007 National Championship, and fees for using TSA-provided communications, services, or amenities. Such actions are allowed only if TSA has paid the current year's principle and interest payments on any TSA bonds pledged. Under the conditional enactment clause, none of the above-described legislation will be effective unless a TSA facility is selected by October 31, 2005, as the site of an NCAA national championship or playoff game.

House Bill 2055 (Chapter 116):

Municipal Taxes; Credits & Claims

The bill relates to City Privilege Tax Refunds and calculation of interest. It:

- Prohibits the City from refusing to process a valid claim or requiring a taxpayer to refile a valid claim, and establishes certain procedures.
- Prohibits the City from requiring the taxpayer to return the refund to the taxpayer's customers whether the amount of the tax was separately itemized and collected from the customer.

- Makes the interest rate and calculation same as for the state TPT.
- Interest on a refund is calculated from the date the claim for refund is filed to the date the refund is paid. This is consistent with the current provisions of the Model City Tax Code.
- The bill is effective September 30, 2005, and states that the change cannot be cited or considered in the interpretation of the code in effect prior to the change.

House Bill 2133 (Chapter 39):

County Excise Taxes; Hotels

HB 2133 amends ARS § 42-6108 to apply to a county with a larger population than was previously stipulated, and only apply to transient lodging businesses in unincorporated areas of the county. The maximum tax rate, as set by the county board of supervisors, is increased from 2% to 6%. The distribution of revenues from this tax is modified to include a percentage for the county's economic development activities. Due to the population stipulation of A.R.S. § 42-6108, this current tax has application only in Pima County.

House Bill 2343 (Chapter 80):

Vehicles; Special Registration

HB 2343 amends three Title 28 statutes dealing with motor vehicle registrations, to change the nonresident registration from a 30-day to a 90-day certificate. This bill also amends A.R.S. § 42-5061 to change the cross references to this certificate in two subsections that provide full or partial transaction privilege tax exemptions for sales of motor vehicles to nonresidents of certain states.

House Bill 2365 (Chapter 248):

Special District; Theme Park & Car Dealers

Provisions:

- Allows the establishment of a joint Theme Park and Vehicle Support Facility District (District) in a city with a population greater than 1,000,000 and a county with a population greater than 125,000 but less than 150,000.
- Requires the District to levy a transaction privilege tax (TPT) at a rate of nine percent on business activity within the District.
- Authorizes the District to issue \$1 billion in negotiable bonds to provide sufficient monies for theme park and vehicle support facility purposes.
- Requires the District to receive commitments in private sector financing before the bonds can be issued.

House Bill 2626 (Chapter 249):

Military Reuse Zone; Tax Incentives

- Increases, from five to ten years, the termination date and subsequent renewal terms for military reuse zones.
- Eliminates prequalification with DOC for eligibility for the transaction privilege tax (TPT) exemption relating to prime contracting activities and the class 6 property classification.
- Requires taxpayers seeking to qualify for a tax incentive on the TPT for prime contracting activities in

a military reuse zone or on the classification of property in a military reuse zone, to provide information to DOC relating to the amount of tax benefits the taxpayer receives each year for each year in which the taxpayer claims the incentives.

- Allows taxpayers seeking an income tax credit for net increases in employment in a military reuse zone or an income tax credit for the classification of property in a military reuse zone, to be qualified for the credit for a five-year period, subject to the continued eligibility of the taxpayer.

Senate Bill 1169 (Chapter 94):

Luxury Tax; Liquor Wholesalers

SB 1169 provides that, beginning January 1, 2007, the Arizona luxury tax for wine will be due only upon its sale by the wholesaler. Currently, all wholesalers of beer, wine, and spirits must pay luxury tax and add the amount of the tax to the sales price; the tax for beer and wine accrues in the month that the wholesaler purchases them, while the tax for spirits accrues in the month the wholesaler sells them in Arizona. The bill brings the time that tax is due on wine in line with that for spirits.

- Exempts from most of the title's licensure, regulatory, and prohibitory provisions the acquisition, storage, distribution, and consumption of wine for religious purposes.
- Extends the applicability of a requirement that the product remain on a wholesaler's premises for at least twenty-four hours to all alcoholic beverages; presently, it only applies to beer.

Senate Bill 1274 (Chapter 200):

Municipal Tax Incentives

SB 1274 requires a municipality to make findings regarding the financial benefits and necessity of a retail development tax incentive agreement as a condition of entering into the agreement. A municipality must find by a majority vote (a two-thirds vote is required for municipalities in or within twenty-five miles of a metropolitan area with a population of more than 2 million) of the governing body that: (a) the proposed incentive is anticipated to raise more revenue than the amount of the incentive within the duration of the incentive agreement, and (b) but for the provision of the incentive, the retail business or a similar one would not locate in the municipality in the same time, place, or manner. The finding must be verified by an independent third party before the municipality enters into the agreement.

Senate Bill 1413 (Chapter 259):

Rental Agreements; Heavy Equipment

- Requires a person in the business of renting heavy equipment property in Arizona to include in the rental agreement a one and one-half percent surcharge of the gross rental receipts for any item of heavy equipment that is rented by a customer.
- Stipulates the surcharge be used to pay the personal property tax levied against the heavy equipment.