January 2008

STEPTOE & JOHNSON LLP

Arizona Tax Update

A Periodic Report from Steptoe & Johnson LLP

When Experience Matters ®

New Prime Contracting Transaction Privilege Tax Developments

There are two recent developments in the area of the Arizona sales taxation of contracting that we bring to your attention in this newsletter. The first is the legislation that clarifies that a developer that owns land and hires one or more contractors to improve that land (e.g. homes or condos) will not be taxable on the sale of improved real property even if it is "presold." The second is the *Ormond Builders* Court of Appeals case which held that a construction manager acting as the owner's representative will not be taxable on payments made to the various trade contractors on the job.

Legislation Clarifies That an Owner/Developer Who Hires Contractors to Improve Real Property Cannot Be Taxable as a Prime Contractor Simply by Pre-selling the Improved Real Property.

On May 8, 2007, the Governor signed House Bill 2627 into law. This bill nullifies a recent Department of Revenue position that would have expanded the scope of persons taxable under the prime contracting classification. The Department had been treating an owner who hired other contractors to improve real property as the taxable prime contractor where that owner had executed sales contracts for the improved real property before construction was completed.

House Bill 2627 changes the statutory definition of "prime contractor." The new definition clarifies that, under most circumstances, a person who (1) owns real property, (2) hires one or more contractors to improve that real property and (3) does not itself improve that real property is not a taxable prime contractor regardless of whether it has a contract to sell the improved real property in place before construction is completed.

Owners and developers that employ contractors to improve real property for sale, i.e. speculative builders, have traditionally not been taxable as prime contractors under the state structure.

Most states impose a sales tax on the sale of building materials, but do not tax the business activity of contracting. Unlike those states, Arizona imposes a Transaction Privilege ("sales") Tax on people or entities that engage in the business of contracting, but exempts the sale of building materials to these entities from retail sales tax. Arizona's tax structure imposes the tax on the "prime contractor." Under this structure, not all "contractors" working on any given project are taxable. To be liable as a taxable "prime contractor," a person must first be a contractor – a builder, including trade contractors, that personally or by or through others improves real property. A person must also perform, coordinate or supervise the improvements and be the party responsible for the completion of the project.

To illustrate, an electrician doing work directly for a homeowner is a taxable prime contractor because it is a contractor and has the responsibility for completing the work. In contrast, an electrician working for a general contractor is an exempt subcontractor. In this scenario, the general contractor is the taxable party because it supervises and coordinates the trade contractors' work and has the responsibility to the owner for completing the project.

Arizona courts have long held that an owner, who is not a builder and employs other contractors to improve real property, does not incur liability as a prime contractor when it sells the improved real property. *See SDC Mgmt., Inc. v. State ex rel. Arizona Dep't of Revenue, 167 Ariz. 491, 808 P.2d 1243 (App. 1991).* In *SDC Management*, a California supermarket chain bought numerous parcels of land in Arizona and hired contractors to build improvements on that property. Within a few years, it later sold many of the improved real properties. The Department assessed tax under the "contracting" classification on the proceeds of sale. It argued that the supermarket chain met the definition of "contractor" because it undertook construction by or through the contractors it had hired, and was therefore taxable.

The Court rejected the Department's argument. It held that, in contrast to the City Speculative Builder tax, an owner that simply employs a general contractor to improve real property does not become taxable under the state structure by virtue of selling the improved real property.

Private Letter Ruling 05-007: the Department attempts to tax owners that pre-sell improved real property.

Developers and owners commonly hire prime contractors to construct buildings or make other improvements on land that the developer owns. In some cases, an owner or developer may contract to sell the improved real property to a third party. The contracts sometimes include an agreement by the owner or developer to make improvements to the real property before the property is transferred to the buyer.

In recent Private Letter Ruling, PLR 05-007 (September 2005), the Department used reasoning similar to its arguments in the *SDC Management* case. It took the position that an original owner, who used a general contractor to construct office condominiums, was a taxable prime contractor on its gross receipts from the sale, if it entered into a contract to sell the completed office condo and the contract was executed before the unit was substantially completed ("pre-sold"). In this situation, the Department treated the general contractor as an exempt subcontractor. If the developer did not pre-sell the unit, the Department ruled that the general contractor was the taxable prime contractor and would be taxed on the gross receipts it received from the owner/developer.

This ruling created two separate administrative dilemmas. First, it leads to a strong potential for double-taxation. The general contractor would be paying the tax on draws it received from the owner/developer during the construction process. However, if the owner/developer pre-sells the unit part way through the construction process, it will be paying tax on its sales proceeds. State statutes do not provide a mechanism through which the developer can receive a refund of the tax it already paid to the general contractor prior to the pre-sale.

Second, under the structure advocated by the Department, accurate reporting by the general contractor would become exceedingly difficult. The general contractor would have to continually know exactly which units the owner/developer had pre-sold, so that it could accurately collect tax to file its monthly TPT returns.

House Bill 2627 nullifies PLR 05-007, rejects the Department's position and conforms with the decision in *SDC Management;* refund claims are limited.

The Arizona legislature nullified the Department ruling by passing House Bill 2627, Laws 2007, ch. 188. The bill amends A.R.S. § 42-5075. It specifically *excludes* owners, who hire one or more contractors to improve real property and do not themselves improve real property, from the definition of prime contractor. *See* A.R.S. § 42-5075(N)(8). The exclusion applies "regardless of the existence of a contract for sale or the subsequent sale of the real property." *Id.*

House Bill 2627 makes this definition retroactive to January 8, 1991, the date of the Arizona Court of Appeals decision in *SDC Management*. House Bill 2627, however, requires that all refund claims be filed before January 1, 2008 and limits the total amount the state can refund to $10,000. If total claims exceed that amount, each claim will be reduced proportionately. Furthermore, the Department will not issue refunds unless the claimant provides evidence that it will return the refunded tax and interest to the party who paid the tax.

Under House Bill 2627, an owner that otherwise meets the exclusion's requirements, will only be treated as a taxable prime contractor in two discreet situations.

Under the new law, owners that meet the exclusion's requirements will only be taxable as prime contractors in two situations. First, an owner who hires contractors but does not itself improve real property will be taxable as a prime contractor if it executes and delivers to its contractors an Arizona Form 5005 exemption certificate. This certificate would state that the owner is liable for the sales tax.

Second, House Bill 2627 treats an owner/developer as a taxable prime contractor if that owner enters into a contract for the sale of the real property, but is also responsible to the purchaser for making improvements to the real property after title transfers and is compensated for those improvements. However, in this situation the owner bears liability only for the improvements made after title transfers to the purchaser.

House Bill 2627 also establishes a methodology for determining an owner's taxable gross receipts in this situation. Those methods are as follows:

- If the sales contract specifies the amount to be paid to the owner for post-title transfer improvements, that amount constitutes the owner's taxable gross receipts. However, any amounts that the owner receives after title transfers that are unrelated to the post-title transfer improvements are not taxable.
- If the owner and the purchaser enter an agreement separate and apart from the sales contract that specifies the amounts to be paid for post-title transfer improvements, those amounts comprise the owner's taxable gross receipts.

The bill also creates a presumption that amounts received by an owner/developer that was responsible to the purchaser for improvements subsequent to title transfer (other than delayed disbursements from escrow that are unrelated to the post-title transfer improvements) are taxable gross receipts unless the owner proves otherwise.

Finally, in a situation where an owner/developer does bear liability as a prime contractor, its tax base is determined under the prime contracting classification and will include the automatic 35% labor deduction and any other applicable exemption, deduction or exclusion.

By nullifying PLR 05-007, House Bill 2627 confirms that there is no speculative builder tax under the state structure and validates the marketing-arm/contracting-arm business structure used by many Arizona developers.

In nullifying the Department's attempt to expand the scope of taxable entities under the prime contracting classification, House Bill 2627 validates the Court of Appeals decision in *SDC Management* and confirms that there is no speculative builder tax at the state level.

Unlike the state structure, Arizona cities, through the auspices of the Model City Tax Code, can impose a tax on "speculative builders." This tax applies to any owner or developer who sells or contracts to sell improved real property either prior to completion or within twenty-four months of substantial completion of the improvements. The tax applies even though the owner does not actually perform any building activities. In 1991, the Court of Appeals determined that these types of owners were not taxable as contractors at the state level in *SDC Management*. By

excluding these types of owners from the definition of "prime contractor," House Bill 2627 confirms that there is no speculative builder tax under the state regime.

Moreover, House Bill 2627 validates the marketing arm/contracting arm business structure used by many large-scale builders and developers in Arizona. Under this business structure one related company (the marketing arm) hires another related entity (the contracting arm) to make improvements, such as building homes or condominiums. Either entity may own the land. If the marketing arm owns the land, it pays the contracting arm cost plus a reasonable percentage for its contracting activities. Then, it sells the completed improvements and the land to the final purchaser. If the contracting arm owns the land, it sells the completed improvements and land to the marketing arm for costs plus a reasonable percentage. The marketing arm then resells the completed improvements and land to the final purchaser. By using this structure, the business pays tax only on the contracting activities, not on the larger sales proceeds from the final sale.

Where the marketing arm owns the land, House Bill 2627 excludes that arm from the prime contractor definition because the marketing arm (1) owns the land, (2) hires one or more contractors to make improvements and (3) does not itself make improvements. Thus, it cannot be taxed as a prime contractor at the state level on the sale to the final purchaser. Where the contracting arm owns the land, the sale by the marketing arm to the final purchaser is not taxable at the state level because the marketing arm has not engaged in any taxable activity; it simply bought and then resold improved real property.

However, where the contracting arm owns the land, the House Bill might also exempt the sale by the contracting arm to the marketing arm and further reduce the builder's tax liability. If the contracting arm does not make any of the improvements itself, but uses only other contractors, it would meet the three requirements for the exclusion. In summary, House Bill 2627 validates the marketing arm/contracting arm structure by ensuring that the sale by the marketing arm to the final purchaser will not be taxed under the state structure. It may also provide an opportunity for additional tax savings.

Court of Appeals Decision in *Ormond Builders* Holds That Construction Managers Acting as the Representative of the Owner Are Not Taxable on Amounts Paid to Trade Contractors on the Job.

As noted above, Arizona places tax liability on the prime contractor, i.e. the builder that supervises, coordinates or performs real property improvements and is responsible for the completion of the project. Rather than relying on general contractors, many property owners try to curtail costs by hiring construction managers that have expertise in building. These construction managers provide advice to owners on design, make recommendations on costs and bids and, in some cases, actually execute contracts with trade contractors as an agent of the owner, schedule and supervise work, and pass funds through from the owner to the trade contractors on behalf of the owner.

In a recent case, *Arizona Department of Revenue v. Ormond Builders, Inc.*, the Department of Revenue took the position that a construction manager that acted in a supervisory capacity and passed funds through to subcontractors was taxable as a prime contractor on all amounts received from an owner. The Court of Appeals disagreed with the Department. It held that construction managers that actually supervise or coordinate construction may be taxed on their own fees, but they cannot be liable for funds received from the owner and paid to the trade contractors on behalf of the owner.

Background to the *Ormond* case: Ormond acted as a construction manager that supervised and coordinated on-site work and acted as a conduit through which owners would pay the trade contractors.

Ormond Builders, Inc. ("Ormond") is an experienced construction contractor. It entered into agreements with two Arizona school districts, Payson and Show Low, to provide management services and expertise on the construction of educational facilities within these two districts. The school districts sought out a construction manager because they lacked the in-house expertise to administer these projects.

The agreements required Ormond to supervise and coordinate all construction activities. For example, Ormond developed construction timelines and schedules; prepared budgets; directed, coordinated, monitored and inspected the work of trade contractors through full-time on-site employees; processed and approved change orders; assisted in obtaining building permits; and assisted the school districts in determining substantial completion of the projects. The agreements also required Ormond to use its best efforts to complete the projects.

Both school districts, however, directly entered contracts with various trade contractors, which obligated the trade contractors to perform all actual construction work. These contracts identified Ormond as a construction manager or the entity hired by the school districts to administer the projects. Ormond was not a party to any of the Payson trade contracts and signed the Show Low contracts, along with the school district, as a representative of the owner.

As part of its administrative function, Ormond oversaw the payment of the trade contractors. Trade contractors submitted their payment requests to Ormond, which processed and reviewed them. The school districts paid Ormond the amounts due to the trade contractors and Ormond deposited those funds in its own account for an interim period before disbursing them to the trade contractors.

Ormond was not obligated to pay trade contractors unless and until it received the funds from the school districts.

Under these arrangements, the school districts made three types of payments to Ormond: (1) a construction manager fee based on a percentage of the total project budgets; (2) payments for costs incurred by Ormond for expenses not included in the trade contracts, such as permit fees, license fees, debris removal, and costs for corrective work; and (3) pass-through payments for trade contractors.

Ormond paid transaction privilege tax on its own fees. Additionally, many of the trade contractors reported and paid taxes as prime contractors, but many others did not. Because all taxes on the two projects were not reported and paid to the Department, the Department audited Ormond. In the wake of the audit, it issued a state and municipal assessment against Ormond for the total amounts it received from the school district to both cover ancillary costs and pay the trade contractors. Ormond protested the assessment.

Relying on twenty years of precedent, the Arizona Board of Tax Appeals held for Ormond because agents are generally not taxable.

Arizona courts have long held that agents acting on behalf of their principals are not taxable. In 1969, the Arizona Supreme Court held that a construction contractor, which also acted as a purchasing agent with respect to specialized equipment that would be incorporated into an owner's real property, could not be taxed as a contractor on the gross receipts it received from the owner for that equipment. *Ebasco Servs., Inc. v. Arizona State Tax Comm'n,* 105 Ariz. 194, 459 P.2d 719 (Ariz. 1969).

Similarly, the Arizona Court of Appeals has held that a general partner of development partnerships that was acting in a capacity akin to a construction manager was not taxable as a construction contractor under the Tucson Tax Code. *See Indigo Co. v. City of Tucson*, 166 Ariz. 596, 804 P.2d 129 (App. 1991).

For the past twenty years, the Arizona Board of Tax Appeals has been correctly applying this precedent with respect to construction managers. *See Mackey Plumbing Co. v. Arizona Dep't of Revenue*, (Ariz. Bd. Tax App. July 30 1991) (No. 752-90-S) (holding that a plumber who contracted with an owner was the taxable contractor, rather than the construction manager that acted as an agent of the owner); *Jerry's Plumbing v. Arizona Dep't of Revenue*, (Ariz. Bd. Tax App. June 20, 1987) (No. 473-86-S).

In May 2003, the Arizona Board of Tax Appeals ("BOTA") relied on this precedent and held that Ormond was taxable only with respect to its fees, but not with respect to the amounts Ormond passed through to trade contractors. It rejected the Department's argument that Ormond satisfied the definition of a taxable prime contractor and recognized that Ormond's relationship to the school districts was one of agency. It thus held that the Department's assessment was in error.

The Arizona Tax Court reversed the Board of Tax Appeals and held that Ormond was a prime contractor and was taxable on all amounts received, but could take a credit for the amount of taxes paid by the trade contractors.

The Department of Revenue appealed BOTA's decision to the Arizona Tax Court. It argued that Ormond was liable for tax on all amounts received from the school districts under both the state and city tax structures. It contended that Ormond met the definition of prime contractor under the state structure because it was a licensed contractor (i.e. builder) that coordinated and supervised all work for the school districts.

It also contended that Ormond met the definition of "construction contractor" for city tax purposes. For city tax purposes, the definition of "construction contractor" mirrors the state definition in many respects. However, under the Model City Tax Code, a taxable construction contractor also specifically includes "any person receiving consideration for the general supervision and/or coordination" of a construction project.

The Department argued that agency relationship is irrelevant; if a party meets the definition of a taxable contractor all amounts received should be subject to taxation. The Department's position reflected a convenient approach to collecting all taxes due on the school district projects. Rather than having to audit numerous trade contractors, the Department could embark on "one-stop-shopping" by simply assessing all taxes due to Ormond.

In an Under Advisement Ruling issued on January 12, 2005, the Tax Court agreed with the Department. It held that Ormond met the definitions of taxable prime contractor and construction contractor for state and city purposes. Consequently, it ruled that all amounts received by Ormond were subject to tax, except to the extent Ormond could prove that taxes were paid directly by the trade contractors. In reaching its decision, the Tax Court virtually ignored both Ormond's argument that it acted as an agent of the school districts with respect to the pass-through payments to trade contractors and the voluminous Arizona precedent supporting Ormond's position that agents acting on behalf of their principals are not taxable.

The Arizona Court of Appeals Reverses the Tax Court and Holds that Ormond Was Not a Taxable Contractor with Respect to the Amounts it Passed-Through to Trade Contractors on Behalf of the School Districts.

Ormond appealed the Tax Court's decision to the Arizona Court of Appeals. It raised two issues on appeal.

1. Did Ormond act as a prime contractor in fulfilling its obligations as a construction manager?
2. If so, which of its receipts are taxable as gross income from the business of prime contracting or construction contracting?

On the first issue, the Court of Appeals held that Ormond met the definitions of taxable prime contractor and construction contractor with respect to its own contracts to act as a construction manager.

The Court reasoned that Ormond was a contractor because it entered into contracts with the school districts to supervise and coordinate the construction of the projects. It further reasoned that Ormond acted as a prime contractor and construction contractor with respect to its own construction management activities because it agreed to and was responsible to the school districts for performing certain specific supervisory tasks and received compensation for its performance.

The Court did not change its analysis because Ormond acted as an agent of the owner. Indeed, it noted that the definition of prime contractor does not exclude otherwise taxable parties acting in an agency capacity and that being an agent may not necessarily be inconsistent with acting as a prime contractor. Consequently, the Court held that Ormond was liable for transaction privilege taxes on the fees it received for its construction management services (which it had already paid) and on the amounts it received as reimbursement for the ancillary services it performed.

On the second issue, the Court reversed the Tax Court and held that Ormond was not taxable on the largest portion of the Department's assessment – the pass-through funds used to pay trade contractors. Instead, the Court held that Ormond acted as the school districts' agent with respect to these amounts.

While Arizona statutes create a presumption that all gross income derived from a business activity are taxable until the contrary is shown, the Court cited the *Ebasco* decision discussed above and recognized that all "gross income" of a prime contractor need not include all monies paid to that contractor on any given project. In short, a prime contractor may receive both taxable and non-taxable receipts.

The Court agreed that Ormond acted as the school districts' agent with respect to these funds because:

- Ormond was not liable to the trade contractors for payment under those contractors' contracts with the school districts;
- Ormond was not a party to the Payson School District's contracts with the trade contractors in any capacity and signed the Show Low contracts only as a representative of the owner;
- Ormond did not sign the numerous change orders on the projects;
- Even though Ormond deposited the sums it received into its own account, the short-term possession and use of these funds to pay trade contractors reflected an agency relationship, similar to that of an escrow or payroll agent;
- Ormond was not at-risk and did not assume any liability for trade contractors' work should those contractors fail to perform.

Furthermore, the Court rejected the Department's attempt at one-stop shopping. While recognizing that it might be simpler for the Department to collect from one large taxpayer than multiple smaller ones, the Court observed that neither Arizona statutes nor the Department's own regulations mandate or can support the imposition of tax on a single prime contractor per project.

Observations

In addition to significantly reducing the tax liability of the taxpayer in *Ormond*, this decision brings further clarity to the taxability of construction managers under Arizona law. Construction managers that engage in any type of supervisory activities or that assume any responsibilities for administering a construction project on behalf of an owner will likely be taxable as prime contractors and construction contractor with respect to their own fees.

In contrast, construction managers that simply assist owners in reviewing plans, specifications, budgets and materials, but that do not assume any responsibilities for overseeing trade contractors, may still be exempt.

Most importantly, construction managers that pass-through funds from owners to trade contractors should not be liable for transaction privilege taxes on these sums as long as they can establish an agency

relationship. To establish this relationship, agreements with owners should, at minimum: (1) clearly state that the construction manager is the agent of the owner; (2) clearly state the construction manager does not assume the risk for trade contractor non-performance; (3) and clearly set forth that the construction manager is not responsible for payment to the trade contractors. Finally, as an additional safeguard, we recommend that a construction manager that passes funds through on behalf of an owner create a separate account for routing these funds.

It merits note that the foregoing summaries are not intended as legal advice on any particular question of law. If you have any questions about these or related developments, please contact Pat Derdenger.

Notes:

Steptoe's State & Local Tax Practice

Our Washington, Phoenix, and Los Angeles attorneys represent business clients of many types and sizes in state and local tax matters, including high-technology businesses, electric utilities, telecommunications companies, mining and railroad companies, manufacturers, retailers, banks, printers, mail order businesses, tax-exempt organizations, and resorts.

On behalf of these clients, our attorneys litigate complex and varied income, sales and use, and property tax issues in administrative proceedings and state and federal courts, and they also seek legislative solutions to industry-wide concerns that affect firm clients.

In addition, our attorneys counsel the firm's clients on the multi-state tax implications of their business transactions. For example, the firm advises its e-commerce industry clients on their complex multi-state income tax responsibilities and their sales and use tax collection obligations.

Appellate State & Local Tax Practice

Representing a financial institution appealing the disallowance of bad debt refunds arising from retail sales tax paid on assigned receivables, where those receivables were assigned without recourse by the retailer to the financial institution.

Representing a newspaper publisher on the issue of whether, for corporate income tax purposes, an affiliated corporation that was a partner in a partnership that manufactured newsprint satisfied the operational integration test for inclusion in the publisher's unitary group.

Representing an electric utility in the valuation for property tax purposes of its transmission and distribution network, and specifically whether contributions in aid of construction are to be included in the valuation base.

Representing a national apartment developer in the proper application of the state transaction privilege tax to construction managers.

Representing a developer of low income housing tax credit projects over the method to be used in valuing the apartment projects for property tax purposes, specifically whether the value of the federal tax credits are to be included in the valuation base, and whether for the income method of valuation, the income stream is to include the actual rents paid by the tenants (which is restricted) or market rent.

Representing a construction contractor in establishing that the state could be estopped from imposing taxes based on its communications and positions in past correspondence and audit assessments.

Defending a judgment for an operator of self-storage facilities in an action challenging property tax classification of housing provided for on-site managers.

Representing a pharmaceutical company in appealing state income taxes imposed on an out-of-state business based on protections for "solicitation of sales" under Public Law 86-272.

Corporate Income Tax

Advising and representing corporations in controversies over "unitary" combination issues – i.e., whether a particular affiliate is a member of the unitary group or not under the various tests the states use for determining unitary combination (such as operational integration or functional integration).

Advising and representing corporations on income tax nexus issues, particularly with respect to the application of the protection from state income tax afforded by Public Law 86-272 (which prohibits a state from imposing a net income tax where the company's only contact with the state is the solicitation of orders where those orders are sent back to the home office for approval and filling).

Advising and representing companies on business income vs. non-business income issues (business income is apportioned to the various states the company does business in using factor apportionment while non-business income is allocated entirely to the source state). Some examples include gain on the sale of stock of a foreign subsidiary, the sale of a plant that had been closed for a number of years, the sale of land that had been acquired to build a new facility but where plans changed, royalty income from patents, income from court-awarded judgments. Assisting E-commerce clients with state income tax planning, particularly with nexus and Public Law 86-272 issues.

Advising and representing clients on intangible holding company issues and whether for separate return reporting states such a holding company has nexus with a taxing state based on the presence of the holding company's intangibles in the state (e.g., trademarks, trade names). Also advising and representing clients on whether such an intangible holding company is properly included in a unitary group based upon the particular state's unitary test.

Representing companies protesting and appealing disallowed income tax credits for pollution control equipment, and specifically whether pollution control equipment installed on leased and rented automobiles qualifies for the credit and whether retroactive legislation providing that the credit does not apply to automotive pollution control equipment is constitutional.

Representing a newspaper publisher in an appeal involving the question of whether the flow through income from an out-of-state partnership to the publisher (the publisher was a general partner) where the partnership had no nexus with the taxing state was protected from taxation by Public Law 86-272.

Obtaining private corporate income tax rulings and drafting state income tax legislation for clients and industry groups.

Tax Consequences of Mergers & Acquisitions

Counseling clients on the state and local tax consequences of mergers and acquisitions, both income tax and sales tax, including whether an asset sale is a casual sale for state sales tax purposes

Working with corporate counsel to draft tax provisions for merger and acquisition agreements.

Multi-State Taxation

Income Taxation

Advising multi-state businesses on state corporate income tax issues, including unitary combination issues, consolidated return elections, allocation and apportionment issues, business/non-business income questions, Public Law 86-272 nexus issues, throwback rule issues, Appeal of Joyce types of issues, intangible holding company issues and voluntary compliance and amnesty filings.

Counseling clients on the multi-state taxation of flow-through entities such as partnerships, S-corporations, and limited liability companies, including nexus issues, composite return filings, and combined return issues.

Sales and Use Taxation

Advising clients on nexus issues: when remote vendors will be required to collect the destination state's sales and use tax on sales made into the state, voluntary compliance and amnesty filings, Streamlined Sales Tax Project issues and registration.

Sales and Use Taxes, Privilege Taxes, & Excise Taxes

Advising high-technology businesses, telecommunication companies, and manufacturers on gross receipts and other privilege taxes imposed by various jurisdictions.

Advising an international telecommunications company on nexus issues and state and local tax collection obligations on international calls.

Advising airlines and other air transportation companies on whether their sale or purchase of aircraft is subject to sales or use tax.

Advising out-of-state alarm monitoring services on nexus issues.

Advising contractors and homebuilders on the state and local tax treatment of their construction and home-building activities.

Representing clients during a state or local audit to avoid or limit an assessment before it is issued.

Representing developers and construction contractors appealing assessments of state and municipal privilege taxes.

Working with homebuilders to prepare and appeal denials of refund claims where land deduction claimed on tax returns was substantially less than the deduction allowed by statute.

Advising e-commerce clients on sales and use tax collection obligations in the various states where their customers are located and where the orders are shipped.

Representing clients in protests and appeals of tax assessments disallowing exemptions from sales and use tax claimed by clients engaged in mining, construction contracting, natural gas pipelines, adverting, and printing and publishing.

Representing clients engaged in taxable and nontaxable business activities that have been taxed as if all receipts were from taxable business transactions.

Representing a bank's protest of sales tax assessed on the sale of a debtor's business assets.

Representing a regional marketer of petroleum products protesting denied refunds of excise taxes on gasoline and diesel exports.

Advising providers of systems design, software development, and other computer services on exemptions from retail sales and use tax.

Obtaining private tax rulings and drafting state tax legislation for clients and industry groups.

Property Tax

Our real and personal property tax representation spans the full administrative process through the Arizona Tax Court.

Advising and representing heavy and light industrial manufacturers, high-technology business, multi-family residential rental owners, golf course and common area land owners, and other property owners in real property tax valuation and classification appeals, including illegal tax claims.

Representing a major electric utility in property tax appeals over the value of a nuclear generating plant, the treatment of contributions in aid of construction, and other valuation issues.

Representing operators of federally-owned national park facilities seeking refunds for erroneous assessments of property tax.

Representing clients challenging the inclusion of federal tax credits in the valuation of low-income rental housing.

Representing clients faced with Notice of Change or Notice of Correction proceedings and in obtaining refunds and/or valuation changes through Notice of Claim proceedings.

Representing property owners who have been denied appropriate statutory exemptions.

Representing owners of improvements on land leased from governmental entities.

Representing industrial manufacturers in personal property audits and valuation appeals involving issues of value and obsolescence.

Steptoe's Federal Tax Practice

Steptoe's federal tax practice covers the entire spectrum of federal taxation, including representation of businesses before the Congress, Treasure and the national office of the IRS; transactional planning for domestic and multinational corporations; complex audit and controversy work for corporations and other business interests contesting IRS adjustments; and litigation before the Tax Court, Court of Federal Claims, district courts, courts of appeals, and the Supreme Court. The firm's tax practice also encompasses all aspects of employee benefits (ERISA), executive compensation, tax exempt organizations, charitable giving, and estate planning.

State & Local Tax Group

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