



ARIZONA TRANSACTION PRIVILEGE TAX PROCEDURE TPP 13-1

Janice K. Brewer
Governor

Procedure for Requesting Refunds Under
Laws 2013, Chapter 153, 51st Legislature

John A. Greene
Director

ISSUE:

This procedure provides guidance to taxpayers requesting a refund of transaction privilege tax ("TPT") paid under the provisions enacted by House Bill ("HB") 2535 during the 2013 first regular legislative session.

Chapter 153
HB 2535

Amends the prime contracting TPT deduction at Arizona Revised Statutes ("A.R.S.") § 42-5061(B)(7). The former language provided that the deduction applies to gross receipts from activities on tangible personal property that is either deductible for retail TPT under A.R.S. § 42-5061(B) or exempt from use tax under A.R.S. § 42-5159(B) *and* that does not become a "permanent attachment" to real property, as defined. The new language provides that the deduction applies to gross receipts from activities on tangible property that is deductible for retail TPT or exempt from use tax as before *and* that has "independent functional utility," as defined. *Retroactive to tax periods from and after June 30, 1997.*

BACKGROUND:

TPT is a tax imposed on the privilege of conducting business in the State of Arizona. The tax is levied on the vendor, not the purchaser. While it may pass the burden of the tax on to the purchaser, the vendor is the party that is ultimately liable to Arizona for the tax. Therefore, only the vendor may request a refund of TPT paid.

Under A.R.S. § 42-1118, the Department must refund TPT "paid in excess of the amount actually due." In addition to refunds of taxes paid in excess of amounts actually due, requests for refund may be generated due to legislative action. Each year, the Legislature enacts new tax provisions into law. During the first regular session of the 2013 legislative session, a new retroactive deduction provision was enacted that amends the prime contracting TPT statute.

Laws 2013, chapter 153, section 4(A) provides for the refund of prime contracting TPT, applied retroactively to tax periods beginning from and after June 30, 1997, paid on gross receipts that are no longer subject to tax based on the new independent functional utility analysis. Laws 2013, chapter 153, section 4(B) further provides that the aggregate amount of refunds based on the retroactivity provisions of the legislation is limited to \$10,000. If the

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aggregate amount of claims determined to be valid equals more than this amount, the legislation requires the Department to reduce each claim proportionally so that the aggregate amount of the refund does not exceed \$10,000.

Laws 2013, chapter 153, section 4(B) also states that a refund claim based on such retroactive application will be considered timely filed under A.R.S. § 42-1106 if filed with the Department on or before December 31, 2013. A failure to file a claim on or before this date constitutes a waiver of the taxpayer's refund claim.

PROCEDURE:

In general, a claim for refund must be in writing and must identify the claimant by name, address, and tax identification number. Additionally, each claim must include the amount of refund requested, the specific tax periods involved, and the specific grounds on which the claim is established. A taxpayer may submit either a written request or a Transaction Privilege, Use, and Severance Tax Return (TPT-1) properly marked as an "Amended Return," when filing for a refund. The taxpayer or the taxpayer's authorized representative must sign the return.

Please note that taxpayers intending to file for multiple periods should first submit a written request to the Refund Unit *before* they file any amended returns. The Refund Unit will review such requests and contact the taxpayers with further instructions to accommodate amended return filings for multiple periods.

Taxpayers must send all requests for refunds based on Laws 2013, chapter 153 to the address below:

Arizona Department of Revenue
Attn: TPT Refund Unit—HB 2535 Request
1600 W. Monroe St. Division Code 16
Phoenix, AZ 85007

If returns or requests are not properly addressed as shown above, refunds may not be properly issued.

Under A.R.S. § 42-1108(A), if the Department is not satisfied with a return, the Department may examine the return, including any books, papers, records, or memoranda relating to the return. All information relating to a refund request is subject to verification by the Department.

Refund Claims Based on Retroactive Application of Laws 2013, Chapter 153

The following categories constitute refund claims that *are* based on retroactive application of the legislation:

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- Taxable periods from and after June 30, 1997 that fall within the limitation period set by A.R.S. §§ 42-1104 and 42-1106, for which a taxpayer wishes to file a claim for refund based on the new deduction language of Laws 2013, chapter 153.
- Ongoing protests for taxable periods from and after June 30, 1997, for which a taxpayer wishes to advance an argument under the new deduction language of Laws 2013, chapter 153 in lieu of the A.R.S. § 42-5075(B)(7) permanent attachment deduction analysis that the legislation replaces.

Under Laws 2013, chapter 153, section 4(B), such claims are subject to the \$10,000 cap on the aggregate amounts of refunds arising from retroactive application, as well as the December 31, 2013 deadline for filing refund claims.

Refund Claims Not Based on Retroactive Application of Laws 2013, Chapter 153

As stated in Laws 2013, chapter 153, section 4(D)-(E), refund claims that are *not* based on retroactive application of the legislation are not subject to the \$10,000 cap or December 31 deadline but are still subject to A.R.S. §§ 42-1106 (time limitations for credit and refund claims) and 42-1104 (statutes of limitation), which state that a refund claim must be filed by the taxpayer with the Department within four years after the report or return was originally required to be filed or within four years after the report or return was filed, whichever period expires later.

John A. Greene, Director

Signed: September 9, 2013

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.