Lewis Roca
ROTHGERBER CHRISTIE

2019 YEAR IN REVIEW | ARIZONA TAX UPDATE

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2019 TRANSACTION PRIVILEGE TAX DEVELOPMENTS:

2019 Legislation

House Bill 2027, Chapter 124. Online Lodging Marketplaces.
This bill makes minor changes to A.R.S. § 42-6009 (the online lodging marketplace classification, enacted in 2016), including to specify that the Department of Revenue is to not only administer, collect, enforce, but also "distribute" taxes levied by a city, town or other taxing jurisdiction on online lodging marketplaces (previously the Department had authority to "remit" the tax to the cities; the amended version replaces "remit" with "distribute"). The bill also mandates uniform levies on all online lodging marketplaces and is effective August 27, 2019.

House Bill 2109, Chapter 50. County Transportation Excise Tax.
This bill increases the county transportation excise tax rate, if approved by the qualified electors voting at a countywide election from 10% to 20% of the state transaction privilege tax rate for the particular classification. The rate cannot exceed more than 20% (currently 10%) either alone or combined with any tax imposed for the county transportation excise tax for roads, under the rates for: (1) the transaction privilege classification rates; (2) the jet fuel excise tax rate; or (3) on the use or consumption of electricity or natural gas customers subject to use tax. The bill is effective August 27, 2019.

House Bill 2360, Chapter 290. Estimated Tax Payment Thresholds.
This bill increases the total tax liability thresholds for payment of estimated transaction privilege taxes as follows:

Year	Threshold
2019	$1,000,000
2020	$1,600,000
2021	$2,300,000
2020	$3,100,000
2023 and after	$4,100,000

Estimated payments are due each year by June 20th. The bill is effective August 27, 2019.

House Bill 2445, Chapter 53. Notice of Tax Changes – Rental Properties.
This bill requires cities and towns to notify both the owner and tenant of a residential rental property by mail of any voter-approved new rental tax or rental tax increase 60 days before the tax change takes effect.

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SOURCE: State of Arizona, House of Representatives, Summary of 2019 Legislation

House Bill 2757, Chapter 273. Economic Nexus and Marketplace Facilitators.
On May 31, 2019, Governor Doug Ducey signed Arizona H.B. 2757 adopting economic nexus standards for internet sales made into Arizona. This change was in direct response to the U.S. Supreme Court's decision in South Dakota v. Wayfair, 138 S. Ct. 2080 (2018) and took effect on October 1, 2019. In addition to adopting economic nexus standards, H.B. 2757 requires marketplace facilitators (Amazon, et al.) to collect the sales tax on behalf of sellers using the facilitator's platform. It also preempts the retail classification for city sales taxes under the Model City Tax Code. The legislation establishes economic nexus thresholds based on the amount of sales into Arizona. Once the thresholds are passed, remote sellers (defined as a retailer without a physical presence in Arizona) and marketplace facilitators are required to collect and remit retail TPT on their sales to Arizona customers. The threshold for remote sellers is currently $200,000, phasing down to $100,000 by 2021. The threshold for marketplace facilitators is $100,000.

2019 Court Decisions

***Phoenix. v. Orbitz Worldwide, Inc.,* CA-18-2075-PR (Ariz. Supreme Court, Sept. 9, 2019). Online travel companies are "brokers" engaged in the business of operating hotels under the Model City Tax Code but are not "hotels" themselves.** This case involved online travel companies (websites like Expedia or Orbitz) that allow travelers to reserve and pay for hotel rooms; however, the online travel companies ("OTCs") do not own those rooms. Typically, the total price paid by travelers includes the "reservation rate" plus taxes and fees. The reservation rate is typically the room rate set by the hotel and the OTC, plus the OTC's mark-up. Fees usually include an additional service fee retained by the OTC. The case involved two separate taxes under the Model City Tax Code ("MCTC"): § 444, which is imposed on "every person" engaged in the business of operating hotels, and § 447 which was imposed on the gross income of "hotels." The Arizona Supreme Court held that OTCs were taxable under MCTC § 444 because they were brokers engaged in the business of operating hotels, but not under MCTC § 447 because they were not actually hotels. The Court also held that MCTC § 542(b) bars taxation under a new policy, procedure, or interpretation until a city has both adopted the change and provided impacted taxpayers with notice of that change.

The Arizona Supreme Court held that MCTC § 444 imposes a tax on "every person" engaged in the business of operating hotels. It also held that "operating a hotel" means the business activities that are central to keeping the brick-and-mortar lodging place functional or in operation. These activities include those performed by an OTC: advertising rooms and soliciting customers, collecting customer information, processing payments, confirming reservations, providing customer service, facilitating reservation modifications and cancellations. Furthermore, the OTC's service fees and mark-up on the hotel rooms was subject to tax because MCTC § 444 taxes the gross receipts from the business activity. Finally, the Court held that OTCs are "persons" under the MCTC because they are "brokers." The OTCs satisfied the three requirements for being considered a "broker" of a hotel: (1) they were acting on behalf of the hotels for a consideration (the mark-up and service fees); (2) they were engaged in the business of operating a hotel; and (3) they were receiving all or part of the gross income from that business.

However, the Supreme Court held that online travel companies are not themselves "hotels" under MCTC § 447. MCTC § 447 imposes an additional tax only on the "gross income from the business activity of any hotel… in the business of charging for lodging." The Court held that this additional tax does not extend to brokers because it is limited to the gross income of hotels, rather than persons operating hotels, and the MCTC defines a "hotel" as "any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering "lodging" to transients for a compensation.

***Wilbur-Ellis Co. v. Ariz. Dep't of Revenue,* 1 CA-TX 17-0003 (Jan 22, 2019). Fertilizers and pesticides are not "propagative materials."** A.R.S. § 42-5061(A)(33) allows a deduction for sales of "seeds, seedlings, roots, bulbs, cuttings and other propagative materials to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops." The Court of Appeals held that "propagative materials" meant materials that reproduce or multiply species of plants. It also held that fertilizers and pesticides are not "propagative materials" because they do not reproduce or multiply plants, even though they might make that process more efficient. Finally, the court rejected the taxpayer's argument that the farmers were not consumers of the fertilizers because they "conveyed the nutrients in the fertilizers to their customers," instead holding that farmers purchase fertilizers for use in producing agricultural products.

***Driver v. ADOR,* No. 1 CA-TX 18-0006 (June 11, 2019). Can't Buy Cigarettes Online without Paying Tax.** Ms. Driver was held liable for luxury and use tax on cigarettes she purchased online without paying any Arizona tax. Currently, Arizona law prohibits the purchase of cigarettes by telephone, internet or mail, unless they have a tax stamp. Prior law (applicable to Ms. Driver) stated an individual could possess unstamped cigarettes for his or her own consumption if the person complied with certain requirements: register with the DOR and remit luxury tax within 10 days after receipt of the unstamped cigarettes; and pay use tax in addition to the luxury tax. Ms. Driver paid no luxury or use tax on her online purchases. Court upheld the assessment and determined that the normal 4 year statute of limitations did not apply because no returns were filed.

2019 Department of Revenue Taxpayer Information 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."

Private Taxpayer Ruling LR 19-005 (June 11, 2019). Transfer of non-transplantable human tissue for research purposes is a taxable sale. In this ruling, the taxpayer was a non-transplantable human tissue bank that provided human tissue to medical facilities, hospitals, universities and others for research purposes. The taxpayer received tissue samples from donors for no consideration, and then charged its customers fees to recover costs of acquisition, storage, preservation, preparation, and distribution of the tissue. The Department of Revenue determined the taxpayer was making taxable sales of tangible personal property and that it did not qualify for the professional or personal service deduction under A.R.S. § 42-5061(A)(1) because its dominant purpose was to supply tissue samples rather than a service. Finally, the taxpayer's processing activities to bring the tissue to market were in preparation for a sale and thus were not deductible as services rendered in addition to a sale under A.R.S. § 42-5061(A)(2). However, transportation costs could qualify for the deduction under A.R.S. § 42-5061(A)(2) if they were separately stated and reflected the Taxpayer's actual costs.

Transaction Privilege Tax Ruling 19-1 (Apr. 15, 2019). Relief for failure to file or pay taxes for property management companies. A.R.S. § 42-6013 required the Department of Revenue to create and implement an electronic filing system for property management companies to report and pay TPT on behalf of property owners. The system went live on January 1, 2019, but property management companies faced many issues, including confusion over the new process and fiduciary responsibilities, technical difficulties that prevented property management companies from filing and paying taxes and license renewal fees, difficulty merging preexisting city license information with the Department's system, resulting in misapplied credits and liabilities, and delays in payment processing and error resolution. The Department found that the issues constituted a reasonable basis for property management companies' failure to timely file or pay taxes. The Department issued a separate notice regarding the procedure for applying for penalty abatement (see below).

Transaction Privilege Tax Procedure 19-1 (May 13, 2019). Procedure for penalty abatement for property management companies. This procedure was issued pursuant to TPR 19-1 and applies to property management companies that filed TPT returns on behalf of property owners for the tax periods starting January 1, 2018 (filed February 2018) through June 30, 2019 (filed July 2019) and were registered with the Department of Revenue. In order to request penalty abatement, the property management company was required to complete and file Arizona Form 290 (Request for Penalty Abatement) and to include the statement: "The attached property owners managed by [Property Management Company Name] qualify for penalty abatement relief pursuant to TPR 19-1." Property management companies were also required to include the "PMC Penalty Abatement Client List" using template available on the Department's website. Applications were due September 30, 2019.

Private Taxpayer Ruling LR 17-009 (Rev. Apr. 2, 2019). Department revises its position on "independent functional utility". The original ruling, issued on April 28, 2017, involved the deduction for the installation of machinery and equipment at solar power plants with "independent functional utility" under A.R.S. § 42-5075(B)(7). The statute defines "independent functional utility" as machinery or equipment that can operate without attachment to real property except for: (1) assembling the machinery or equipment; (2) connecting items of machinery or equipment to each other; (3) connecting the machinery or equipment to utilities other services; or (4) stabilizing or protecting the machinery or equipment by bolting, burying or similar nonpermanent methods. In the original 2017 ruling, the Department concluded that concrete foundations, pads, and vaults needed for stabilization were not "nonpermanent" and machinery and equipment attached thereto did not have independent functional utility. In the revised ruling, receipts from installation of exempt machinery and equipment attached to concrete foundations, pads, or vaults are exempt; however, the installation of the foundations, pads, or vaults themselves are taxable.

Taxpayer Information Ruling LR 19-004 (Apr. 2, 2019). Non-profit taxpayer's sales of memberships, periodicals, and fees paid by authors to be published not subject to TPT. The taxpayer was a Section 501(c)(3) non-profit organization with the following revenue streams: (1) membership fees for access to database of taxpayer-published magazines and periodicals and ability to purchase hard-copy subscriptions and other tangible property (i.e., t-shirts or pins); (2) publication fees paid by authors to be published in taxpayer's periodicals; and (3) fees from hosting educational conferences. Although membership fees (and other tangible personal property) are generally taxable under the retail classification, the taxpayer's receipts were not subject to TPT because of its non-profit status. The taxpayer was also not considered a "publisher" subject to TPT under A.R.S. § 42-5065 because the periodicals were not manufactured or distributed from a location in Arizona, and books are excluded from the classification. Additionally, Taxpayer's receipts from hosting conferences and meetings were not subject to tax under the amusements classification (A.R.S. § 42-5073) because the taxpayer's conferences and meetings were considered "private or group instructional activity," excluded from tax under A.R.S. § 42-5073(A)(2).Finally, the taxpayer was exempt from all city-level taxes under MCTC § 270(a).MCTC § 270(a) exempts anyone deemed not engaged in business from city tax, and MCTC § 270(a)(1) specifies that Section 501(c)(3) exempt organizations are not engaged in business for city tax purposes. Because all of the taxpayer's revenue streams were exempt, it was no longer required to continue filing TPT returns.

Taxpayer Information Ruling LR 19-003-D (Mar. 18, 2019). Taxpayer who held and maintained property in accordance with local government regulations, then sold property, was not a speculative builder.
The Department of Revenue held that the following properties were not subject to speculative builder tax:

Lot No.	Purchase Date	Property Description at at Time of Purchase	Activity on Property Subsequent to Purchase	Subdivided?	Reparceled?
#1	2009	Vacant Commercial Urban Property	Held & Maintained	No	No
#2	2009	Vacant Commercial Urban Property	Held & Maintained	No	In 2013, moved a 20- foot strip of the property into an adjoining property (also owned by Taxpayer), then in 2017 moved the same strip back into Lot #2
#3	2009	Vacant Commercial Urban Property	Held & Maintained	No	No
#4	2014	Vacant Commercial Urban Property	Held & Maintained	No	In 2017, assesor made lot line adjudments

2019 PROPERTY TAX DEVELOPMENTS:

2019 Legislation

House Bill 2074, Chapter 208. Residential Treatment Facilities. This bill exempts non-profit residential treatment and education facilities from property taxation if the facility is used for educational purposes and is not used or held for profit. The exemption is retroactive to taxable years beginning in 2019.

House Bill 2095, Chapter 49. Agricultural Property Classification When Water is Reduced; Payment Plans. This bill permits inactive or partially inactive agricultural land where the inactivity is due to a partial reduction in water supply or irrigation district water allotments to be eligible for classification as property used for agricultural purposes. It also allows the partial reduction of water supply to be certified by the irrigation district to the county assessor.

Finally, the bill allows a county treasurer to enter into a payment plan agreement with a taxpayer for up to 36 months for the payment of delinquent taxes of $1,000 or more and to charge a fee of not more than $150 for the administrative costs associated with the plan. House Bill 2095 is effective August 27, 2019.

House Bill 2097, Chapter 225. Livestock Personal Property Report. This bill prohibits a county assessor from requiring livestock owners for first apply for a reporting requirement exemption from A.R.S. § 42-15053, which requires all property owners to report personal property except livestock before April 1 of each year. The bill is effective August 27, 2019.

House Bill 2363, Chapter 31. Tax Lien Sales. This bill requires the county treasurer to continue a tax lien sale until each parcel has been offered for sale and no more bids are offered (rather than until the parcel is sold). It also requires a purchaser of a tax lien property to pay the county treasurer within 15 days after the close of the sale. Finally, it gives the county treasurer the authority to ban a purchaser from buying a tax lien for up to one year if the purchaser fails to timely pay the treasurer. The bill is effective August 27, 2019.

House Bill 2493, Chapter 291. Appraisal of Solar Energy Devices. This bill amends A.R.S. § 42-11054(C)(2) to remove the language that deemed solar energy devices to have no value for property tax purposes. The statute now reads "solar energy devices primarily for on-site consumption are considered to add no value to the property on which such a device or system is installed." The bill also updates the appraisal methodology to that solar energy devices characterized as personal property must have a ten-year life and prescribes an accelerated depreciation schedule. Finally, the bill requires that taxes paid for tax years before the effective date (August 27, 2019) that are in excess of the taxes as calculated with the accelerated depreciation schedule must be refunded to the taxpayer.

House Bill 2556, Chapter 294. Agritourism Property. This bill makes "agritourism" property eligible for agricultural classification and valuation treatment. "Agritourism" is defined as any activity that allows members of the general public to view, enjoy, or participate in rural activities for recreational, entertainment, or educations purposes. Rural activities include farming, ranching, historical, cultural, "u-pick," harvest-your-own, or natural activities and attractions if the activity is conducts on farmland or land adjacent to and operated in connection with farmland. However, food establishments licensed with the Arizona Department of Health Services that are associated with agritourism and rodeo events that are open to the public and sell tickets for admission are excluded from agricultural classification and valuation. The bill is effective August 27, 2019.

Senate Bill 1033, Chapter 167. Property Tax Statements. This bill requires the county treasurer to mail property tax statements to the owners of mortgaged properties; previously, such statements were only mailed upon request of the owner. The county treasurer is also required to send a property tax statement to the lender upon request. The bill is effective August 27, 2019.

Senate Bill 1235, Chapter 249. Possessory Improvements. This bill defines "possessory improvements" as all residential, commercial, and industrial buildings located on federal, state, county, or municipal property or the property of another political subdivision of Arizona that is owned by a nongovernmental possessor. The bill provides that possessory improvements are subject to the limited property value limitation (where value can only increase by 5% per year, not to exceed full cash value) and are valued as real property. Under prior law, possessory improvements were valued as personal property and taxed at the full cash value. The bill is effective August 27, 2019.

Senate Bill 1236, Chapter 303. Tax Liens. This bill states that the expiration date to foreclose on a tax lien property is determined by the date of the original certificate of purchase. It also specifies that any outstanding fees attached to the parcel are include in the sale of a tax lien. The bill is effective August 27, 2019.

Senate Bill 1248, Chapter 306. Property Tax Modifications; Valuation. This bill provides that when a property has been modified by construction, destruction, or demolition since the preceding valuation year such that the total value of the modification is 15% or greater of the full cash value, then the limited property value is established by "Rule B." Under prior law, any amount of modification would trigger a Rule B calculation. The bill is effective August 27, 2019.

Senate Bill 1300, Chapter 308. Low-Income Housing Exemption. This bill modifies the qualification conditions for low-income housing by exempting property from taxation if it is used exclusively for affordable rental housing pursuant to the Internal Revenue Code or another restrictive covenant imposed by financing for affordable housing. The bill also requires that the property qualify under specific conditions, be owned and operated by a qualified entity, and not exceed 200 units. It is effective August 27, 2019.

2019 Cases

***Siete Solar, LLC v. ADOR,* 1 CA-TX 2018-0002 (Jan. 29, 2019). Methodology for valuing and classifying property depends on the valuation date.** At issue in this case was a taxpayer's eligibility for a deduction from valuation for tax incentives received during the property tax year, but where the deduction was not effective at the valuation date. The Arizona Legislature had amended the valuation statute applicable to solar electric generation facilities after the valuation date for a particular property tax year, but while the taxpayer's appeal was still ongoing. The taxpayer asserted that it could use the amended statute for valuation purposes.
The court disagreed, holding that the 'values determined as of [the valuation date]' necessarily included not only the application of the legal classification criteria as if it were the valuation date… but also the law as if it were the valuation date." The court also held that the new methodology also did not apply to the property tax year where the valuation date had passed but the Department of Revenue had not yet finalized valuations because "the valuation method employed by the Department… was statutorily mandated to be the method in place [on the valuation date] unless the legislature specifically provided otherwise."

***R.O.I. Properties LLC v. ADOR,* 1 CA-TX 2018-0001 (Feb. 21, 2019). Property was not eligible for a charter school exemption when school ceased operations during the tax year.** In this case, the assessor's office did not apply the charter school exemption for the 2019 property tax year when the school ceased operations on May 29, 2015. The taxpayer argued that because it used the property for an exempt purpose for the first half of the year, it was entitled to the exemption for the full year. The court disagreed, holding that in order to be exempt the property must be both owned by an entity with federal tax exempt statute and used for educational purposes. Because the school closed, the second requirement was not met.

***101 Val Vista/Montgomery, LLC v. ADOR,* 1 CA-TX 18-0003 (June 11, 2019). Court clarifies requirements for the agricultural use classification.** Under A.R.S. § 42-12157, there are four requirements that must be met for a property to receive the agricultural use classification: (1) a minimum capacity of 40 animals and an 'economically feasible' number of animals; (2) primarily used for agriculture and 'actively producing' for three of the last five years; (3) the reasonable expectation of an operating profit; and (4) noncontiguous parcels must be operated as a unitary whole with each parcel making a 'functional contribution'. The statute allowed that the "reasonable expectation of operating profit" requirement "shall be satisfied" by an affidavit from the property owner. The court held that the Legislature was permitted to establish the methodology for complying with the condition, and that an affidavit executed after the valuation date was valid because it "was based on information that existed on that date, namely, the Property owner's expectations at that time for the relevant tax year."
The court further held that a sublessee's use of the property can make a functional contribution if the sublessee was using the property for agricultural purposes and providing an economic benefit to the larger property. Finally, the court held that grazing land is in "active production" even if it has been inactive due to "an act of God" (i.e., drought).

***Ariz. v. Ariz. Board of Regents,* TX-2019-000011 (Tax Ct. June 24, 2019). Government property exempt from taxation, regardless of use.** In this case, the Arizona Attorney General sued Arizona State University ("ASU") and the Arizona Board of Regents over a property tax exemption applied to the Omni Hotel project. The hotel in question was built on the ASU campus, on land owned by ASU. The developer deeded title of the hotel to ASU, and ASU leased it back to the developer to operate. Because the Arizona Constitution exempts property owned by the state and its political subdivisions, the hotel which was owned by ASU, was exempt from property taxation. The Arizona Tax Court upheld the exemption as applied to the hotel, holding that "[s]hort of selling the fee interest outright to a non-exempt party, nothing the Board does with the land can affect its exemption."

INCOME TAX DEVELOPMENTS:

2019 Legislation

House Bill 2042, Chapter 48. 7-Year Statute of Limitations If No Return Filed. Limits the Department of Revenue's (DOR) ability to assess an income tax or withholding tax to seven years after the date the most recent tax return was required to be filed if a taxpayer fails to file a tax return. States that the DOR may assess a tax or begin a court proceeding at any time if the failure to file was due to an intent to evade tax or for any tax other than income tax or withholding tax. The bill is effective August 27, 2019.

House Bill 2367, Chapter 169. Limited Audit Review for Individuals. Permits the Department of Revenue (DOR) to conduct a limited scope review of filed individual income tax returns in cases where the information reported by a taxpayer is different than the information received from withholding returns. Allows the DOR to use an electronic portal to issue a deficiency notice, for Title 42 (transaction privilege tax) or Title 43 (income tax) if a taxpayer agrees in writing. The bill is effective August 27, 2019.

House Bill 2425, Chapter 164. School Tax Credit Expanded. Expands the tax credit for public school fees and contributions to include taxpayer contributions towards capital items, community school meal programs and student consumable health care supplies for Arizona public schools. Allows the site council of a public school to transfer undesignated contributions to any school within the same district. The bill is effective August 27, 2019.

House Bill 2757, Chapter 273. Arizona Finally Conforms to TCJA and Cuts 2019 Rates; Keeps 2018 Windfall; IRC Conformity. Adopts conformity with the Tax Cuts and Jobs Act but also cuts personal income tax rates, increases the standard deduction, and replaces the dependent exemptions with a new child tax credit for the 2019 tax year. On the corporate side, H.B. 2757 makes clear that Arizona will not follow the federal government in imposing a new tax on global intangible low-taxed income (GILTI), but does not address full expensing and the net interest limitation.

The changes are designed to neutralize the effect of the TCJA, which resulted in an effective tax increase for Arizona taxpayers in 2018. Arizona must adopt conformity to the federal income tax code annually, unlike some states, where such adjustments are automatic. Because the TCJA expanded the tax base, and most states – including Arizona – use federal adjusted gross income as the starting point for state tax calculations, updating the state's conformity date without making any other changes would have resulted in a net tax increase. In 2018, the Arizona Department of Revenue's income tax forms assumed that the legislature would adopt updated federal conformity for that year, even though the legislature failed to actually do so – resulting in an estimated $155 million in additional tax collected. H.B. 2757 allows the state to keep this windfall and use it to pay down state debts. The changes to the income tax code taking effect for the 2019 tax year reverse the impact the TCJA had on Arizona taxpayers in 2018 but going forward only.

Senate Bill 1027, Chapter 297. Charitable Organizations Tax Credit Expanded. Expands the tax credit for contributions to qualifying charitable organizations to individuals, rather than children, who have a chronic illness or physical disability. The bill is effective August 27, 2019.

Senate Bill 1485, Chapter 281. School Tuition Organization Inflator. Reduces the annual growth rate of the corporate tax credit cap for contributions to school tuition organizations from the current 20% to 15% for FY 2021, to 10% for FY 2022, to 5% for FY 2023 and the greater of 2% or the metropolitan Phoenix consumer price index for FY 2024 and each fiscal year thereafter. The bill is effective August 27, 2019.

2019 Court Decisions

***ADOR v. Wendtland,* No. CA-TX8-0004 (June 13, 2019). Don't Be an Ostrich and Ignore an Assessment.** The Taxpayer did not file an Arizona income tax return for 2004. By cross matching with IRS, the DOR issued an assessment in 2015. The Taxpayer did not appeal, and the assessment became final. The Taxpayer did not pay and the DOR subsequently filed suit to recover the balance owed. The Taxpayer argued that he was a non-resident for the year in question. However, the Court of Appeals held that since the Taxpayer had not appealed the assessment, he no longer could challenge the assessment on the basis that he was a non-resident. That argument must have been made by timely appealing the assessment.
Moral of the story: don't be an ostrich!

***Majid Nayeri, et al. v. Mohave County, et al.,* 1 CA-TX 18-0009 (November 14, 2019) Challenge to Tax Lien Sale.** A.R.S. § 42-11004 does not require a property owner to pay delinquent taxes before suing in tax court to challenge the sale of a property tax lien under A.R.S. § 42-18105.

MISCELLANEOUS TAXES:

2019 Legislation

House Bill 2373, Chapter 203. Tax Corrections Act of 2019. Corrects errors and obsolete language, addresses blending problems and provides clarifying changes to the tax statutes. The bill is effective August 27, 2019.

House Bill 2454, Chapter 230. Repeals Municipal Band Tax. Repeals the ability of a city or town to levy a tax each year to maintain or employ a municipal band. The bill is effective August 27, 2019.

Senate Bill 1024, Chapter 142. Medical Marijuana – Disclosure of Confidential Information by DOR. Authorizes the Department of Revenue (DOR) to disclose confidential information to the Department of Health Services to determine if a medical marijuana dispensary complies with Arizona's transaction privilege tax requirements. The bill is effective April 29, 2019.

Senate Bill 1180, Chapter 58. Fingerprinting of Department of Revenue Applicants. Requires specified personnel who are not paid employees of a school district and who must be fingerprinted or obtain a fingerprint clearance card to certify on a notarized form provided by the school if they have ever had a charge or conviction that has been vacated, set aside or expunged. Allows the Department of Revenue (DOR) to obtain state and federal criminal records checks and consumer reports for job applicants and employees. The bill is effective august 27, 2019.

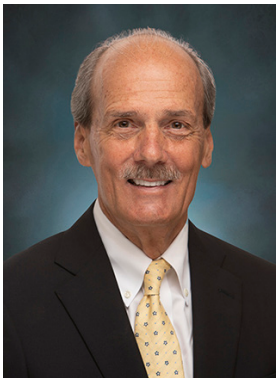
Senate Bill 1332, Chapter 313. Vehicle License Tax for Alternative Fuel Vehicles. This bill modifies the calculation of the vehicle license tax (VLT) for alternative fuel vehicles. For alternative fuel vehicles registered before January 1, 2022, the bill specified that the value is 1% of the manufacturer's base retail price and decreases by 15% for each 12-month period thereafter. Previously, the rate was set by the Director. It also requires that for alternative fuel vehicles registered in the year 2022, the value is 20% of the manufacturer's base retail price and decreases by 15% for each 12-month period thereafter. Previously, the value was 30% of the manufacturer's suggested retail price (MSRP). For alternative fuel vehicles purchased on or after January 1, 2023, the VLT shall be calculated in the same manner as non-alternative fuel vehicles. The bill is effective January 1, 2020.

Senate Bill 1347, Chapter 65. Luxury Tax on Cavendish. This bill defines cavendish for luxury privilege tax purposes. It prohibits a person applying for a license to distribute tobacco products from having a place of business located in a residential location or post office box. Finally, it specifies that a license to sell tobacco is valid for one year unless it is cancelled earlier. The bill is effective August 27, 2019.

Lewis Roca
ROTHGERBER CHRISTIE

The foregoing summaries are not intended as legal advice on any particular question of law. If you have any questions or concerns about these or related developments, please contact us.

State and Local Tax Group



Pat Derdenger
Partner
602.262.5315
pderdenger@lrrc.com

Karen Lowell
Associate
602.239.7423
klowell@lrrc.com

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