

Lewis Roca

ROTHGERBER CHRISTIE

2020 YEAR IN REVIEW | ARIZONA TAX UPDATE

In this Issue:

Income Tax

Transaction Privilege Tax

Property Tax

Miscellaneous Taxes

▶ **PROPOSITION 208 APPROVED BY VOTERS; INCREASES TOP INDIVIDUAL RATE TO 8%; CHALLENGED IN COURT**

In the November 2020 election, Arizona voters approved Proposition 208, the “Tax on Incomes Exceeding \$250,000 for Teacher Salaries and Schools Initiative,” a controversial education-funding proposition. The law would impose a 3.5% surcharge on annual taxable income over \$250,000 for single persons or married persons filing separately, or \$500,000 for married persons filing jointly or heads of households. The top marginal rate for individuals is 4.5%, and with the 3.5% surcharge, the top rate becomes 8%, which is one of the higher state rates, whereas before, Arizona's top rate was one of the lower state top rates. The revenues from the tax are to be used to increase funding for public education. The tax surcharge is effective beginning with the 2021 income tax year.

On November 30, 2020, the Goldwater Institute, a free-market public policy research and litigation organization, filed a lawsuit on behalf of several members of the Arizona Legislature in Arizona Superior Court, alleging that Prop 208 violates the Arizona Constitution. The suit argues that because Prop 208 authorizes a tax, which pursuant to the state constitution can only be enacted by a two-thirds vote of the state legislature, makes the law thus unconstitutional. The plaintiffs further argue that Prop 208 is unconstitutional because the state constitution prohibits citizens from enacting laws which the legislature cannot itself enact. Finally, the suit alleges that Prop 208 “seeks to exempt itself from the expenditure limitations for school districts specified in the Arizona Constitution,” that it violates the Revenue Source Rule because the tax revenue raised would not cover the mandated appropriations, and that it restricts “the legislature’s ability to exercise its constitutional authority to appropriate general funds.”

Judge John Hannah heard arguments in late December 2020. On January 14, 2021, he issued a ruling rejecting the claim that Prop 208 illegally constrains the ability of the state legislature to control the state budget. He did not rule on the other claims at issue in the suit. It is expected that the Plaintiffs will appeal this ruling.

▶ **INCOME TAX**

2020 Legislation

House Bill 2494, Chapter 24; Senate Bill 1296, Chapter 40. Annual Internal Revenue Code Conformity; Incorporates the Federal Changes Made in 2019. This bill updates Arizona’s federal income tax conformity date for tax years starting after December 31, 2019 to the version of the Internal Revenue Code in effect on January 1, 2020, with the specific adoption of all retroactive effective dates for 2016 through 2019. For tax years beginning between December 31, 2018 and December 31, 2019, the bill updates Arizona’s conformity to include the provisions of the Taxpayer First Act (P.L. 116-25) and the Consolidated Appropriations Act of 2020 (P.L. 116-94) that were adopted with retroactive effective dates.

House Bill 2771, Chapter 7. Extends the Credit for Qualified Facilities and the Eligibility Date for the Credit for Renewable Energy Investment and Production for Self Consumption by International Operations Centers.

This bill amends the deadline for capital investments in qualifying manufacturing, research, and headquarters facilities. In order to be included in the computation of the tax credit, the capital investment must be made not more than 36 months before submitting the application for pre-approval; previously, investments could be made any time on or after July 1, 2012 to be included. Additionally, net new full-time positions with job duties associated with the qualifying facility are now counted for purposes of determining eligibility for the credit; previously, such jobs were required to be located at the facility. The bill also specifies that international operations centers that qualify for utility relief under A.R.S. § 41-1520 cannot also claim the credit for energy generated for self-consumption under A.R.S. § 43-1164.05. Finally, the bill amends the credit for increased research activity to provide for a 10-year carry over period starting in tax years beginning on or after December 31, 2021.

Senate Bill 1100, Chapter 60. School Tuition Organization Annual Reports to be Posted on the Department of Revenue's Website by March 31.

This bill requires the Department of Revenue to post the annual reports received from school tuition organizations ("STO") online by March 31 each year. The annual report is to contain information about the STO, including the total number and amount of contributions received and the total number and amount of scholarships awarded.

Senate Bill 1348, Chapter 43. Annual Tax Corrections Act; Makes Several Substantive Income Tax Changes.

This bill makes primarily technical, but some substantive, corrections and changes to Arizona's tax laws. The substantive changes applicable to income tax laws include: (1) updating the requirement for when Arizona tax returns must be filed when income is greater than the amount of the standard deduction; (2) eliminating several additions to Arizona income for individual and corporate tax purposes; (3) eliminating two deductions from Arizona income for individual and corporate tax purposes; (4) clarifying that a taxpayer cannot claim an itemized deduction for a charitable contribution if the taxpayer also claims a credit for the same contribution, even if the contribution is treated as a payment of state income tax; and (5) limiting certain credits to co-owners of a business, including individual partners in a partnership, but not shareholders, of an S-corporation.



2020 DEPARTMENT OF REVENUE RULINGS

THE FOLLOWING DEPARTMENT OF REVENUE STATEMENT ACCOMPANIES ALL PRIVATE TAXPAYER RULINGS:

"This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department. This determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position."

Individual Income Tax Procedure ITP 20-01 (Oct. 29, 2020). Procedure for Claiming Credit for Taxes Paid to Another Country by Arizona Resident Individuals Simplified. An Arizona resident that claims the federal credit for taxes paid to foreign countries but is not required to report income passed through from a mutual fund or other regulated investment company on a country-by-country basis is not required to prepare a separate Arizona Form 309 to separately report income on a country-by-country basis for purposes of claiming the corresponding Arizona tax credit.

Ariz. Department of Revenue Hearing Office Case No. 201800188-C (Feb. 11, 2020). Income from Progressive Jackpot Slot Machine Systems Sourced to Arizona as Rental Receipts. This case involved a taxpayer that was a company specializing in the design, manufacture, and marketing of electronic gaming equipment and systems. Its significant revenue streams included sales and leases of various gaming equipment, revenue from its proprietary Wide Area Progressive ("WAP") systems, sales of casino management systems and parts, and licenses. Taxpayer entered into agreements with casinos under which it created and provided access to WAP machines; in exchange, Taxpayer received a portion of the gambler's wagers. Taxpayer is responsible for funding and paying the top progressive jackpots using its share of the wagers from all WAP machines linked to a particular jackpot. Taxpayer reported Arizona sales and leases of gaming equipment in the numerator of its Arizona sales factor, but excluded income from WAP systems. The Hearing Officer concluded that Taxpayer's customers achieved the requisite use and control of the WAP systems to be considered a rental of tangible personal property rather than a service as Taxpayer argued. The Hearing Officer further concluded that the sales must be sourced according to Ariz. Admin. Code R15-2D-806(3)(b) (sourcing of rental receipts to the state if the rental property is in the state) and that the Department of Revenue had correctly included revenue from the WAP systems in Arizona in Taxpayer's Arizona sales factor.

▶ TRANSACTION PRIVILEGE TAX

2020 Legislation

Senate Bill 1121, Chapter 71. Process to Amend the Model City Tax Code Changed. This bill makes one major change to the procedure by which the Model City Tax Code (MCTC) is amended. The Model City Tax Code Commission is the body under prior law and under this bill that approves changes to the MCTC that are then adopted by the cities and towns. Under prior law, only cities and towns could propose a change to the MCTC. This bill changes the law so that the Department of Revenue and any taxpayer in addition to the cities and towns may propose an amendment to the MCTC. Additionally, the bill deletes A.R.S. § 42-6053 and combines its provisions with A.R.S. § 42-6052. Those provisions include: (1) that the Department of Revenue is responsible for maintaining the official version of the MCTC; (2) that the Department must post it on the Department's website and any changes not reflected in the official version are void and of no effect; (3) that the Department must post all proposed amendments, meeting notices, and agendas of the Model Tax Code Commission at least 30 days before any informational public hearing and at least 60 days before any meeting that could result in a vote on a proposed amendment; (4) that cities and towns must implement all changes adopted by the Model Tax Code Commission and cannot implement changes not approved by the Commission (other than changes to tax rates); and (5) that if a city or town adopts a change to a tax rate, including the adoption or repeal of an option that increased the amount of tax a taxpayer must pay, the Department and the Commission must be notified within 10 days of passage.

Senate Bill 1348, Chapter 43. Tax Corrections Act Requires Electronic Payment of Estimated Payments and Makes Changes to Exemptions Under the Commercial Lease and Personal Property Classifications. This bill makes primarily technical, but some substantive, corrections and changes to Arizona's tax laws. The substantive changes applicable to sales tax laws include: (1) taxpayers required to make estimated payments must make them in the same manner (i.e., electronically) as regular payments, and payments are delinquent if not received by the last business day of June (or the preceding business day, if the taxpayer is permitted to file by mail); (2) eliminates the exemption under the commercial lease classification for certain agricultural properties; and (3) amends the exemption in the personal property rental classification for certain leases between affiliates to apply to "business entities" rather than "corporations."



2020 COURT DECISIONS

Vangilder v. Ariz. Department of Revenue, 1 CA-TX 19-0001 (Jan. 16, 2020). Constitutionality of Prop. 417 Upheld. In 2017, Pinal County voters simultaneously approved Propositions 416 to adopt a regional transportation plan and 417 to enact an excise tax to fund that plan. Shortly thereafter, several taxpayers filed suit seeking to enjoin enforcement of the excise tax authorized by Prop 417, alleging that it violated A.R.S. § 42-6106(B), which requires the county transportation excise tax to be imposed upon all Transaction Privilege Tax (TPT) classifications, because it applied only to retail transactions under \$10,000 rather than to all TPT classifications. The Court of Appeals held that the tax, by its terms, applied across all transaction privilege tax classifications and included a valid, constitutional modified rate as applied to the retail sales classification (taxing only transactions under \$10,000).

Carter Oil Co. V. Ariz. Department Of Revenue, 1 Ca-Tx 19-0002 (Jan. 30, 2020). Dyed Diesel Fuel Used to Power Machinery Involved in Mining and Processing Operations is not Exempt Machinery and Equipment. Taxpayer Carter Oil sought a refund of taxes paid on sales of dyed diesel fuel to Hanson Aggregates that used the dyed diesel to power dozers, loaders, haul trucks, and rock crushers in its gravel mining and processing operations. In addition to providing the energy to power the machinery, the dyed diesel also acts as a lubricant for the components in the machinery's fuel systems. Without the fuel, the machinery Hanson used for mining and processing would not work. Carter Oil asserted that the fuel was exempt under A.R.S. §§ 42-5061(B)(1) and (2) as "machinery or equipment" used in mining and processing operations. The Department denied Carter's refund claim and Carter appealed to the Tax Court after exhausting its administrative remedies. The Tax Court held that the dyed diesel qualified as machinery or equipment when used directly in mining operations and was therefore exempt from the transaction privilege tax. The Court of Appeals reversed the Tax Court and upheld the Department's denial of the refund because the fuel did not touch, manipulate, or add value to the raw materials in the mining process and as such was neither machinery or equipment nor an item traditionally thought to be machinery or equipment for purposes of the deduction.

Ariz. Department of Revenue v. Tunberg, 1 CA-TX 18-0008 (Apr. 21, 2020). Member-manager and CEO of Limited Liability Company that Collected Transaction Privilege Tax from its Customers and did not Remit it to the Department is Personally Liable for that Tax. Following an audit, the Department of Revenue determined that the taxpayer, Sanctuary Design, LLC, had failed to pay some \$353,652 in transaction privilege taxes. The taxpayer did not protest the assessment and the Department filed suit against the taxpayer and its member-manager and CEO to recover the taxes. Pursuant to A.R.S. §42-5028, an officer or director of a taxpayer may be personally liable for unpaid TPT where the taxpayer billed and collected the taxes from its customers but did not pay it over to the Department. The Court of Appeals, agreeing with the Tax Court, held that a corporate entity, including an LLC, cannot evade taxes simply by failing to delegate a person to be responsible for their payment and that in the absence of someone who has been given that responsibility, it must be the person with ultimate responsibility for the entity. The court concluded that the taxpayer had failed to delegate the responsibility to anyone, and as such the responsibility for payment was assumed by the member-manager and CEO, who had the ultimate responsibility for running the business and thus could be held personally liable for the assessment.

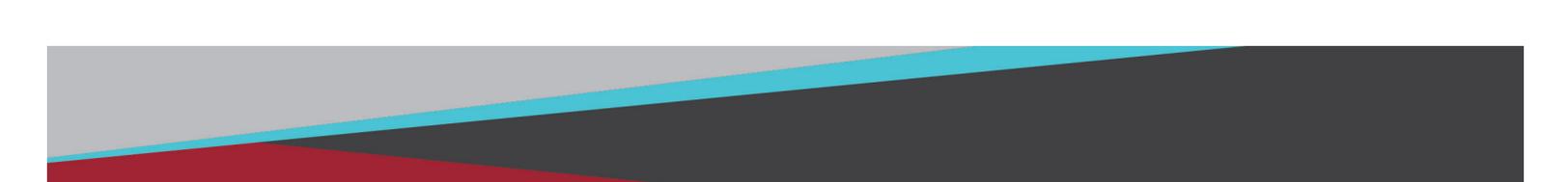
Swift Transportation Co. v. Ariz. Department of Revenue, 1 CA-TX 19-0004 (July 14, 2020). Taxpayer Liable for Use Tax on Diesel Fuel Purchases Where Fuel Taxes are Refunded. Arizona law imposes one of two distinct taxes on all diesel fuel sales — fuel tax (A.R.S. § 28-5606) or use tax (A.R.S. § 42-5155) — depending on how the diesel fuel is used. The law requires diesel fuel vendors to collect fuel taxes from consumers at purchase based on a legislative presumption that the fuel is acquired to propel motor vehicles on Arizona highways. But if the diesel fuel is ultimately used for a different purpose (such as for off-road or agricultural purposes), the fuel taxes are refunded and the use tax is applied. Swift Transportation bought diesel fuel from vendors and tendered the advance payments of fuel taxes at purchase. Swift ultimately used part of the fuel for something other than to propel motor vehicles on Arizona highways. It thus applied to the Arizona Dept. of Transportation (ADOT) for a fuel-tax refund of \$281,018.91, simultaneously reporting it would then owe \$190,836.39 in use taxes, leaving a refund payment of \$90,182.52. ADOT approved Swift’s application in full.

A year later, Swift asked the Department of Revenue to refund its \$190,836.39 offset payment of use taxes. Swift conceded that ADOT refunded its fuel taxes and acknowledged that it stored, used, or consumed the diesel fuel as required to impose use taxes. But Swift argued it was still exempt from use taxes because the diesel fuel was “subject to” fuel taxes at purchase, which remained true notwithstanding the fuel tax refund. A.R.S. § 42-5159(A)(5). DOR denied the claim, ruling that Swift was no longer “subject to” fuel taxes after ADOT refunded those taxes and Swift then owed use taxes on the diesel fuel. Ariz. Admin. Code R15-5-2327(B). Swift then sued DOR in tax court to obtain a refund of use taxes levied on its diesel fuel purchases, having already received a refund of fuel taxes on the same fuel. Swift argued that “[p]urchases of motor vehicle fuel are subject [to] the Arizona use tax pursuant to A.R.S. § 42-5155,” but simultaneously “exempt from the use tax pursuant to A.R.S. § 42-5159(A)(5) because they are subject to motor vehicle fuel tax pursuant to A.R.S. § 28-5606(A).”

The issue in this case is the interpretation of the phrase “subject to.” The Court of Appeals affirmed the Tax Court’s interpretation of “subject to,” as used in the use tax statute, as synonymous with “required to pay.” As such, the taxpayer was no longer eligible for the use tax exemption when ADOT refunded its advance payments of fuel taxes.

2020 DEPARTMENT OF REVENUE TAX INFORMATION RULINGS/ PRIVATE TAXPAYER RULINGS

Transaction Privilege Tax Ruling TPR 20-1 and Procedure TPP 20-1 (July 14, 2020). Late Filing and Late Payment Penalty Abatement Related to COVID-19 Pandemic. This ruling and the related procedure provide that taxpayers have reasonable cause for not timely filing or paying applicable transaction privilege taxes to the Department of Revenue due to the COVID-19 emergency and subsequent measures taken to protect public health. Taxpayers are eligible for abatement of late filing and late payment penalties for the period starting February 1, 2020 and ending upon notice from the Department. Taxpayers seeking penalty abatement should file Arizona Form 290 (Request for Penalty Abatement) and cite “COVID-19” as the reason for abatement.



Transaction Privilege Tax Ruling TPR 20-2 (Oct. 6, 2020). What Happens When the State Sourcing Provisions for Retail and Rental Transactions are Inconsistent with the Sourcing Provisions in the Model City Tax Code. This ruling provides guidance on the sourcing of retail and personal property leasing or rental transactions when the state sourcing provisions contained in A.R.S. § 42-5040 are inconsistent with the municipal sourcing provisions found in the Model City Tax Code (MCTC). The Department's ruling concludes that the provisions of A.R.S. § 42-5040 are binding upon municipalities and that they supersede inconsistent city provisions, regardless of the source of power (i.e., charter power or state law) upon which a city or town relied when it adopted such inconsistent provisions. The ruling also prohibits municipalities from assessing or penalizing a taxpayer for complying with then-existing MCTC sourcing provisions for any periods prior to the date of the ruling.

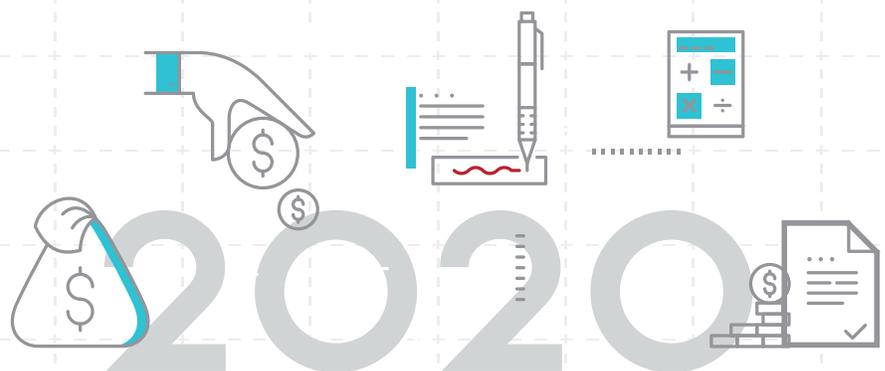
Private Taxpayer Ruling LR 20-001 (Jan. 21, 2020). SAAS Not Taxable. This ruling deals with the taxability of what is generally referred to as software as a service (SAAS) and is a deviation from most of the Department's prior rulings dealing with SAAS, which held that if the user could manipulate the software, then the taxpayer had control of the software, which amounted to a taxable rental of the software. The Department here addressed the question of whether the utilization of a temporary, nontransferable software license to provide clients with the ability to access and view taxpayer-created reports constituted a taxable sale, lease, or rental of the software. The Department concluded that the taxpayer's clients lack the requisite level of control over the software, and that it was the taxpayer, not its clients, that used the software. Therefore, the software license was not taxable as a retail sale or lease of software.

Private Taxpayer Ruling LR 20-002 (Feb. 7, 2020). Taxability of Construction of a Solar Energy Plant. At issue was whether the solar panels, inverters, solar panel racks, and the battery storage system (used to store the solar generated electricity for later transmission to a customer) used in a utility-scale solar energy plant were deductible. The Department concluded the solar panels, inverters, and racks were used directly in producing electricity and thus were deductible under A.R.S. § 42-5061(B)(4) (machinery and equipment used directly in the production of electricity). However, the Department concluded that the battery storage modules were not machinery and equipment used in producing or transmitting electricity and thus were not eligible for the A.R.S. § 42-5061(B)(4) deduction. The Department did conclude though that the battery storage modules were eligible for the retail deduction for "solar energy devices" found in A.R.S. § 42-5061(M) if the modules were purchased from a "registered solar energy retailer." Finally, the Department addressed the deductibility of the labor to install and assemble the exempt solar machinery and equipment under A.R.S. § 42-5075(B)(7) (labor to install exempt machinery and equipment is deductible if the machinery and equipment retains its independent functional utility) and affirmed its conclusions regarding the independent functional utility of the solar panels, racks, and inverters originally discussed in Private Taxpayer Ruling LR 17-009 (rev. Apr. 2, 2019).

Private Taxpayer Ruling LR 20-003 (Mar. 23, 2020). Arizona use Tax on the Cost of Products and Supplies Stored and Tested In-State Prior to Shipment Out-Of-State. The taxpayer, a financial services company, purchased computer equipment from large national retailers for use by employees in its business throughout the country. Equipment was delivered to a warehouse in Arizona, where it was tested and bundled with other equipment used by employees, then shipped to the employees' location outside Arizona. The Department ruled that the taxpayer is not liable for Arizona use tax for tangible personal property brought into Arizona for storage if the tangible personal property: (1) is purchased for bona fide use or consumption outside of Arizona; (2) is not used in conducting a business in Arizona; (3) is located in Arizona temporarily, with the storage time not to exceed 30 days; (4) is prepared for actual use by taxpayer outside the state; and (5) is, in fact, first used by the taxpayer outside the state. Generally, tangible personal property brought into Arizona and stored for 90 days or more or subsequently used in the business in Arizona would be subject to Arizona use tax.

Private Taxpayer Ruling LR 20-008 (July 16, 2020). Tower Crane, Mobile Crane, and Construction Hoist Rentals. This ruling addresses the taxation of certain crane and hoist rentals under the state prime contracting and municipal construction contracting classifications. The ruling discusses the difference in tax treatment under the state and city code including that rentals of cranes with an operator are not taxable under the state prime contracting classification but taxable under the municipal personal property rental classification. One significant difference is if a crane company supplied a crane with an operator to a prime contractor on a project, it would not be taxable at the state level because it is an exempt subcontractor, but would be taxable at the city level under the personal property rental classification.

Private Taxpayer Ruling LR 20-011 (Sept. 1, 2020). Membership fees as a Non-Taxable Separate Line of Business. Taxpayer, a federally recognized 501(c)(6) nonprofit organization, was a not-for-profit professional membership association that sold eLearning courses, subject to the retail TPT, and also issued certain professional certifications. The Department concluded that separately from the organization's taxable sale of the eLearning courses at retail, the organization is also engaged in a service of professional development through its membership. As such, the Department concluded that the organization's membership is a nontaxable separate line of business under the Holmes & Narver test. The ruling noted in footnote 34 that even if the ruling had found the sale of memberships to be taxable by the state and county, the sale of memberships would still not be taxable by the cities as an exempt organization under MCTC § 270.



Private Taxpayer Ruling LR 20-012 (Sept. 18, 2020). Retail Sales of Insertable Cardiac

Monitors are Taxable. The Department concluded that the taxpayer's gross income derived from the sale of an insertable cardiac monitor (ICM) is subject to TPT unless specifically deductible or excluded by statute. Although the retail classification provides a deduction for prosthetic appliances (A.R.S. § 42-5061(A)(9)), the deduction is not applicable because it is not used to support or take the place of a body part or organ, rather; it is used to diagnose a condition. Additionally, the retail deduction for durable medical equipment ("DME") is not applicable because the ICM does not meet all of the statutory requirements to be considered DME. More specifically, it is not reimbursable by Medicare because physician services must be included when it is sold and cannot be used in the home; therefore, it is not exempt DME (A.R.S. § 42-5061(A)(13)). However, the income derived from the sale of an ICM is deductible from the TPT base under A.R.S. §§ 42-5061(25)(a), (b) and (d) if sold to qualifying hospitals, health care organizations or qualifying community health centers in Arizona. The ruling observed that these deductions apply similarly for city privilege tax purposes.

Private Taxpayer Ruling LR 20-016 (December 10, 2020). Residential Property Developer That Sells Improved Land to Homebuilders Not Taxable as a Prime Contractor When It Makes Post-Sale Improvements to the Land.

The issue the taxpayer asked the Department to rule on is whether the taxpayer, a property developer, is taxable under the prime contracting classification on the gross income received after the sale of improved property for contracting work, where the sales contract requires taxpayer to complete unfinished improvements to the land. Specifically, the taxpayer requested guidance on this issue as it pertains to prime contracting and not the city speculative builder tax.

The Department concluded that the taxpayer is not taxable under the state prime contracting classification from the sale of improved real property where the sales contract requires the taxpayer to ensure completion of certain improvements to the property post-title transfer when: (1) compensation for the improvements are included in the real property's sale price and are not specified; (2) the improvements are not formalized in a separate contract between taxpayer and buyer; and (3) payments to taxpayer post-title transfer are delayed disbursements from escrow for the improvements and not additional modification activities. The Department, while not asked by the taxpayer, made it clear that the city speculative builder tax would apply to the sale of that improved real property.



PROPERTY TAX

2020 Legislation

Senate Bill 1099, Chapter 70. Remaining Proceeds of Tax Deed Land Sales To Be Given to the Former Owner of the Property. This bill requires county treasurers to distribute any balance of funds from a sale of real property held by the state because the tax lien holder failed to redeem the lien or because no one purchased the lien to the former property owner after payment of all outstanding taxes, interest, penalties, fees, and costs.

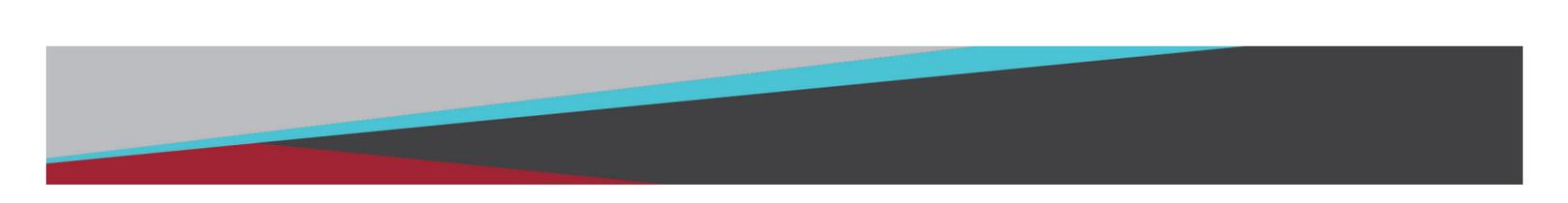
Senate Bill 1113, Chapter 11. Property Tax Statements for Mortgaged Properties to Be Mailed by November 1. Under this bill, the following information for the current and previous tax years must be included in the property tax statement mailed by the county treasurer to the property owner: (1) the amount of primary and secondary taxes applicable to the property due to each taxing jurisdiction and (2) the amount of additional state aid provided to school districts for class 3 properties (if applicable). The statement must be mailed before November 1 each year.

Senate Bill 1348, Chapter 43. Tax Corrections Act; Parcel's Limited Value May Be Adjusted if Parcel Subdivided. This bill makes numerous technical changes and some substantive changes to tax laws. Among the substantive changes, the bill amends A.R.S. § 42-13302 to specify that a parcel's limited property value may be adjusted if that parcel is subdivided between January 1 and September 30 of the valuation year. Other changes triggering revaluation during that period include a split or a consolidation of the parcel.

2020 COURT DECISIONS

***Transwestern Pipeline Co. v. Ariz. Department of Revenue*, 1 CA-TX 19-0006 (Aug. 6, 2020) (unpublished).** **Taxpayer's Valuation Appeal Supported by Competence Evidence.** Following an eight-day bench trial in which the Tax Court reduced the valuation of taxpayer's property, the Department of Revenue appealed, asserting its valuation was correct. The Court of Appeals found that the Tax Court's valuation was based on competent evidence but remanded to the Tax Court for consideration of a company-specific risk premium.

***Sky Ranch Operations, LLC v. Yavapai County*, 1 CA-TX 19-0005 (May 12, 2020) (unpublished).** **Taxpayer Owned Improvements Located on Land Leased from Sedona Oak Creek Airport Authority and Thus not Exempt.** The taxpayer sued for a refund of property taxes imposed on permanent improvements located on land leased from a governmental agency. The Court of Appeals denied the refund, concluding that under the plain language of the lease, which stated that "[a]ll buildings, structures, equipment and fixtures installed by Lessee... shall be and remain the property of Lessee during the term of this lease," the taxpayer was the owner of the improvements.



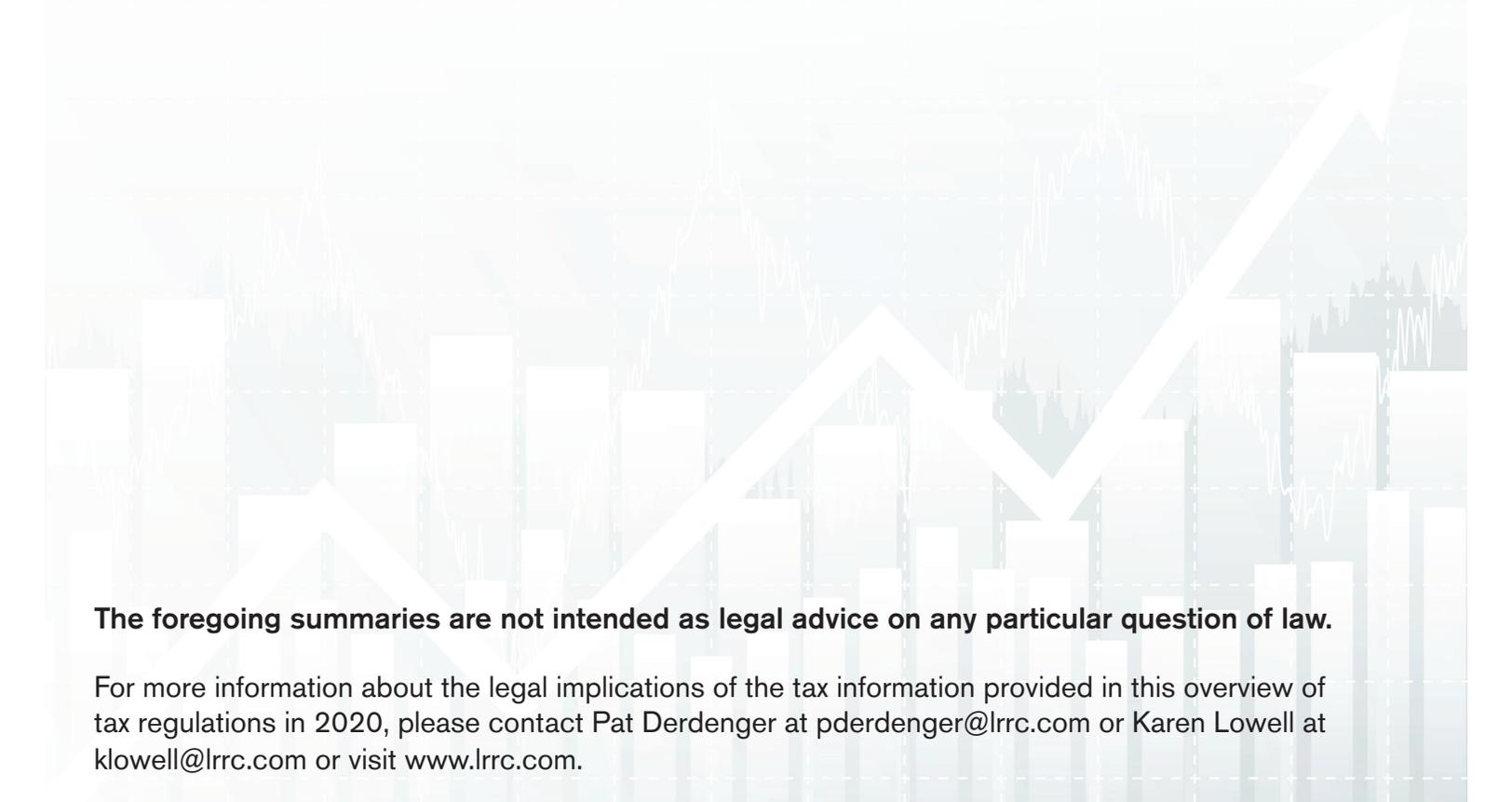
MISCELLANEOUS TAXES

2020 Legislation

Senate Bill 1021, Chapter 60. Electronic Signatures Must Be Accepted by the Department.

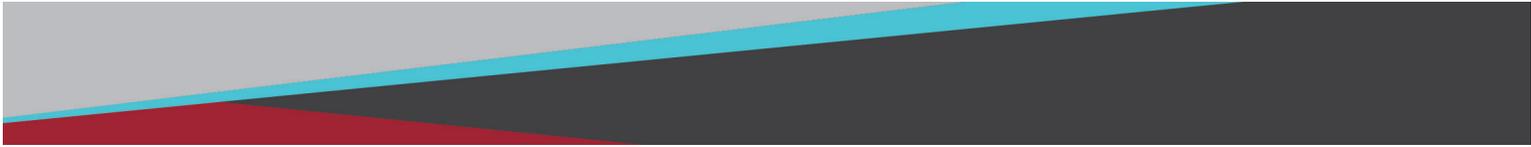
This bill provides that electronic signatures have the same force and effect as a written signature. The Department of Revenue is required to accept, and may require, electronic signatures as the functional equivalent of written signatures on documents that are submitted to the Department. Valid electronic signatures must meet the following requirements: (1) be executed by a person with the intent to sign the document or to indicate that person's approval of the information; (2) be attached to, or logically associated with, the document being signed; (3) be capable of reliable identification and authentication of the person as the signer; (4) be linked to the document in a manner that would invalidate the electronic signature if the document was changed; (5) be linked to the document so as to preserve its integrity; and (6) be compatible with standards and technology generally used in business and by other state governments. The bill also allows the Department of Revenue to adopt rules regarding the type and format of electronic signatures. The electronic signature provisions apply to all tax types administered by the Department.

Senate Bill 1295, Chapter 39. Continues Department of Revenue for 8 More Years. This bill provides that the Department of Revenue terminates on July 1, 2028.



The foregoing summaries are not intended as legal advice on any particular question of law.

For more information about the legal implications of the tax information provided in this overview of tax regulations in 2020, please contact Pat Derdenger at pderdenger@lrrc.com or Karen Lowell at klowell@lrrc.com or visit www.lrrc.com.



LEWIS ROCA ROTHGERBER CHRISTIE PRACTICE SERVICES

State and Local Taxation (SALT)

The firm's SALT lawyers provide counseling in the full range of state and local tax implications of business transactions, involving multi-state income tax responsibilities, sales and use tax reporting, including the economic nexus implications of remote sellers, and property tax issues. We structure, negotiate and provide tax analysis and guidance in connection with a wide variety of corporate and individual transactions and our experienced SALT lawyers represent clients in all aspects of tax controversy and litigation before state and local administrative agencies, state tax or superior court, the courts of appeals, and the Supreme Court.

Corporate and Partnership Tax

Our firm has substantial experience in structuring and documenting corporate acquisitions involving both publicly held and private companies. Our lawyers advise clients of the tax and legal consequences of proposed business transactions. We structure, negotiate, and provide tax analysis and guidance in connection with various joint venture transactions, and provide tax analysis and planning in connection with partnership debt restructurings and workouts.

Executive Compensation/Employee Benefits

We have extensive practice in the executive compensation/employee benefits area including advice regarding qualified retirement plans, deferred compensation agreements for executives, employee stock options (also called phantom stock arrangements), and insurance-related compensation, including split-dollar arrangements. Our firm is also active in advising employers on employee welfare plans. Finally, we provide advice with respect to fiduciary responsibility issues in the employee benefits area and are equipped to handle all proceedings before the Internal Revenue Service, and the Department of Labor.

Employment Taxes

Our tax lawyers assist clients in dealing with employment tax matters, both federal and state. A considerable portion of a business' tax responsibility arises from the various employment taxes imposed on the employer: Federal Income Tax Withholding, Social Security tax, and Federal and State Unemployment taxes. We advise our clients on questions of classification and status of workers, whether they are independent contractors or employees. We have performed audits and reviews of our clients' employment tax practices to determine whether they are in full compliance with the various employment tax, withholding, payment, and return filing requirements. We also represent our business clients in disputes with the Internal Revenue Service as well as state agencies over employment tax compliance, and, in particular, on the issue of whether workers are independent contractors or employees.

Individual Income Tax Planning

Our lawyers are dedicated to assisting our clients with the accumulation, management, and transfer of personal wealth. The firm helps clients identify and implement tax planning goals and utilize strategies best suited to their needs. We evaluate the current individual tax position, advise clients about income tax laws and provisions, and advocate legal rights at the federal, state, and local levels. Tax services include:

- Tax planning and taxpayer defense of federal and state tax positions
- IRS audit representation
- Tax appeals before the IRS Office of Appeals and in the US Tax Court
- Refund actions in the federal district courts and the US Court of Federal Claims

LEWIS ROCA ROTHGERBER CHRISTIE PRACTICE SERVICES (con't)

Tax Controversy Work

Our tax lawyers represent clients in tax controversy and litigation matters, both at the federal and state levels. At the federal level, we assist and represent our clients when they have been audited by the Internal Revenue Service and handle the administrative appeal to the Appeals office and thereafter to the U.S. Tax Court or, in a refund action, to Federal District Court or the U.S. Claims Court. This controversy work includes federal individual income, corporate income, employment and payroll taxes, excise taxes, "responsible officer" penalties, and estate, gift, and generation skipping transfer taxes. We have experience in the preparation and submission to the national office of the Internal Revenue Service both private letter rulings and technical advice requests.

We also represent clients in criminal tax matters, including voluntary disclosure submissions to the Internal Revenue Service for persons seeking to avoid criminal penalties for undeclared foreign bank accounts.

At the state and local level, we represent clients in disputes with the Arizona Department of Revenue concerning income taxes and transaction privilege taxes (sales tax), clients in disputes with municipal tax authorities concerning transaction privilege taxes (including the speculative builder tax), and clients in disputes with county assessors concerning ad valorem property taxes. We represent clients during audit, administrative appeals, Arizona Tax Court litigation, and appeals to the Arizona Court of Appeals and Arizona Supreme Court.

Tax-Exempt Financing

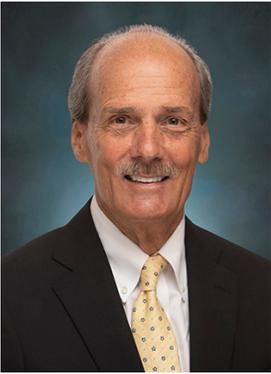
The firm represents users and issuers in tax-exempt financing transactions. We have represented industrial development and pollution control authorities as issuer's counsel, and have represented numerous hospitals, nursing homes, multifamily housing developers, and industrial and service firms as user's counsel. The firm is a nationally recognized bond counsel and also serves as underwriter's counsel in connection with the public sale of tax-exempt securities.

Tax-Exempt Organizations

We represent numerous nonprofit organizations with local, national, and international operations. We provide the full spectrum of transactional and governance advice for day-to-day operations. Our tax lawyers advise nonprofits on the tax issues directly affecting the organization, including unrelated business taxable income, intermediate sanctions, excess private benefit, use in tax-exempt finance, and private foundation rules.

Trusts and Estates

Our trusts and estates attorneys provide advice in all phases of estate planning, including the preparation of wills, living trusts, and irrevocable trusts. We counsel clients on estate, gift, and generation skipping transfer tax planning, including advice on lifetime wealth transfer through qualified personal residence trusts, grantor retained annuity trusts, family limited partnerships, planned giving, charitable remainder trusts, and other sophisticated tax planning techniques. We evaluate the proper uses of insurance in estate planning, review clients' assets to structure ownership so as to minimize estate and gift taxes, and work closely with our corporate attorneys in designing and implementing succession plans for closely held businesses. We counsel professional fiduciaries, such as corporate trustees, on their responsibilities and on trust interpretation issues. The firm also has a probate and probate-related litigation practice.



Pat Derdenger

Partner

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Clients rely on Pat Derdenger for his deep knowledge of state and local tax issues that vitally impact business operations. Serving businesses across industry sectors, Pat understands how to evaluate complex transactions, applying the latest laws and regulations toward obtaining tax benefits and incentives, while reducing tax exposure.

In his extensive state and local tax practice, Pat advises businesses on corporate and individual income, multi-state sales and use, and property tax matters, and counsels them on the state and local tax implications of their business transactions. He also represents clients in related litigation matters, from audits and appeals through various administrative states, as well as in federal and state courts and courts of appeals, and the US Tax Court. He has obtained private tax rulings for clients on state and local tax issues and helped draft state tax legislation for clients and industry groups. Pat also advises businesses on the tax implications of various economic incentives and benefits of relocating to and operating in Arizona. In addition, he frequently represents construction industry and homebuilder clients on tax issues related to maintenance, repair, replacement, alteration (MRRA), and modification projects in Arizona.

Pat also counsels clients on federal income and employment tax matters, independent contractor/employee tax issues, responsible officer penalties, information return filing penalties, and federal and state excise taxes, and represents them in related litigation matters. Clients also turn to him for advice on constitutional issues, including the federal commerce clause, due process clause, and equal protection clause.

Personal Approach

Frequently described as “the problem solver,” Pat goes far beyond the typical options to find the solution that helps his clients achieve the best possible results. With his open and friendly communication style, Pat views his relationships with his clients as a true partnership.

Pat enjoys road and mountain biking, golfing, USC football, and traveling. He has traveled to each of the seven continents but still has a long list of places he wants to visit.

Memberships & Affiliations

National Tax Association

Arizona Tax Research Association, Board of Directors and Tax Practitioners' Committee Member

Arizona Chamber of Commerce and Industry, Tax Committee

National Association of Property Tax Attorneys, Board of Directors

Institute for Professionals in Taxation (IPT)

American Bar Association, State and Local Tax Committee, Section of Taxation

Arizona State Bar, Tax Section (Prior Chair)

Council on State Taxation

Strafford Legal Publications, Tax Law Advisory Board Member



Karen Lowell
Associate
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With a proven background in resolving business tax disputes, Karen Jurichko Lowell focuses her legal practice on sales, use, and property tax matters, including tax audits and appeals through various administrative stages, the tax court, and the court of appeals. She advises manufacturers, high tech companies, construction contractors and developers, electric utilities, solar energy companies, and other clients on various multi-state sales and use tax issues, including advising e-commerce businesses on their multi-state sales and use tax nexus and collection obligations. She also has experience with property tax valuation appeals for various types of industrial and commercial properties, corporate transactions, and health care taxes.

Karen previously worked for a tax consultancy focused on California state business incentives, rising to the position of senior manager for audit and controversy. In that role, she managed more than 100 audits annually, provided conflict resolution for all company clients with the California Franchise Tax Board, and crafted a structured methodology to resolve tax disputes.

Memberships & Affiliations

University of Southern California Alumni Club of Phoenix, President

Ballet Arizona Contemporary Council, Board Member

Arizona State Bar Tax Council, State & Local Tax Liasion

Arizona Law Review, Senior Articles Editor, University of Arizona, James E. Rogers College of Law

Lewis Roca

ROTHGERBER CHRISTIE

▶ ABOUT THE FIRM

Lewis Roca Rothgerber Christie is a premier U.S.-based law firm, serving clients from around the world in complex litigation, intellectual property, business transactions, labor and employment, regulatory counseling, and government relations. More than 220 lawyers strong, we are large enough to handle virtually any matter, no matter how sophisticated, but small enough to preserve our culture of legal excellence and exceptional client service.

Vast Network of Teamwork

- 220** Lawyers
- 9** Offices
- 33** Practice and Industry Groups



- Corporate Transactions
- Construction
- Litigation
- Real Estate
- Labor and Employment
- Government Contracts
- Gaming
- Banking and Lending
- Regulatory
- Intellectual Property
- Tribal Affairs
- Cybersecurity
- Government Relations