

ARIZONA TAX 2007 UPDATE

This update will provide you with an overview of Arizona tax developments that have occurred over the past year focusing on 2007 tax legislation and court cases. We trust that you will find this annual compilation of Arizona tax developments useful and interesting. Should you have any questions about the developments reported here, or their potential applicability to your business, please feel free to call Pat Derdenger, the head of our state and local tax practice, at 602.257.5209, or e-mail him at pderdenger@steptoe.com. We are also happy to announce that the past editions of our Arizona Tax Updates are now available on our website; please visit www.steptoel.com/aztaxupdates to view them.

Some of the more significant developments that we would like to call your attention to are:

House Bill 2627 - Changes the Statutory Definition of "Prime Contractor."

This Bill nullifies a recent Department of Revenue position that expanded the scope of persons taxable under the prime contracting classification. The Department had previously treated an owner who hired other contractors to improve real property as the taxable prime contractor when that owner had executed a sales contract for the improved real property before the construction was completed. The Bill changes the statutory definition of "prime contractor" and 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.

House Bill 2784 - Provides Property Tax Relief for Business Personal Property and Class 1 Property.

This Bill changes the schedule of additional depreciation allowed for Legal Class 1 and 2 business personal property that is initially classified during or after the 2008 tax year. It allows a higher percentage of additional depreciation and also extends the number of years that the property receives additional depreciation from 4 to 5 years. Furthermore, the bill speeds up the assessment ratio reduction for Legal Class 1 and Legal Class 6.4 (Enterprise Zone property for secondary property tax purposes) so that the assessment ratio reaches 20% in 2010, instead of 2014 as originally scheduled. To accomplish this, the rate will decrease by 1% per year instead of the current 0.5% per year.

Arizona Dep't of Revenue v. Ormond Builders, Inc. The Court of Appeals held that a construction manager acting as the owner's representative is not taxable on payments made to various trade contractors on behalf of the owner. However, a construction manager is taxable on its own fees that it receives in compensation for its management services when those management services fall within the definition of "prime contractor."

LEGISLATION

The general effective date for 2007 legislation is September 19, 2007, unless otherwise noted in the summaries.

Income Tax

House Bill 2079 (Laws 2007, Chapter 7). *Income Tax Review Schedule Update.*

This bill reschedules the individual income tax credits for family income, donations to a private school tuition organization and public school extracurricular activity fees to the income tax credit review schedule in 2012. It also reschedules the individual and corporate income tax credits for school site donations to the income tax credit review schedule in 2012.

House Bill 2084 (Laws 2007, Chapter 112). *Allows an Individual Income Tax Credit for Arizona Residents who Pay Income Taxes to Another State in Which They are Also Considered a Resident Under the Laws of That State.*

Some states consider an individual to be a resident of that state if he or she has working in that state for a certain period of time (usually 6 months). In such cases, all of the taxpayer's income is subject to taxation not only in Arizona, but also in the other state. This includes a spouse's salary, dividends, interest, capital gains, pension and other forms of income even if not earned in that state. This Bill provides for a credit in such circumstances. See A.R.S. § 43-1071. The credit may only be claimed for the amount of taxes paid on income derived from within the other state. Any claims for refund must be filed according to the statute of limitations (4 years), up until December 31, 2011. The Bill applies retroactively to taxable years from and after December 31, 2001.

House Bill 2322 (Laws 2007, Chapter 225). *Modification of the Motion Picture Production Tax Incentive Program.*

This Bill modifies the motion picture production tax incentive program by providing that 5% of the credits be used for commercials and music videos. The Bill also establishes a new managed audit program within the DOR to facilitate transferring these credits. It also

adds new income tax credits for infrastructure projects (under the existing caps for soundstages and support facilities) and restructures the amount of credit a motion picture production can receive.

House Bill 2491 (Laws 2007, Chapter 180). *Expands the Solar Energy Income Tax Credit to Include Third Party Organizations That Have Installed or Manufactured Solar Energy Devices.*

Currently the tax credit is available only to a taxpayer who has installed a solar energy device or a third party organization that has financed a solar energy device. In addition to commercial or industrial applications, this Bill includes any other nonresidential applications of one or more solar energy devices installed in the taxpayer's facility as eligible to receive the income tax credit. The Bill contains a retroactive effective date of January 1, 2006.

House Bill 2784 (Laws 2007, Chapter 258). *2007 Tax Reduction Package.*

This Bill provides individual tax incentives to invest in college savings plans and creates a new individual income tax credit for donations to the Military Relief Fund.

Senate Bill 1157 (Laws 2007, Chapter 1 E). *Establishes a Standard Procedure for Income Tax Filing and Payment Deadlines.*

The Bill stipulates that the filing or payment of income tax is considered timely filed on the next business day after a Saturday, Sunday or legal holiday if the original deadline falls on one of those days. It further provides a retroactive effective date from and after December 31, 2006 for income tax filing and payment deadlines.

Senate Bill 1233 (Laws 2007, Chapter 160). *Provides a Statutory Definition of Final Determination for the Purpose of Adjusting Arizona Gross Income Due to Changes in Federal Taxable Income.*

Arizona, like many states, requires taxpayers to use their federal adjusted gross income as the starting point for a state income tax assessment. Under the current statute, if a taxpayer's taxable income is adjusted under audit by the IRS or changed as the result of a renegotiation of a contract with the federal government, the taxpayer is required, within 90 days, to file either a copy of the final determination (for the DOR to recompute the tax owed) or an amended return. The DOR can require an amended return from a taxpayer who chooses to only file a copy of the final determination and usually requests the taxpayer to do so. Before this Bill there was no statutory definition of "final determination." This caused problems in situations where there was a partial agreement with the IRS, because a taxpayer might end up having to file multiple amended returns with the DOR to ensure that it had met the 90 day requirement. This Bill provides a statutory definition of "final de-

termination" under which the due dates for submitting documents to the DOR is after all IRS disputes have been settled. The Bill provides a retroactive effective date beginning from and after December 31, 2006.

Transaction Privilege Tax and Use Tax

House Bill 2300 (Laws 2007, Chapter 252). *Allows for the Establishment of the Upper San Pedro Water District ("District") and Board of Directors if Approved by Qualified Voters in the District.*

This Bill outlines the powers, duties, responsibilities and limitations of the District and the Board. It creates an Organizing Board to prepare organizational, financial, comprehensive and election plans for the District. In addition, this Bill provides the District with authority to impose a TPT.

House Bill 2515 (Laws 2007, Chapter 276). *Prohibits Municipalities Located Entirely Within a Metropolitan Statistical Area With a Population of Two Million or More From Providing Retail Tax Incentives to Induce Businesses to Locate in Their Municipality.*

However, the prohibition for retail tax incentives does not apply to any city or town that has adopted incentives prior to July 1, 2007. In addition, other exceptions to the penalties are provided.

House Bill 2627 (Laws 2007, Chapter 188). *Changes the Definition of "Prime Contractor."*

The definition of prime contractor under A.R.S. § 42-5075 is changed to exclude property owners who hire one or more contractors to make improvements to the property, regardless of the existence of a sales contract. Former property owners may be considered prime contractors for sales tax purposes only on improvements not included in the sales contract made by the former owner after the property's title has been transferred to a new owner. The Bill is retroactive to January 8, 1991. The deadline for refund claims was December 31, 2007, and refunds were limited to \$10,000, including interest.

House Bill 2784 (Laws 2007, Chapter 258). *2007 Tax Reduction Package.*

This Bill provides a TPT exemption for admission sales to the 2009 NBA All-Star game and other related events with a conditional enactment that requires the City of Phoenix to provide a municipal TPT exemption for the same events if it is chosen as the host city. This Bill provides for the repeal of this exemption after December 31, 2009.

Senate Bill 1592 (Laws 2007, Chapter 174). *Requires a Contractor Who is Convicted of a License Violation and Sentenced to a Probationary Period to Pay TPT and Use Taxes Arising From the Act or Omission of Violation.*

License violations include committing a wrongful or fraudulent act that results in substantial injury to another person; aiding or abetting a licensed or unlicensed contractor to evade licensing requirements; or acting as a contractor without a license. The Bill authorizes the DOR to release confidential tax information to the prosecutor for purposes of sentencing the contractor for license violations.

Property Tax

House Bill 2078 (Ariz. Sess. Laws 2007, Chapter 41). *Extends the Property Tax Oversight Commission ("PTOC") for 10 years.*

The PTOC provides oversight of the budgeting and taxation processes of counties, municipalities, school districts and community college districts. The PTOC was set to sunset on July 1, 2007, but this Bill extends the sunset date until July 1, 2017.

House Bill 2091 (Ariz. Sess. Laws 2007, Chapter 8). *Parcel Splits and Taxing Districts.*

A homesite area is assessed as class 3 property at 10% of its full cash value and qualifies for property tax protections for owner-occupied residential property. Land that is part of the parcel, but in excess of the designated homesite area is generally classified as class 2, vacant land. This land is assessed at 16% of its full cash value and is not eligible for the tax protections for owner-occupied residential property. While the Department has issued guidelines to county assessors assessing large parcels, there previously was no statutory definition of "homesite." This Bill defines a homesite and allows class 3 property to include.

House Bill 2091 (Ariz. Sess. Laws 2007, Chapter 8). *Parcel Splits and Taxing Districts.*

This Bill states that a special taxing district that submits proposed boundaries after November 1, 2007 must only include whole parcels, not partial parcels.

House Bill 2207 (Ariz. Sess. Laws 2007, Chapter 117). *Tax Collection on Split or Consolidated Property.*

This Bill prescribes the process for allocating the taxes due on a property that was split or consolidated after the tax roll was submitted to the county treasurer.

House Bill 2476 (Ariz. Sess. Laws 2007, Chapter 106E). *Repeals the Tax on Improvements Constructed on Land Owned by and Leased From an Agricultural Improvement District Retroactively to September 18, 2003.*

In 2006, A.R.S. § 42-11102 was amended to remove subsection D which specifically taxed a group of buildings in Tempe owned by SRP. This Bill makes the 2006 legislation retroactive to September 18, 2003, thus having no legal effect for any time period. The Bill had an emergency clause and went into effect on April 20, 2007

with the Governor's signature.

House Bill 2657 (Ariz. Sess. Laws 2007, Chapter 203). *Revises the Method for Valuing the Land Used by an Electric Generation Facility.*

This Bill requires the DOR to value the land used in operating electric generation facilities at "the cost to the current owner" as of December 31 of the preceding calendar year. This Bill is retroactive to the valuation years beginning from and after December 31, 2006. This means that it is effective for the 2007 valuation year (2008 tax year). The revised land values were included in the preliminary valuation notices that were mailed on June 15, 2007.

House Bill 2784 (Ariz. Sess. Laws 2007, Chapter 258). *2007 Tax Reduction Package.* This Bill provides property tax relief for businesses as follows:

Business Personal Property

- Changes the schedule of additional depreciation allowed for Legal Class 1 and 2 business personal property that are initially classified during or after the 2008 tax year.
- Allows a higher percentage of additional depreciation and also extends the number of years that the property receives additional depreciation from 4 to 5 years.

Class 1 Property

- Speeds up the reduction of the assessment ratio for Legal Class 1 and Legal Class 6.4 (Enterprise Zone Full Cash Value) so that a 20% assessment ratio is reached in 2010 rather than 2014. To accomplish this, the rate will decrease 1% per year instead of the current 0.5% per year.

MISCELLANEOUS TAX PROVISIONS

House Bill 2681 (Ariz. Sess. Laws 2007, Chapter 218). *Repeals Utility Assistance Fund.*

This Bill repeals statutes relating to the Utility Assistance Fund and requires utility companies to transfer all abandoned deposits to a Qualified Fuel Fund Entity for the purposes of assisting eligible Arizona residents in making deposits, repairs, and replacement of utility related appliances or systems.

House Bill 2786 (Ariz. Sess. Laws 2007, Chapter 260). *Budget Reconciliation. General Revenues.*

This Bill makes various changes related to state revenues necessary to implement the FY 2007-08 state budget. Provisions related to the DOR and unclaimed property statutes are as follows:

- Decreases the abandonment period for corporate bonds from 5 to 3 years.
- Specifies a 3 year holding period for dividends and other interests on unclaimed securities.
- Allows the DOR to sell unclaimed securities upon their receipt.
- Eliminates requirement for the DOR to pay appreciation to claimants if securities are sold prior to the 3 year holding period.
- Entitles claimants to the net proceeds from the sale of securities.
- Requires all proceeds from the sales of securities in FY 2007-08 be deposited into the state General Fund.

House Bill 2789 (Ariz. Sess. Laws 2007, Chapter 263). *Budget Reconciliation; Heath and Welfare.*

This Bill includes provisions related to the budget for health and welfare. Affected state agencies include the Arizona Health Care Cost Containment System, the Department of Health Services, the Department of Administration, the Department of Economic Security and the Department of Insurance.

ADMINISTRATION

Senate Bill 1036 (Laws 2007, Chapter 132). *Directs the DOR to Extend Tax Due Dates and Waive or Suspend Interest for Taxpayers Affected by Certain Federal or State Disasters.*

The list of disasters include Presidentially-declared disasters, military or terrorist actions or states of emergency as declared by the Governor. This Bill defines *affected taxpayer* as an individual or business located in a covered area, a government-sanctioned relief worker who is assisting in a covered area, an individual or business whose necessary records are maintained in a covered area and any other person as determined by the Director of the Department.

Senate Bill 1554 (Laws 2007, Chapter 37). *Increases The Compensation Paid to the Hearing Officers of the State BOE.*

Raises the maximum per diem compensation, from \$150 to \$300, for hearing officers employed by the State BOE.

Senate Bill 1320 (Vetoed by Governor). *Commercial Photography Exemption.*

The list of items exempt from sales and use tax are expanded to include sales of photographic images to a commercial purchaser who acquires the images for future commercial use. The Governor's veto message stated

that contrary to the sponsor's assumptions, commercial photography has been subject to taxation for decades and the DOR has not changed its policy on this issue. Retroactive to taxable periods beginning August 1, 1993.

CASES

Transaction Privilege Tax and Use Tax

Copper Hills Enterprises, Ltd. v. Arizona Department of Revenue, 214 Ariz. 386, 153 P.3d 407 (Ct. App. 2007). A sales tax collected by the city from a business located in an annexed area must be refunded if the subject annexation is found to be void.

The taxpayer was located in a Gila County island, an unincorporated area between the City of Globe and the Town of Miami. In 1996 the City attempted to annex the Gila County island. From September 1996 to December 1998, the taxpayer paid the city \$98,041.20 in municipal TPT. The Town of Miami successfully challenged the annexation in *Town of Miami v. City of Globe*, 195 Ariz. 176, 985 P.2d 1035 (Ct. App. 1998). The court concluded that the annexation was invalid and of no force or effect. The taxpayer filed two refund claims seeking a total of \$98,041.20. In this case, the question before the Court of Appeals was whether the attempted annexation empowers the City to levy taxes for a limited time on businesses within the subject area. Statutes provide that a municipality may not impose a tax on gross receipts derived from places of business lying outside its geographical boundaries. The Court found that the annexation did not comply with at least one of the procedures required by the statute, and therefore it did not become final. Since the City lacked jurisdiction to undertake the annexation, it was null and void. The Court of Appeals reversed the tax court's ruling in favor of the City and found that it could not impose its tax on the county island businesses. Thus, the Court directed the lower court to enter summary judgment in favor of the taxpayer in the amount of the refund of \$98,041.20.

Arizona Department of Revenue v. Ormond Builders, Inc., 216 Ariz. 379, 166 P.3d 934 (Ct. App. 2007). A construction manager acting as the owner's representative will not be taxable on payments made to trade contractors on the job.

The taxpayer, a construction management contractor for two school districts, appealed the tax court's decision establishing a contractor's liability for sales tax under the state prime contracting classification and municipal construction contracting classification. The Court of Appeals found that the taxpayer was a "prime contractor," for purposes of state sales tax, but such tax did not apply to amounts that the contractor received from school districts to pay to trade contractors. The Court concluded that the taxpayer paid the trade contractors as the agent of the school districts. However, the Court found that the contractor's own activities constituted "construction

contracting” for purposes of the provision in the Model City Tax Code imposing a privilege license tax on construction contracting. Thus the construction manager was responsible for taxes on its own fees.

Karbal v. Arizona Department of Revenue, 215 Ariz. 114, 158 P.3d 243 (Ct. App. 2007). *The mere fact that Arizona hotels and car rental agencies may pass their taxes on to customers does not shift the legal incidence of the tax or confer standing to sue.*

Steven Karbal and Michael Devine, Michigan residents, rented a car and a hotel room during their visit to Arizona. The car rental companies collected amounts equal to 3.25% of their car rental prices, and the hotels collected amounts equal to 1% of their hotel rates. Devine filed a refund claim challenging the validity of the taxes collected. The Court of Appeals found that Karbal lacks legal standing to bring this suit because he is not the actual taxpayer. The Court held that hotel and car rental customers who paid the surcharge did not have standing to litigate the validity of these taxes because, similar to the state’s TPTs, the incidence of the tax (and liability) is on the person or entity engaging in the hotel or car rental business. Thus the Court dismissed of Karbal’s claim.

Property Tax

Sun City Grand Community Association v. Maricopa County, 216 Ariz. 173, 164 P.3d 679 (Ct. App. 2007). *The statutes governing eligibility for common area property tax valuation extends the right to use the property for the general public and commercial use.*

The property at issue in this case was the Sun City Grand clubhouse, golf cart and snack shop buildings and surrounding property. The tax court held that the subject property qualifies as a “common area” for purposes of property tax valuation under Arizona law. The county appealed. The main question before the Court of Appeals was whether or not A.R.S. § 42-13402(B) requires that the subject property be used *only* by owners, residents, and invited guests, or if any use by the general public disqualifies the subject property as a common area. The secondary question was whether or not the statute limits the common area to commercial use. In its analysis, the Court not only closely studied ambiguous words in the statute in question, but also looked for support in the legislative history of A.R.S. § 42-13402. The court found that members of the Legislature expressly declined to restrict common areas to non-commercial uses or non-general public uses, thus indicating that they intended to include use by the public (even for commercial use). Therefore, the Court of Appeals affirmed the judgment of the tax court.

Arizona Department of Revenue v. Questar Southern Trails Pipeline Co, 215 Ariz. 577, 161 P.3d 620 (Ct. App. 2007). *In calculating full cash value, the value produced by statutory formula is the exclusive method for calculating such value. A taxpayer must pay interest on an underpayment of taxes from the date of underpayment if the Department successfully appeals the set value.*

Questar is a Utah corporation and operates a pipeline in Arizona. The taxpayer appealed the full cash value calculation claiming that the Department should have accounted for external obsolescence. The Court of Appeals confirmed that Arizona statutes provide a method for valuing pipeline property and this statutory formula is the exclusive method for calculating full cash value. Thus, the Department did not need to use obsolescence in its valuation process. In any event, when the Legislature wants the Department to consider obsolescence, it provides express instructions. Secondly, the taxpayer contended that the cash value cannot exceed market value pursuant to A.R.S. § 42-1101(6). The Court stated that even assuming that the taxpayer’s assertion is correct, the effective date for the statute that adds the “market value” provision was September 21, 2006 and it is not retroactive to 2004 and 2005 (the years at issue). The taxpayer also challenged the lower court’s award of interest starting from the date of underpayment. However, the Court of Appeals affirmed based on the analysis of the statute (A.R.S. § 42-16214) and its legislative history.

Eurofresh, Inc. v. Graham County, 218 Ariz. 382, 187 P.3d 530 (Ct. App 2007). *A Taxpayer who is seeking a reduction in full cash value for ad valorem tax purposes due to purported external obsolescence must prove both the cause of the asserted obsolescence and that the subject property is actually affected by that cause.*

Eurofresh is the leading year-round producer and seller of greenhouse tomatoes in the United States. The subject properties in this case are two hydroponic greenhouses located in Arizona. Eurofresh challenged the county’s full cash value assessments for both greenhouses in tax court and won, but the County appealed. The Court of Appeals reviewed whether or not a party seeking an adjustment in property value for ad valorem tax purposes based on external obsolescence must prove the cause, effect and quantity of such obsolescence. Eurofresh’s expert witness employed the market extraction method to calculate depreciation. He analyzed sales of other greenhouses similar to the subject properties and concluded that because the three other greenhouses sold for between 40% and 58% less than their replacement costs, it was appropriate to reduce the replacement costs of the subject properties by at least 40% to account for the external obsolescence. The Court stated that even if accepting this approach, Eurofresh failed to offer sufficient proof of the cause of the external obsolescence in the other properties. There was no evidence that subject

properties in fact have incurred “similar amounts and types” of external obsolescence. Eurofresh supported its argument with a simple allegation that its greenhouses must have incurred external obsolescence because such external obsolescence occurred in the other greenhouses. Thus, the Court of Appeals held that the taxpayer must prove the cause, effect and quantity of such obsolescence, and reversed the Tax Court.

Personal Liability

Arizona Department of Revenue v. Action Marine, Inc.*, 215 Ariz. 584, 161 P.3d 1248 (Ct. App. 2007), rev’d, 181 P.3d 188 (2008). *The Department may not hold corporate officers or directors personally liable for failing to remit the money collected from corporation’s customers to pay TPT.

In this case, the Arizona Court of Appeals held that A.R.S. § 42-5028 does not extend personal liability to corporate officers and directors whose corporate duties include the collection and remittance of sales tax. The Court reasoned that tax statutes that impose liabilities for failures to do some act can only apply to persons upon whom another statute imposes an affirmative obligation to act.

NOTE: This decision has been reversed by the Arizona Supreme Court later in 2008.

Chandler v. Jackpot Partners, L.L.C.*, TX 2006-050066 (Ariz. Tax Ct. 2007). *Individual members of a limited liability company are personally liable for the L.L.C.’s unpaid and uncollected city sales tax under A.R.S. § 29-706(D) of the Arizona Limited Liability Company Act.

In this case, the taxpayer L.L.C. had distributed all assets to its members. A.R.S. § 29-706(D) provided that only the L.L.C. had the legal remedy to recover distributions made to its members. The Court, though, considered the distributions to be a fraudulent conveyance, and held that Chandler could compel the L.L.C. to recover the tax proceeds from its members on Chandler’s behalf.

Miscellaneous

4501 Northpoint v. Maricopa County*, 212 Ariz. 98, 128 P.3d 215 (2006). *A taxpayer who accepts a Rule 68 offer of judgment which is ultimately in the taxpayer’s favor is eligible for a fee award under A.R.S. § 12-348(B).

The taxpayer sued the County based on a dispute regarding the State BOE’s valuation of the taxpayer’s real property. The County sent the taxpayer an offer of judgment, offering to reduce the valuation. The offer had been partially accepted by the taxpayer, conditioned with the request for attorney fees. The tax court denied the request for the attorney fees on the basis that the offer of judgment was not an *adjudication on the merits* and the Court of Appeals affirmed. The Arizona Supreme Court, on review defined the phrase “prevails by an adjudica-

tion on the merits” by considering plain meaning of the statute, its legislative intent and prior case history. It held that because a Rule 68 judgment in the taxpayer’s favor is a final resolution that is binding on the County, it is an “adjudication on the merits” for purposes of A.R.S. § 12-348. Thus the taxpayer is eligible for a fee award.

DEPARTMENT OF REVENUE RULINGS AND DECISIONS

Corporate Income Tax Rulings

CTR 07-2 (Application of Penalties to an Income Tax Return Filed Under Extension)

Reviews the return extension filing provisions of A.R.S. §§ 42-1107, 42-1125.A., 42-1125.D., 43-501 and provides detailed guidelines on imposing the late filing penalty, the late payment penalty and the extension underpayment penalty to returns filed under an extension as provided by the statutes above.

CTR07-1 (Inclusion of Short-Term Investments in the Sales Factor)

Provides that only “net” gain (not gross receipts) from the investment of short-term securities is included in the sales factor of the apportionment formula. This ruling rescinds and supersedes CTR99-4.

Fiduciary Tax Rulings

FTR 07-1 (Taxation of Electing Small Business Trusts (“ESBT”))

Explains that the computation of Arizona taxable income starts with federal taxable income, computed pursuant to the IRC, and is not limited to only federal taxable income shown on a federal form, such as Form 1041. The taxable income of the S portion is not shown on the Form 1041, but the schedule computing the taxable income of the S portion is part of the federal return field. This ruling clarifies that because the ESBT is a single entity and Arizona does not have a provision imposing a different rate of tax on the S portion, the ESBT must file a single Arizona income tax return for fiduciaries (Arizona Fiduciary Income Tax Return Form 141AZ). The ESBT must include the federal taxable income from both the S portion holding its S corporation stocks and the non-S portion holding its other assets on its Form 141AZ.

General Tax Ruling

GTR 07-1 (Written and Oral Advice by the Department)

Explains the manner in which the Department provides information to the taxpayers. This ruling discusses in detail the following guidance instruments: private taxpayer rulings, tax rulings and tax procedures, information letters, tax information notices or publications, and oral advice. This ruling supersedes and rescinds GTR 97-1.

Individual Income Tax Rulings

ITR 07-2 (Filing Extensions and Statute of Limitations)

Provides that the Department will grant an automatic filing extension of six months for individual and fiduciary income tax returns when properly applied for by the taxpayer. Alternatively, the Department will accept a federal extension for the period covered by the federal extension. When an extension has been granted, the period of limitation for claiming refunds or for assessment of additional tax begins at the expiration of the extension period or the date the return is filed, whichever is later. If both the income tax extension and the return are filed prior to the original due date of the return, the extension shall be deemed not granted and has no effect on the statute of limitations. This ruling rescinds and supersedes ITR 01-2.

ITR 07-1 (Application of Penalties to an Income Tax Return Filed Under an Extension)

Provides guidelines of imposing the late filing penalty, the late payment penalty and the extension underpayment penalty to returns filed under an extension.

General Tax Procedures

GTP 07-2 (Public Inspection of Private Taxpayer Rulings)

Provides guidance to the public on the procedure for obtaining copies of private taxpayer rulings issued by the Department. This procedure supersedes and rescinds GTP 94-2.

GTP 07-1 (Issuance of Private Taxpayer Rulings)

Provides an explanation of the issuance of private taxpayer rulings. Additionally, this procedure discusses areas in which Department will not issue private taxpayer rulings and the reliance that may be placed on them by taxpayers and the Department. This procedure supersedes and rescinds GTP 01-3.

DECISIONS OF THE DIRECTOR

Individual Income Tax Decisions

Case No. 200500157-I (01/08/2007) – Held that the construction of storm water retention areas and sewer systems do not qualify for a credit as pollution control equipment.

On appeal, the taxpayers argued that they are entitled to a credit for the construction of storm water retention areas and sewer systems because they constitute pollution control equipment. The Department argued that these sites do not qualify for the credit because such property is not directly used, constructed or installed for the purpose of meeting or exceeding pollution related requirements of the EPA or the DEQ. The Director affirmed the Hearing Officer's decision on the basis that

the purpose of the installed items was to channel storm water runoff and waste water from the development and that the storm water retention areas and the sewer systems serve public health and safety purposes. Thus the primary purpose of the installed items is not pollution control.

Case No. 200600055-I (01/08/2007) – Held that expenses associated with the taxpayer's driving between its home and the police station where the taxpayer worked were not deductible as a business expense.

On appeal, the taxpayer argued that A.R.S. § 23-1021.01 makes an Arizona police person's drive into work within the scope of employment and thus, an itemized deduction as a business expense is allowed, because the costs were not reimbursed. The Department argued that the expenses are for commuting and are not deductible. In general, daily transportation expenses incurred in going between a taxpayer's residence and a work location are nondeductible commuting expenses. The Director examined the intent of A.R.S. § 23-1021.01(A) the taxpayer relied on. The language of that statute clearly stated that traveling to or from work is considered in the course and scope of employment "solely for the purposes of eligibility for worker's compensation benefits." Thus the general rule that the expenses of commuting are not deductible is not changed by A.R.S. § 23-1021.01(A). Finding that none of the exceptions to the general rule were applicable in the present case, the Director affirmed the Hearing Officer's decision.

Case No. 200600155-I (02/22/2007) – Held that for a swimming pool to qualify as a medical expense deduction, the taxpayer needs to show to what extent the expenditure for the swimming pool exceeds the increase in the value of his house resulting from the swimming pool. Furthermore, the Hearing Officer held that the taxpayer may change filing status from married filing separate to married filing joint only if the requirements of A.R.S. § 43-311(C) are met.

The issue in this appeal is the propriety of a modified assessment. The Hearing Officer found that the taxpayer has provided insufficient evidence to show that he is entitled to itemized deductions in amounts greater than those allowed by the modified assessment. With regards to the deduction of the swimming pool as a medical expense, the taxpayer produced no evidence to show to what extent the expenditure for the swimming pool exceeds the increase in the value of his house as a result of the swimming pool installation. In addition, the taxpayer requested that his filing status for the years at issue be changed to married filing jointly from married filing separate. The Hearing Officer found that the taxpayer did not meet the requirements of A.R.S. § 43-311(C) to qualify for filing a joint return, thus the request was denied.

Case No. 200700131-I (11/05/2007) - Held that losses stemming from the taxpayers' barrel racing activities are not deductible because the activity was not engaged in for profit.

In this case, the taxpayers could not claim federal Schedule C losses on their Arizona tax return for the tax year 2003. Taxpayers claimed a \$41,520 loss on Schedule C stemming from their participation in barrel racing activities. Whether or not the losses can be deducted in full on Schedule C depended upon whether the taxpayers' barrel racing activities were engaged in as a "for profit" business or not. The taxpayers maintained that they engaged in barrel racing as a "for profit" business and that any losses qualify as deductible business losses. The Hearing Officer found that the taxpayers have not yet made a profit in barrel racing since they began in 2000. Therefore, they are not entitled to a presumption that their activity is engaged in for profit under I.R.C. § 183(d), and they have the burden of proving that the determination is incorrect. In determining whether an activity is engaged for profit, the Hearing Officer used Treas. Reg. § 1.183-2(b) which includes nine elements to consider. Applying these elements, the evidence indicated that the taxpayers engaged in this activity primarily for recreation or personal pleasure, and not for the primary objective of making a profit. Therefore, the Hearing Office upheld the disallowance of taxpayers' Schedule C losses.

Case No. 200700157-I (11/27/2007) - Held that a taxpayer's Arizona tax liability has to be reduced by any credits it claims in the taxable year when calculating the amount of the credit for the net income taxes paid to another state.

The issue in this case is the propriety of the recalculation of the credit for income taxes paid to another state. To accurately reflect the credit, A.A.C. R15-2C-501.A.1 contains a formula by which a taxpayer must reduce his Arizona tax liability by any credit he claims in the taxable year when calculating the amount of the credit for net income taxes paid to another state. In this case, the taxpayer claimed and has been allowed a \$20,000 Neighborhood Electric Vehicle credit. However, the taxpayer failed to reduce its Arizona tax liability by \$20,000 when calculating its credit. In its Modified Assessment, the Department recalculated the credit by subtracting the \$20,000 from the Arizona tax liability. This recalculation subsequently reduced the taxpayer's credit. The Hearing Officer held that the calculation was correct and therefore the Modified Assessment was proper.

Transaction Privilege Tax Decisions

Case No. 200500019-S (03/26/2007) - Held that the taxpayer is not entitled to an exemption for installing exempt manufacturing machinery because it became permanently attached to the realty; Held also that water retention and sewer system equipment was not exempt.

The taxpayer argued that the proceeds received for labor during the construction phases of a project should qualify as proceeds from the installation of exempt machinery or equipment and should be exempt from TPT under A.R.S. §§ 42-5075(B)(7), 42-5061(B)(1). Additionally, the taxpayer argued that the proceeds attributable to the purchase of water retention and sewer systems material for installation in the project should be exempt from tax under A.R.S. §§ 42-5075(B)(9), 42-5061(B)(19). The Director found the machinery or equipment to be exempt under A.R.S. § 5061(B)(1) but because it became permanently attached to the real property, the installation labor exemption of A.R.S. §§ 42-5075(B)(7) did not apply (the installation labor exemption applies only if the exempt equipment did not become permanently attached). Furthermore, the taxpayer did not provide information on how the water retention and sewer system were used directly, in accordance with the exemption for pollution control equipment; therefore, the Director concluded that the purchase of such materials does not qualify for the exemption.

Case No. 200500065-S (03/23/2007) - Held that transactions between the taxpayer and a private party were not mere investments or loans; thus, the funds the taxpayer received from the private parties constitute gross proceeds of sales or gross income derived from its retail business.

The taxpayer operates a fine art gallery and engages in the business of selling tangible personal property at retail. The taxpayer argued in this appeal that the transactions at issue were not taxable retail sales, but rather investment arrangements whereby the investor would tender money to the taxpayer in exchange for the right to share in the profit when the gallery sold a work of art. Additionally, the investor did not receive possession of the work of art. The Director found that these transactions were not mere investments or loans by the private party to the taxpayer. The right and obligation to share in any profits or risks, and the possibility of receiving the painting in lieu of repayment, all indicate an ownership interests held by the private party. Finally, the taxpayer argued that applying the tax in this case would result in double taxation. However, the Director noted that two different transactions would be taxed, not one transaction twice. In addition, the transactions will likely take place in different taxing periods, and as the taxpayer has indicated, a subsequent sale to a customer may never take place. Therefore, no double taxation occurs in this case. Thus the Director affirmed and held that the transactions were subject to TPT.

Case No. 200500180-S (07/09/2007) - Held that monitoring contracts are interwoven in and an integral part of taxpayer's prime contracting business.

In this case, the taxpayer was an Arizona corporation in the business of installing home security alarm systems and monitoring services. The taxpayer reported

its revenues under the prime contracting classification, but maintained that not all of its proceeds were subject to tax. The taxpayer argued that its receipts from the first month's alarm service payment, activation fees paid, and the monitoring service contract payment were non-taxable interstate telecommunications. The Director reasoned that while the customers paid fees for these services, the taxpayer would not have received such fees if it had not first performed the contracting activity of installing the equipment. As a result, the taxpayer failed to meet its burden to show that a part of its receipts were from a separate, non-taxable business.

CORPORATE TAX DECISIONS

Case No. 200500075-C (02/12/2007) and No. 200500147-C (01/26/2007) - Held that the construction of storm water retention areas and sewer systems do not qualify for a credit as pollution control equipment unless they are directly used, constructed or installed for the purpose of meeting or exceeding pollution related requirements.

The taxpayers' request for refund of corporate income tax based on claimed tax credits for pollution control equipment pursuant A.R.S. § 43-1170 was denied. On appeal, the taxpayers argued that they were entitled to a credit for the construction of storm water retention areas and sewer systems because such items constitute pollution control equipment. The Director denied the taxpayers refund request on the basis that storm water retention areas and sewer systems are not directly used, constructed or installed for the purpose of meeting or exceeding pollution related requirements of the EPA or the DEQ. The purpose of the installed items was to channel storm water runoff and waste water from the properties. These items rather serve public health and safety purposes.

Case No. 200600105-C (03/07/2007) - Held that the prior closing agreement between the Department and the taxpayer stands unless there has been a change in the law and the company can no longer use the "completed contract method" provisions of the agreement.

The taxpayer and the Department entered into a Closing Agreement that allowed the taxpayer to use the *completed contract method of accounting* for long-term contracts and income tax apportionment in years subsequent to 1978. The Department had audited the taxpayer for the years 1986-1993, resulting in an assessment. The majority of the assessments resulted from reinstating the completed contract methodology set forth in the Agreement. On appeal, the taxpayer alleged that the company could no longer use this method under the terms of the Agreement because the law on point requires a different method of apportionment. The Department argued that the Agreement is still valid and enforceable because neither Arizona's subsequent enactment of the UDITPA nor the

1994 amendments to A.R.S. § 43-947 prohibit the Department from requiring use of the completed contract method set forth in the Agreement. The Hearing Officer confirmed that the specific Arizona law has not changed in this case, thus the completed contract provisions of the Agreement still apply and both the taxpayer and the Department are bound by those provisions.

Case No. 200600082-C (06/15/2007) - Held that gains arising from certain transactions are business income unless it is clearly classified as nonbusiness income or fails the "transactional" or "functional" test.

This case involves whether to classify certain gains/losses as business or non-business income. The parties agreed that the holding companies at issue were not a part of the taxpayer's business. However, the business of each holding company was to hold assets or property. A.A.C. R15-2D-503 provides in part that gains from the sale of assets and property constitute *business income* if the property, while owned by the taxpayer, was used in the taxpayer's business. The assets and property were used in each of the holding companies' businesses, because the holding companies were in the business of holding asset or property. Therefore, the Hearing Officer concluded that gain from the sales of these assets and property constituted business income.

The taxpayer had argued that capital gain from the sale of a minority interest in other corporations was not apportionable business income. However, the Hearing Officer rejected this argument because the taxpayer had chosen to file a consolidated return. The taxpayer additionally argued that its royalty income from the patents constituted nonbusiness income because such patents did not form an integral part of the taxpayer's business as the taxpayer did not use those patents in its business. The Hearing Officer determined that the business of the holding companies was to hold the patents or trademarks, therefore any income derived from holding the patents or trademarks property constituted business income. With regards to the sale of a minority ownership interest in another company, the Hearing Officer found no evidence to conclude that the company was utilized for the production of nonbusiness income. To the contrary, the taxpayer reported all income/loss from its business as business income/loss on its consolidated returns. Thus, the Hearing Officer concluded that the gain from the sale of the business is business income pursuant to A.A.C. R15-2D-503.

Case No. 200600091-C (05/14/2007) - Held that gains arising from the sales of common stock of a majority-owned overseas subsidiary constitute business income and are apportionable to Arizona.

The issue in this appeal was whether the gains arising from the sale by the taxpayer of the stock it owned in its overseas subsidiary constituted business or nonbusi-

ness income. The taxpayer owned the stock through a subsidiary holding company whose sole purpose was to hold that stock. The taxpayer argued that the holding company as a holding company was not engaged in any business activities, and thus it was not operationally integrated with the taxpayer (the Arizona test for a unitary business is operation integration rather than functional) and it and its gain from the sale of the foreign subsidiary stock could not be included in the taxpayer's combined return. The Hearing Officer found that the holding company was an integrated part of the taxpayer's unitary business that it and its income from the stock sales must be included in the combined Arizona income tax returns for the years at issue. The taxpayer also argued that the gains constitute nonbusiness income, not apportionable to Arizona. However, the Hearing Officer held that, pursuant to A.R.S. § 43-1131.1 and A.A.C. R15-2-1131, gains from sales of the common stock of the foreign subsidiary was apportionable business income under the functional test.

Case No. 200600161-C (06/07/2007) - Held that (1) the application of CTR 91-2 and A.A.C. R15-2D-302 (former R15-2-1123), which in a merger situation limit an Arizona net operating loss carryforward to the same business unit that generated the losses is appropriate and (2) the exclusion of in-state municipal bonds is constitutional.

This appeal presents two issues. The first issue concerns the correct methodology to calculate the usage of an acquired Arizona net operating loss ("NOL") carryforward. The acquired Arizona NOL carryforward at issue arose from the acquisitions of several companies. These acquired companies had NOLs prior to acquisition and merger with the taxpayer and the taxpayer deducted them on its returns in years after the mergers. In its assessment, the Department applied Arizona CTR

No. 91-2 to calculate the Arizona NOL carryforward. The Hearing Officer found that CTR 91-2 relied on the principals set forth in *State Tax Commission v. Oliver's Laundry & Dry Cleaning Co.*, 19 Ariz. App. 422, 508 P.2d 107 (1973) and former A.A.C. R15-2-1025 in addressing the allowable Arizona NOL for corporations. In *Oliver's Laundry*, the court stated that in the case of such a merger, "the loss may be carried over only to the extent that the losses being used to offset the subsequent gains are from the same business unit" and furthermore, that a company "having sustained pre-merger losses may not carry them over to post-merger gains attributable to a different business unit." Since similar principals apply to pre-merger and post-merger NOLs in the *Oliver's Laundry* case, it was reasonable to conclude that the Department properly applied CTR 91-2 and A.A.C. R15-2D-302 (former R15-2-1123) to the facts in this case.

The second issue was the constitutionality of the exclusion of in-state municipal bond interest from taxable income, while requiring the inclusion of income received as interest from out-of-state municipal bonds. The taxpayer argued that the statutory provisions allowing the exclusion are facially discriminatory and invalid because they favor in-state bonds over out-of-state bonds in violation of the Commerce Clause. Courts presume that legislative acts are constitutional, and the Hearing Officer found that the taxpayer had produced insufficient evidence to overcome this presumption.

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.

STEPTOE'S STATE & LOCAL TAX PRACTICE

Our Washington, Phoenix, Los Angeles and Century City 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, a steel mill, semi-conductor, aerospace and other 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.

STATE AND LOCAL TAX LITIGATION

Steptoe's State and Local Tax Group includes experienced tax litigators who have broad commercial litigation and tax litigation experience. Their practice is national in scope, including practice in many states. Pat Derdenger served as a Justice Department trial attorney in the honors program representing the IRS in numerous trials during his time there. He has over thirty years of tax litigation experience, including property tax, sales and use tax and income tax litigation. Dawn Gabel began her career as a commercial litigator, litigating a broad range of commercial disputes including banking litigation, CERCLA litigation, toxic torts, bad faith insurance disputes and general contract disputes. She has been practicing for over twenty years. For the last sixteen years she has focused on tax litigation, primarily property tax litigation. We combine trial-tested litigation skills with up-to-date substantive tax experience. This combination enables us to take on the most challenging cases and achieve outstanding results for our clients.

Our attorneys have proven skills and extensive experience in all aspects of tax controversy and litigation:

- Managing audits
- Prosecuting property tax valuation and classification appeals through the administrative hearing and review process
- Filing appeals of administrative actions in tax or superior court and bringing original actions in court
- Negotiating litigation settlements
- Trying cases in court
- Arguing appeals in state appellate courts

Our active controversy and litigation docket keeps us at the cutting edge of evolving administrative and judicial practice and procedures, strategy and tactics.

In addition to our litigation skills, we are widely recognized for our substantive tax knowledge and experience. Many members have LL.M. degrees in taxation from, and teach classes at, top law schools, and are constantly researching, writing, and speaking to professional audiences on a broad range of substantive tax issues.

Pre-controversy Advice and Counsel. Our tax lawyers combine litigation and substantive tax experience to assist clients in effectively anticipating and planning for future controversies. Often, when the tax treatment of an item or transaction is challenged, the ultimate resolution is influenced significantly by actions taken or not taken when the transaction was planned, implemented, or first reported. With this in mind, we provide experience-based advice on reporting, document retention, and other pre-controversy matters.

Settlement Efforts. We fashion creative and effective approaches to settlement. Our experience encompasses not only direct negotiations for single clients, but also group representations of taxpayers with the same or similar issues. We work hard to achieve favorable results for our clients and to identify the

most effective approach to resolve the matter, which in many cases may be a favorable settlement for the client rather than prolonged litigation.

DEEP AND CURRENT TRIAL AND APPELLATE EXPERIENCE

Settlement of Cases in Litigation. Many cases, when not settled administratively, can be favorably settled in litigation. We have a history of achieving such settlements, drawing on our litigation skills and our experience as litigators.

Actual Trial Experience. Relying on our courtroom experience, we develop and implement efficient, effective, and thorough trial strategies. Whether the case is presented by dispositive motion, or by trial, we have the required skill and experience, including handling intricate discovery and evidentiary disputes, the preparation and examination of fact and expert witnesses, and utilization of the most sophisticated electronic trial presentation and briefing techniques. Our experience enables us to be prepared for all the twists, turns, and surprises of trial advocacy.

Effective Appellate Advocacy. Steptoe tax lawyers have argued cases in state courts and every major federal Court of Appeals, as well as before the US Supreme Court. Our brief writing and appellate advocacy skills are recognized as leading in the bar.

Step-in Litigation Ability. We have successfully litigated cases in which we were not involved in the administrative process. These clients sought the highest level of litigation experience, and chose us for our premier tax litigation talent.

UNRIVALED TALENT

Substantive Tax Experience. Attorneys in our Tax Department have experience in ad valorem property tax matters, constitutional property tax matters, corporate tax, partnership tax, consolidated returns, international tax, transfer pricing, financial instruments and products, ERISA, employee benefits, tax-exempt organizations, sales and use tax, and other areas of tax law.

Litigation Experience. Our state and local tax attorneys litigate tax matters on a daily basis from the administrative level, through state tax or superior court, the courts of appeals and the Supreme Court. Attorneys in our Litigation Department litigate across the United States and in other countries and are available to assist our tax litigation attorneys with complex and innovative litigation strategies.

Our specific experience and particular skills, as well as backup provided by our colleagues in other practice disciplines, provide Steptoe's tax litigation lawyers with a valuable resource readily available as necessary to effectively represent our clients.

PROPERTY TAX

Our real and personal property tax representation spans the full administrative process, including state tax boards of review, state superior and tax courts, and appellate courts of appeals. In addition, we are active members of the National Association of Property Tax Attorneys, a national non-profit organization committed to providing exceptional property tax representation for its members' clients.

TELECOMMUNICATION INDUSTRY TAX LAW

Our attorneys have considerable experience in dealing with federal and state and local telecommunications excise tax matters, including issues relating to the Mobile Telecommunications Sourcing Act (sources cell phone calls for purposes of local taxation). We have represented telecommunications clients on real and personal property tax matters, including valuation issues. Of note, our attorneys have represented a start-up international telecommunications carrier in structuring its state and local telecommunications excise tax reporting requirements, including nexus issues. Our Telecommunications clients in the tax area have included local, long distance, cell phone and satellite carriers.

ELECTRIC UTILITIES AND PIPELINES

The firm's state and local tax practice has considerable experience in representing electric utilities and pipelines in a wide range of state tax issues. We have represented electric utilities on property tax valuation matters, both generation and transmission and distribution facilities, including a nuclear generation station. [See *ADOR v. SRP and APS*, 212 Ariz. 35, 126 P.3d 1063 (App. 2006).] We have also advised electric utilities on corporate income tax issues, including the sourcing of sales of electricity when generated in one state and sold in another (particularly the costs of performance and market tests dealing with the sales factor), nexus and Public Law 86-272 questions, as well as research and development tax credit issues. Our attorneys have also advised electric utilities on sales tax issues dealing with the construction of generation plants and the applicability of various sales tax exemptions to the construction of those facilities and operation of generation plants, including sales tax issues on the sale of the electricity both in-state and out-of-state. In addition to electric utilities, we have represented natural gas pipelines on sales tax, income tax and property tax matters.

CONSTITUTIONAL TAX ISSUES

Step toe's state and local tax attorneys have considerable experience with federal commerce clause, due process clause and equal protection clause issues, as well as state-specific constitutional provisions such as the uniformity clause, which deals with property taxes and requires that property taxes as imposed on a class of property be uniformly applied.

Commerce clause issues handled include not only income, sales and use tax nexus issues but also issues dealing with discriminatory treatment of interstate commerce. Equal protection clause matters have included challenges to a state's unequal treatment of a taxpayer vis-à-vis the more favorable treatment provided to competitors. Additionally, Steptoe's attorneys in the DC office have represented insurance companies in actions before the US Supreme Court involving constitutional issues relating to state premium taxes.

CORPORATE INCOME TAX

- Advised and represented 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).
- Advised and represented homebuilders on the issue of whether the "gross receipts" or "net receipts" as contended by the state, from the sale of mortgages on the secondary market are to be included in the denominator of the sales factor as well as whether the receipts from the sale of mortgages secured by Arizona property is to be sourced to Arizona or under the costs of performance test to the homebuilder's corporate headquarters state.
- Advised and represented 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 filing).
- Advised and represented 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.

TAX CONSEQUENCES OF MERGERS & ACQUISITIONS

Our attorneys counsel 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. They also work with corporate counsel to draft tax provisions for merger and acquisition agreements.

MULTI-STATE TAXATION & NEXUS ISSUES

Advised multi-state businesses on state income tax issues, including allocation and apportionment issues, business/non-business income questions, Public Law 86-272 nexus issues, throwback rule issues, Appeal of Joyce-types of issues, and intangible holding company issues and intangible nexus issues.

Counseled clients on the multi-state taxation of flow-through entities such as partnerships, S-corporations, and limited liability companies.

Advised Internet and other remote sellers on nexus issues relating to the obligation of the remote seller to collect the destination state's sales or use tax on sales made into the state, as well as advising clients in general on the sale and use tax implications of interstate sale transactions

Advised telecommunications clients, including satellite, telecommunications providers, on their multi-state sales and excise tax reporting obligations, including sourcing issues under the Mobile Telecommunications Sourcing Act.

Advised clients on the Streamlined Sales Tax Project, including registration and amnesty issues.

SALES & USE TAXES, PRIVILEGE TAXES, & EXCISE TAXES

- Advised high-technology businesses, telecommunication companies, and manufacturers on gross receipts and other privilege taxes imposed by various jurisdictions.
- Advised an international telecommunications company on nexus issues and state and local tax collection obligations on international calls.
- Advised airlines and other air transportation companies on whether their sale or purchase of aircraft is subject to sales or use tax.

CONSTRUCTION & HOMEBUILDER TAX ISSUES

Our attorneys represent construction contractors, both general and subcontractors, and homebuilders on a wide array of federal, state and local tax issues, including construction manager tax issues, hospital construction projects and issues dealing with the installation of exempt machinery and equipment.

They also advise and work with homebuilders on the marketing arm-contracting arm structure used in Arizona for state transaction privilege tax purposes, as well as assisting real estate developers deal with the Arizona "speculative builder" tax.

PROPERTY TAX

Our real and personal property tax representation spans the full administrative process, including state tax boards of review, state superior courts, and appellate courts of appeals.

STATE & LOCAL TAX GROUP

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