



2005 Legislative Summaries

**State of Arizona
Department
of Revenue**

**This document contains summaries of 2005 legislation from the
Forty-seventh Legislature – First Regular Session.**

2005 Legislative Summaries

The following is intended to give a brief summary of the 2005 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.

To go to the complete bill click on the chapter number (hyperlink to internet)

Administration

Senate Bill 1171 (Chapter 95)

Taxation; Managed Audit Agreements

SB 1171 establishes a managed audit agreement program where the Department of Revenue (DOR) and the taxpayer work together to audit the taxpayer's books.

This bill allows the taxpayer to request a managed audit agreement and DOR may enter into a managed audit agreement with a taxpayer to audit certain business activities and types of taxes for a specified time period. The types of taxes that may be included under the managed audit include the transaction privilege tax (TPT), local excise tax, use and luxury tax beginning January 2006, with corporate income taxpayers becoming eligible for the program beginning January 2007. Once the managed audit is completed, the taxpayer is required to submit the findings to DOR, at which time DOR may review the audited records and accept or reject the taxpayer's findings and assess a deficiency or issue a refund. If a deficiency is assessed, the taxpayer is not required to pay penalties unless the managed audit discloses that the taxpayer committed fraud or willful tax evasion. Under this bill interest does not accrue on a deficiency or refund if paid within 45 days of the date of the assessment or refund determination. The taxpayer maintains the same appeal rights as if DOR had conducted the audit. In addition, a limited managed audit does not preclude DOR from auditing issues not covered under the managed audit agreement, subject to the statute of limitations.

Provisions

- Establishes a managed audit agreement program that the taxpayer and DOR agree to determine the liability for any privilege tax, local excise tax, use tax, luxury tax or corporate income tax.
- Allows DOR to consider all relevant factors when determining whether to enter into a managed audit agreement, including the taxpayer's history of tax compliance, any legal dispute with DOR and its relevance to the managed audit proposal, the amount of time and quality of resources the taxpayer is able to dedicate to the audit and the extent and availability of the taxpayer's records.
- Requires DOR to notify the cities or towns in which the taxpayer conducts business.
- Prohibits a city or town that does not agree to participate in the managed audit agreement from conducting an audit for 42 months following the end of the last tax period covered by the agreement with some exceptions.
- Requires the taxpayer to provide written findings of the managed audit agreement to DOR.
- Requires DOR to accept or reject the managed audit findings after performing the review.
- Provides the taxpayers with the same appeal rights as if DOR conducted the audit
- Prohibits DOR from assessing interest or penalties unless the managed audit discloses that the taxpayer committed fraud or willful tax evasion or collected monies represented as tax but were not remitted to the state.

- Requires the taxpayer to pay interest if the entire assessment is paid after 45 days.
- DOR is not required to pay interest if the refund is paid within 45 days.
- Requires, in cases of appeal, interest to be calculated on any additional tax that is due or any refund.
- Allows DOR to audit issues not covered by limited managed audit agreement and within the statute of limitations.

Senate Bill 1185 (Chapter 196)

Use Tax Percentage Based Reporting

SB 1185 adds a Use tax statute that allows for an alternative method of reporting based on a percentage.

Provisions:

- Allows the Director of DOR to permit a taxpayer to use a percentage-based reporting method for determining use tax payments by issuing a letter of authorization.
- The letter of authorization is valid for four years.
- Allows the Director of DOR to revoke the letter of authorization under certain conditions.
- The revocation of a letter of authorization made by the director may not be appealed by the taxpayer.
- Allows DOR to audit a taxpayer that has the letter of authorization for a percentage-based reporting method regarding the calculation of use tax.
- Allows the taxpayer to protest a determination of an audit, limited to whether DOR's proposed changes are correct to the terms of the letter of authorization.
- Becomes effective for taxpayers who use direct use tax payments for tax periods after June 30th, 2005 and for all use taxpayers on June 30th, 2007.

Income Tax

House Bill 2059 (Chapter 148)

Income Tax Credits

HB 2059 amends the Individual and Corporate income tax credits for pollution control equipment to provide clarification of property qualifying for the credit.

House Bill 2139 (Chapter 289)

Income Tax; Corporate Sales Factor

Optional Sales Factor Provisions

- Provides an optional apportionment formula for corporate income tax for multi-state and multi-national corporations if certain conditions are met.
- If the conditions are met, allows multi-state and multi-national corporations to elect an apportionment formula using the current double-weighted sales factor or an 80% sales factor apportionment for corporate income tax purposes.
- Provides a three-year phase-in for the option of the 80% sales factor apportionment formula, beginning with tax year 2007 with a 60% sales factor apportionment formula. In the second year, the sales factor weight is increased to 70% and for 2009 and subsequent years, the sales factor is increased to 80%.

Conditions for Optional Sales Factor Provisions

- Provides that the optional enhanced sales factor apportionment formula is effective beginning in tax year 2008 but that it is retroactive to tax year 2007 if the following conditions are met:
 - One or more corporations announce on or after June 1, 2005 that one or more capital investment projects, individually or collectively, exceed \$1 Billion and that these corporations report their activity to the Joint Legislative Budget Committee (JLBC) and the Governor's Office of Strategic Planning and Budgeting (OSPB). Each report must include:

- The date the project will begin and an estimated completion date of the project;
- A description of the construction or reconstruction, expansion, installation of new equipment, tooling or retooling;
- Estimated cost of the project and the number of contractors expected to be employed, and
- Estimated construction employment and the estimated long-term employment of the completed project.
- By December 15, 2007, the corporations that reported their proposed capital investments to JLBC and OSPB must notify these offices that these projects have commenced and are in excess of \$1 Billion.
- JLBC and OSPB will jointly:
 - Publish a list of the corporations and projects reported to them for 2006, 2007 and 2008, and
 - By December 31, 2007, notify DOR and Legislative Council if the conditions for the enhanced sales factor formula have occurred.
- Requires each corporation that made capital investment commitments to file a report on the status of each project by December 31, 2005, 2006, 2007 and 2008.

House Bill 2155 (Chapter 11)

2005 Tax Corrections Act

See summary under multiple tax types.

House Bill 2156 (Chapter 12)

Income Tax Credit Review Schedule

HB 2156 is the annual bill to update the income tax credit review schedule based on the recommendations of the Joint Legislative Income Tax Credit Review Committee. Removes the income tax credits that were reviewed in 2004 and adds these credits to the review schedule in 2009.

House Bill 2323 (Chapter 292)

Tax Credits; Water Conservation Systems

Provisions:

- Provides an individual credit for installation of a water conservation system in a residence to reclaim graywater. The credit is
 - 25 percent of the cost of installing a water conservation system not to exceed \$1000 in the taxpayer's Arizona residence.
 - total credit is limited to \$250,000 per year
- Provides a corporate credit for installation of plumbing stub outs for a separate graywater system in a residence. The credit is
 - for the full cost of installing a water conservation system plumbing stub out not to exceed \$200.
 - total credit is limited to \$500,000 per year
- Requires the Department of Revenue (DOR) to establish a preapproval process for the tax credit applications.
- Allows the credit to be carried forward for five years.

Both credits are effective for taxable years beginning from and after December 31, 2006 and ending before January 1, 2012.

Senate Bill 1027 (Chapter 303)

Income Tax; Military Exemption

SB 1027 provides that in addition to the subtraction allowed under A.R.S. §§ 43-1022 and 43-1332, an individual or an estate may subtract compensation received for active service as a member of the armed forces of the United States to the extent not already excluded from Arizona gross income under the internal revenue code or subtracted from Arizona gross income pursuant to A.R.S. § 43-1022.

This bill will exempt active duty military pay from Arizona income tax. In the case where a taxpayer's only source of income is active duty military pay, the taxpayer will also be exempt from filing an

Arizona income tax return under A.R.S. § 43-301 unless the taxpayer must file to claim a refund of Arizona income tax withheld.

This provision is effective and applies to taxable years beginning from and after December 31, 2005 through December 31, 2006. Therefore, this legislation will apply to only the 2006 taxable year.

Senate Bill 1224 (Chapter 264)

Income Tax Credit; National Guard Employees

The bill adds new A.R.S. §§ 43-1079.01 and 43-1167.01 to provide an income tax credit for a taxpayer whose employee is a member of the Arizona National Guard, if the employee is placed on active duty. The amount of the credit is \$1,000 for each employee who is placed on active duty by the Arizona National Guard. To qualify for the credit, the employee must be a member of the Arizona National Guard who is employed by the taxpayer in a full-time equivalent position when the employee is placed on active duty. Each member of the Arizona National Guard who is employed must have served during the taxable year on active duty for training that exceeds the required annual training period, including any activation for federal or state contingencies or emergencies. Any amount of unused credit may be carried forward for not more than five consecutive taxable years' income tax liability.

The credit may be claimed only once by the taxpayer in any taxable year with respect to each employee who is placed on active duty by the Arizona National Guard. The taxpayer may also claim the credit again for that employee in a subsequent taxable year if that employee remains on active duty or is placed again on active duty in a subsequent taxable year.

Co-owners, including partners in a partnership and shareholders of an S corporation, may claim only the pro rata share of their allowable credit based on their ownership interest. The total of the credits allowed all co-owners may not exceed the allowable credit.

The credits will become effective beginning with the 2006 taxable year.

Senate Bill 1335 (Chapter 316)

Income Tax Credit; Small Business Investments

SB 1335 creates a new income tax credit for investments made after July 1, 2006, by individuals for qualifying investments in a qualified small business. Within 30 days after making the investment, investors apply to Commerce, which reviews the application to determine if the small business qualifies and if the investment itself qualifies. If both qualify, Commerce certifies the credit (including amount and years to be claimed) to the applicant and Revenue. Unless the small business in which the investment is made is a bioscience company or is located in a rural area of Arizona (county of 400,000 or less) the credit is ten percent of the investment amount for each of 3 consecutive years starting the year after the investment. The credit for small business in a rural or bioscience company is twelve percent for the first two years after the investment and eleven percent the third year. Unused credits may be carried forward up to three years. The investor must file a timely return to claim a credit or the credit for that year will expire.

To qualify an investment must be at least \$25,000 and the investor and affiliates cannot own more than thirty percent of the voting power of the small business. To be a qualified small business it must have a location within the state with two employees who are residents, must not have more than \$2 million in total assets and not have as a principal business an activity which is on the statutory disqualified list. In general, manufacturing, research and development, hardware and software services by providers of the same qualify. Other professional services, retail, agricultural, financial and health care do not. Activities involving human cloning or embryonic stem cell research do not qualify.

The credit is capped in four ways: (1) Commerce shall not authorize credits after June 30, 2011; (2) the total amount of credits to be authorized by Commerce in all years cannot exceed \$20 million; (3) each investor and its affiliates are limited to a total of \$250,000 in investments in any year; and (4) the total investments for all years in any given business cannot exceed \$2 million. Upon a written

request by a business, Commerce will certify that the business is a qualifying small business, a rural business and a bioscience business. This certification will remain effective for a year, unless Commerce revokes it. Investments made while a certification is in place will be considered qualified for credit purposes unless the investor knew or should have known the certification was in error.

Senate Bill 1283 (Chapter 278)

Forests Health Amendments

See summary under multiple tax types.

Senate Bill 1347 (Chapter 317)

Tax Incentives; Movie Production

See summary under multiple tax types.

Senate Bill 1466 (Chapter 115)

National Guard Relief; Tax Checkoff

This bill adds new A.R.S. § 26-183 to establish a national guard relief fund. This bill also adds new A.R.S. § 43-619 to establish a new refund check-off on the individual income tax return form. Under this bill, a taxpayer may designate an amount of the taxpayer's refund as a voluntary contribution to the national guard relief fund. The taxpayer may also donate any amount to the national guard relief fund in lieu of or in addition to the designated portion of the refund by an appropriate indication on the return and by including that amount with the return.

This bill is effective and applies to taxable years beginning from and after December 31, 2005.

Senate Bill 1529 (Chapter 334)

Budget; Revenue; Marriage; Taxation

- This bill conforms the Arizona definition of "internal revenue code" to the Internal Revenue Code in effect on January 1, 2005 including those provisions that became effective during 2004 and adopts the retroactive effective dates of all retroactive provisions.

- This bill will continue to exclude the three provisions where Arizona did not previously conform to the federal changes. For the 30 percent special bonus depreciation provided in the Job Creation and Worker Assistance Act of 2002, and both the 50 percent bonus depreciation and Section 179 expensing in the Jobs and Growth Tax Relief Reconciliation Act of 2003, Arizona taxpayers must make an adjustment to add back the amount taken at the federal level and subtract the amount allowable by Arizona when calculating Arizona income tax.
- The bill amends A.R.S. § 43-1041 to provide for inflation indexing for the standard deduction. Under this bill, for each taxable year beginning on or after January 1, the department must adjust the standard deduction according to the average annual change in the metropolitan Phoenix consumer price index published by the United States Bureau of Labor Statistics. The revised dollar amounts must be raised to the nearest dollar. The designated dollar amounts cannot be revised below the amount shown by the standard deduction in the prior taxable year. This provision is effective retroactively to taxable years beginning from and after December 31, 2004.
- The bill amends A.R.S. § 43-1088 (credit for contributions to charities that provide assistance to the working poor) to increase the maximum credit allowed to married taxpayers to twice the amount allowed to single individuals or heads of household. This increase is phased in over a two year period. Under this amendment, the maximum credit for married taxpayers filing a joint return will be \$300 for 2005 and \$400 for 2006 and later years.
- The bill amends A.R.S. § 43-1089 (credit for contributions to school tuition organizations) to increase the maximum credit allowed to married taxpayers to twice the amount allowed to single individuals or heads of household. This increase is phased in over a two year period. Under this amendment, the maximum credit for married taxpayers filing a joint return will be \$825 for 2005 and \$1,000 for 2006 and later years.

- The bill amends A.R.S. § 43-1089.01 (credit for fees paid or contributions made to public schools) to increase the maximum credit allowed to married taxpayers to twice the amount allowed to single individuals or heads of household. This increase is phased in over a two year period. Under this amendment, the maximum credit for married taxpayers filing a joint return will be \$300 for 2005 and \$400 for 2006 and later years.
- Provides taxpayers who make charitable cash contributions in January 2005 for tsunami relief can claim those contributions on their 2004 tax return instead of 2005.

Transaction Privilege Tax/ Use Tax

House Bill 2155 (Chapter 11)

2005 Tax Corrections Act

See summary under multiple tax types.

Senate Bill 1283 (Chapter 278)

Forests Health Amendments

See summary under multiple tax types.

Senate Bill 1347 (Chapter 317)

Tax Incentives; Movie Production

See summary under multiple tax types.

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.

Property Tax

House Bill 2056 (Chapter 66):

Property Tax; Utilities

This bill has amended the definition of “plant” under A.R.S. § 42-14154(G)(8) to exclude “contributions in aid of construction,” or CIAC from the definition. This type of property is now excluded from being considered in the valuation of electric utility and natural gas utility transmission and distribution properties. The two most common examples of CIAC are buried electric lines and new electric lines that have been extended to new developments or to remote properties by property developers. Commonly, once the developers install these power lines they become the property of the utility company.

The bill is effective retroactively from and after December 31, 2004, making it applicable to the current (2005) tax year. This may require an adjustment of levy limits in certain counties (notably Maricopa and Pima). Additionally, litigation is still pending with several centrally valued property (CVP) taxpayers over this issue.

House Bill 2134 (Chapter 40):

Property Taxation; Board Of Equalization

Requires that the State Board of Equalization shall review and consider all competent evidence, including similar property values, if presented as evidence when hearing an appeal on a taxpayer’s property.

House Bill 2252 (Chapter 131):

Property Tax Administration

- Makes several clarifying amendments to ARS §§ 42-16252 and 42-16254 of the Error Correction statutes. The first significant amendment is in regard to the method of delivery to taxpayers of a “notice of error” that does not result in an increase in property value. The second adds wording to specify which statute (ARS § 42-1123) governs the amount of

interest to be paid when a taxpayer has either overpaid property taxes or owes additional taxes, correcting the current inconsistency between the interest rate used by the County Treasurers and the rate used by the IRS and DOR.

- Adds new ARS § 42-18005. This allows the County Treasurer or a Board of Supervisors to act for the state to collect property taxes for “...any tax liens that are assigned to the state or any property that is held by the state.”
- Amends A.R.S. § 42-18051, now allowing a County Treasurer to also require electronic transmission of documentation from any individual or entity that owns multiple parcels of property and that pays taxes on those parcels in a lump sum payment, and raises the minimum lump sum payment amount from twenty-five to fifty thousand dollars.
- Adds new ARS § 42-17153(D), which specifies that a tax lien on any property owned by a water utility company valued by DOR is a tax lien on all of that company’s property. This was done in order to prevent a water company from having delinquent taxes or tax liens on property located in one taxing jurisdiction while the taxes are paid on property in some other taxing jurisdiction(s).
- Amends ARS §§ 42-18202 and 42-18208 which alter the lien foreclosure process with respect to time limits and to tax liens held by the state (and conforms them to the amendments made to the statutes discussed above).
- Also creates three Session Law provisions:
 - Tax amnesty for water utility companies (allows the County Treasurer to “waive” accrued interest from before September 30, 1995);
 - An intent clause stating the amendments of §§ 42-17153, 42-18005 and 42-18208 are all clarifications of existing law;
 - Provides a nonseverability clause for the entire act.

House Bill 2441 (Chapter 276):

Tribal Housing; Tax Exemption

Exempts all property that is owned by an Indian tribe through a 501(c)(3) charitable “housing authority” that is used for low-income housing or related facilities that is not located on an Indian reservation. Subjects this exemption to an initial (one-time only) application filing requirement and requires the self-reporting of any exemption disqualifying events. Also provides for voluntary payments in lieu of property taxes equal to the lesser of the maximum amount allowed under federal law or the cost to the affected taxing jurisdiction of facilities or services provided to the property.

House Bill 2500 (Chapter 243):

Property Records; Redaction

Beginning 01-01-2006, requires all County Assessors, Treasurers and Recorders, on receipt of a court order, to remove from public access the addresses and phone numbers of a specified list of public officers (e.g., police officers, judges, parole officers).

House Bill 2779 (Chapter 302):

Budget; Property Taxes

Provisions:

- Decreases the assessment ratio for Legal Class One property from twenty-five to twenty percent over the next ten tax years in one-half of one percent increments per year.
- Increases the Additional State Aid for owner-occupied residential properties (commonly referred to as the “Homeowner’s Rebate”) percentage from the current thirty-five percent to forty percent over the next five tax years in one percent increments per year.
- Increases the Homeowner’s Rebate amount from the current \$500 to \$600 over the next five tax years in twenty dollar increments per year.
- Allows the board of supervisors for county jail districts and county juvenile detention facilities

to levy an amount for tax years 2006, 2007 and 2008 in an amount equal to tax year 2005

The following table shows the changes by calendar year

Calendar Year	Homeowner’s Rebate %	Homeowner’s Rebate cap	Class 1 AR
2005	35%	\$500	25%
2006	36%	\$520	24.5%
2007	37%	\$540	24%
2008	38%	\$560	23.5%
2009	39%	\$580	23%
2010	40%	\$600	22.5%
2011	40%	\$600	22%
2012	40%	\$600	21.5%
2013	40%	\$600	21%
2014	40%	\$600	20.5%
2015 and thereafter	40%	\$600	20%

Senate Bill 1041 (Chapter 186):

Property Tax Exemptions; Eligibility

This bill amends ARS § 42-11111 the widows, widowers and disabled persons property tax exemption from being subject to filing an annual reapplication to now being required to file only an initial (one-time only) application, and requiring an existing exemption holder to “self-report” any exemption disqualifying events.

Senate Bill 1178 (Chapter 309):

Property Tax Exemption; Widows & Widowers

Requires the use of the Gross Domestic Product (GDP) priced deflator defined under A.R.S. § 41-563 to annually index (calculate an inflation-offsetting increase in) the tax dollar exemption amount, the assessed value limitations and the gross household income limitations now specified under A.R.S. § 42-11111.

Increases the income limits for widows, widowers and disabled persons seeking property tax exemption from \$13,200 to \$25,000 if the person does not have children under 18 years old living with the person and from \$18,840 to \$30,000 if the person has one or more children living at home

House Bill 2281 (Chapter 72):

Special Taxing Districts; Assessments

Amends §§ 48-594, 48-932 and 48-2062 by creating an assessment adjustment (or “reallocation”) mechanism for all parties that have a “legal interest” in any parcel located within a given sanitary assessment district. This new reallocation method is similar to other special taxing district’s procedures

House Bill 2309 (Chapter 135):

Fire District Annexation; Taxes

Amends A.R.S. § 48-813 regarding fire district boundary changes, by creating a new provision allowing a city or town proposing to annex only a portion of an existing fire district to enter into agreements with the remaining portion of the district (the area not being annexed) which are intended to “mitigate any detrimental effects on the remaining population of the district

Multiple Tax Types

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.

- Makes a correction to the enterprise zone credit. 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 1347 (Chapter 317)

Tax Incentives; Movie Production

- Provides corporate and individual income tax and TPT/use tax benefits to motion picture production companies that pay at least \$250,000 in production costs in this state and meet other criteria. The companies must continue to meet all of these criteria during each 12-month period for which they are qualified for tax incentives.
- Provides that the income tax credit is effective for taxable years beginning from and after December 31, 2005 through December 31, 2010. Any costs that a qualified motion picture production company pays in this state that are directly attributable to the production of a motion picture in this state can be used to compute the credit.
- Specifies that the credit amount is a percentage that ranges from 10% to 20%, and is based on how much in production costs a company pays in Arizona.
- Enables entities that originated or previously purchased the corporate income tax credit to transfer it to any number and any type of entity that has an income tax liability. Income tax credits may be transferred to entities regardless of whether or not any of those entities have income tax liabilities.
- Provides a five-year credit carry forward. Each transferee is subject to the same carryover

period as for the production company that originally produced the credit.

- If the transferor was not qualified or is later disqualified from using the credit at the time of transfer, all its transferees will lose their credits. The transferees' only recourse is against the transferor.

Department of Commerce

- Enables the Department of Commerce to begin its rulemaking process before the act's general effective date, which is August 12, 2005.
- Requires the Department of Commerce to qualify a motion picture production company and pre-approve the company's estimated income tax credit amounts to insure that total credits do not exceed that year's statutory credit limit. The pre-approvals must be done on a first-come, first-served basis, effective from and after December 31, 2005 through December 31, 2010.
- Requires the Department of Commerce to issue a letter of qualification that is good for twelve consecutive months.
- Limits the total amounts of credits pre-approved to specified totals, beginning with \$30 million in 2006 and increasing in \$10 million increments annually until it reaches \$70 million for years from and after December 31, 2009.
- Limits the credit to no more than \$5 million for an individual motion picture.
- Obscene motion pictures are not eligible for any incentives
- Requires the Department of Commerce to render a post-approval to the qualified motion picture company meeting post-production requirements and to notify the Department of Revenue. The Department of Commerce must provide these post-approvals to the companies from and after June 30, 2006, and must notify the Department of Revenue that the company might claim income tax credits. Post-approvals are for certified production costs that the production company incurred from and after December 31, 2005.

Department of Revenue

- Limits the total amounts of credits the Department of Revenue may allow to the aggregate amounts the Department of Commerce pre-approved.
- Precludes the Department of Revenue from allowing credits to any taxpayer who has a delinquent tax balance owing to the Department under Titles 42 and/or 43.
- DOR will be responsible for issuing TPT/use tax exemption certificates to qualifying companies that are effective for twelve calendar months. Upon presentation to vendors, companies are able to purchase most goods and services exempt from TPT/use tax under the retail, personal property rental, transient lodging, restaurant, and prime contracting classifications.

Motion Picture Production Companies

- Requires the company to employ a certain percentage of Arizona residents in addition to spending at least \$250,000 in a calendar year.
- Requires the qualified production company to certify its costs to Commerce upon completion of their project(s).
- Enables the motion picture company that originated the credit to allocate its credit among its co-owners, including partners, LLC members and S corporation shareholders without regard to ownership interests. The total allocated credit cannot exceed the amount that would have been allowed to a sole owner of the production company.

Senate Bill 1283 (Chapter 278)

Forests Health Amendments

SB 1283 amends last year's Healthy Forest Legislation by adding a fuel tax reduction and beneficial property tax classification for qualifying property. The transaction privilege, use and income tax incentives for qualified businesses are kept with some changes. Businesses that qualify for the tax incentives are first certified by the state Department of Commerce (DOC), to be then approved or denied by the Department of Revenue (DOR). A

qualifying business must be engaged in a qualifying project that promotes forest health as defined in the bill. The tax incentives may be forfeited or reclaimed if a business' certificate is revoked. DOR's primary involvement continues to be with the administration of the tax benefits, working with Commerce in designing the Memorandum of Understanding (MOU) required of qualified businesses and establishing the mechanism to terminate the certification of a qualified business and to recapture tax benefits as provided in the MOU. The bill also includes technical changes that were recommended by DOR last year but were not incorporated.

- 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.

Miscellaneous

House Bill 2035 (Chapter 237):

Stadium, Tax-Funded; Expanded Use

H.B. 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 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 are 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 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.

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

S.B. 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 1238 (Chapter 311):

Income Tax; December Withholding

- Employers can elect to not impose Arizona withholding in December.
- In order to make the election, the employer must notify its employees and the Department of Revenue (on a form the Department prescribes) before October 1, 2005 with respect to December 2005 Arizona withholding, and before July 1 in each year thereafter.
- Allows employees to change their rate of withholding to compensate for the decrease in annual withholding
- This bill is effective from and after August 31, 2005.

Senate Bill 1274 (Chapter 200):

Municipal Tax Incentives

S.B. 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 1287 (Chapter 105):

Municipal Business Incentives; Referendum

- Prohibits a municipality from using an emergency clause on an action by the council involving an economic development expenditure or development agreement.
- Requires economic development expenditure and development agreement actions to become effective at least 30 days after final approval.
- Defines “expenditure” as any waiver, exemption, deduction, credit, rebate, discount, deferral or other abatement or reduction of the normal municipal tax liability that otherwise applies to similar existing business and property in the municipality that is an inducement to locate a business in the municipality.

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.