

ARIZONA TAX 2008 UPDATE

This update will provide you with an overview of Arizona tax developments that have occurred over the past year focusing on 2008 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 2622 - Provides an Exemption for Design Phase Services and Professional Services Related to Prime Contracting.

The current version of A.R.S. § 42-5075 sets forth several exemptions to the prime contracting tax base. However, the Department of Revenue has generally applied the tax to the whole project, including preconstruction services, such as consulting services provided during the design phase including advice on budget, design, construction management plans, cost estimates, etc. This Bill adds a new section to A.R.S. § 42-5075 which provides a statutory exemption for these types of “professional” and “design phase” service contracts executed before construction begins. However, the exemptions do not apply to the gross proceeds of sales or gross income attributable to construction phase services. A.R.S. § 42-5075(M)(1). The Bill defines preconstruction, professional and construction phase services in detail. The Bill applies retroactively to taxable periods beginning from and after December 31, 2000.

Southwest Airlines Co. v. Arizona Dep’t of Revenue.

The Court of Appeals held that the value of an airplane for property tax purposes included the value of the avionics software installed on airplane flight computers. Here, the Court took a slightly different approach in determining the taxability of computer software that it had in past decision. This ruling’s effect is twofold. First, it supports the Department’s position that it may impose property taxes on intangibles that make up a part of otherwise taxable property. Second, it may lead the Department to pursue such intangible property more aggressively. In the past, Arizona courts have held that computer software, as a type of intangible property, should be excluded in determining the value of tangible property. In *Honeywell Information Systems v. Maricopa County*, 118 Ariz. 171, 575 P.2d 801 (Ct. App. 1977) the court stated “[t]here is little doubt that computer

software is intangible property and, as such, should be excluded in determining the value of tangible computer equipment. While this question is one of first impression in this state, every jurisdiction which has considered the issue agrees.” [CITE] The Courts’ current positions on the taxability of computer software in Southwest may significantly affect ad valorem taxation by opening up the possibility of including the considerable value of software into the amount of business enterprise value. Since 1977, this is the first decision relating to computer software that suggests a significant departure from *Honeywell* with respect to taxation of intangibles.

Arizona Dep’t of Revenue v. Action Marine, Inc..

The Arizona Supreme Court held that the DOR may hold corporate officers or directors personally liable for failing to remit money collected from a corporation’s customers to pay sales tax. However, the amount of personal liability contains an important limitation: it does not extend to penalties, interest or any other costs. As a result, officers and directors may only be personally liable for the actual amount collected from customers.

Tucson Botanical Gardens, Inc. v. Pima County.

The Court of Appeals held that as long as the taxpayer’s principal or primary use of its property is for a designated exempt purpose, the taxpayer is entitled to the exemption notwithstanding its occasional or incidental use of its property for other purposes.

LEGISLATION

The general effective date for 2008 legislation is September 26, 2008, unless otherwise noted in the summaries.

Income Tax

House Bill 2103 (Ariz. Sess. Laws 2008, Chapter 60). 2008 Tax Corrections Act.

This Bill makes the following changes to the income tax statutes:

- (i) Creates a cross reference to clarify that grants for displaced students are an income tax subtraction. A.R.S. § 43-1022(32).
- (ii) Eliminates the requirement that the Department report on the cost of alternative fuel income tax credits.
- (iii) Corrects internal references and revised definitions associated with motion picture tax credits. A.R.S. §§ 43-1075.01 and 43-1163.01.

House Bill 2104 (Ariz. Sess. Laws 2008, Chapter 94). *Conforms Arizona Tax Statutes to the Internal Revenue Code.*

This Bill modifies the definition of the IRC for tax year 2008 to the federal Internal Revenue Code in effect on January 1, 2008. This includes changes adopted by Congress in the Small Business and Work Opportunity Tax Act of 2007, the Energy Independence and Security Act of 2007, Mortgage Forgiveness Debt Relief Act of 2007 and the Tax Technical Corrections Act of 2007. A.R.S. §§ 42-1001, 43-105.

House Bill 2107 (Ariz. Sess. Laws 2008, Chapter 204). *Reduces the Penalty for Late Filing of Information Returns.*

Currently, a taxpayer who is required to file an information return with the DOR and who fails to file the return or files a return that fails to show the information required is issued a flat rate penalty of \$500 unless it can show that the failure is due to reasonable cause and not willful neglect. This \$500 penalty is issued regardless of whether the return is filed one day late, one year late, or remains incomplete. This Bill modifies the \$500 flat rate penalty to an incremental penalty scale. The scale starts at \$100 for the first month of delinquency then increases in \$100 increments not to exceed \$500. See A.R.S. § 12-1125(K). These provisions are effective and apply to information returns that are required to be filed from and after December 31, 2008.

House Bill 2589 (Ariz. Sess. Laws 2008, Chapter 220). *Clarifies Computation of an Individual Tax Credit for Income Taxes Paid to Other States—The Stearns Case.*

This Bill clarifies and defines the “entire income” of both residents and nonresidents for the purposes of an individual income tax credit for income taxes paid to another state or county. Previously, there was some am-

biguity as to whether “entire income” meant “adjusted gross income” (“AGI”) or “taxable income” (“TI”). The formula used to calculate credit for income taxes paid to other states was as follows:

$$\frac{\text{Credit for Income taxes paid to other states}}{\frac{\text{Income Subject to Tax in Both AZ and Other States}}{\text{Entire Income Upon Which AZ Tax is Imposed}}} = \text{AZ Tax Liability Before Credit}$$

In a lawsuit filed against the Department in 2006, Mr. and Mrs. Stearns argued that the definition of “entire income” in the denominator of the formula was rather Taxable Income. Accordingly, the Stearns calculated their credit as follows:

$$\frac{\$36.52}{\text{(Credit amount)}} = \frac{\$857}{\text{(TI in New Mexico \& AZ)}} \times \frac{\$11,397}{\text{(AZ Tax Liability Before Credit)}}$$

$$\frac{\$267,482}{\text{(AGI - Exemptions \& Deductions - TI)}}$$

After an audit, DOR calculated the Stearns’ credit with adjusted gross income in the denominator of the formula:

$$\frac{\$29.38}{\text{(Credit amount)}} = \frac{\$857}{\text{(TI in New Mexico \& AZ)}} \times \frac{\$11,397}{\text{(AZ Tax Liability Before Credit)}}$$

$$\frac{\$332,493}{\text{(AZ AGI + One Dependent Exemptions)}}$$

The Court of Appeals reversed the tax court’s decision and ruled in favor of the taxpayers. The Court came to the conclusion that the “entire income,” as included in the formula, was the entire *taxable* income in Arizona. See *Stearns v. Arizona Dep’t of Revenue*, 212 Ariz. 333, 131 P.3d 1063 (Ct. App. 2006). In response to the Court of Appeals’ ruling, this Bill clarifies and defines “entire income” as the taxpayer’s taxable income. See A.R.S. §§ 43-1071, 43-1096. These provisions apply retroactively to taxable years beginning from and after December 31, 2007.

Transaction Privilege Tax and Use Tax

House Bill 2103 (Ariz. Sess. Laws 2008, Chapter 60). 2008 Tax Corrections Act, Microbreweries, Use Tax Exemption for Solar Energy Devices.

This Bill makes the following changes to the TPT and use tax statutes:

- (i) Inserts a cross reference in A.R.S. § 4-205.08(F) and clarifies the requirement of domestic microbreweries that sell or deliver beer to pay all luxury taxes and TPT.

(ii) Corrects A.R.S. §§ 42-5061(B)(16), 42-5064(B), and 42-5159(B)(16) references to the CFR.

(iii) Creates a use tax exemption for the purchase of solar energy devices bought from a retailer that is registered with the Department as a solar energy retailer or a solar energy contractor. A.R.S. § 42-5159(E)(3). The Bill also defines “solar daylighting” and “solar energy” devices in A.R.S. §§ 42-5051(18) and 42-5051(19).

House Bill 2106 (Ariz. Sess. Laws 2008, Chapter 21). *Establishes an Alternative Delinquency Date for Persons Filing and Paying TPT Electronically.*

This Bill amends A.R.S. § 42-5014 and provides an alternative delinquency date for the electronic payment of TPT. The deadline for electronic payments was previously one day earlier than non-electronic payments, which deterred some taxpayers from filing and paying sales tax electronically. In this Bill, the Legislature changes the delinquency date for taxpayers electing to file and pay electronically: the return will be delinquent and subject to penalties and interest if the return is not received by the Department on or before the last business day of the month following the month in which the tax accrues. This Bill is effective from and after January 1, 2009.

House Bill 2356 (Ariz. Sess. Laws 2008, Chapter 303). *Expands the Deduction Under the Prime Contracting Classification for Development Fees Paid to the State, County or a Municipality to Include Amounts Credited by the City or Town.*

This Bill amends the deduction provisions in A.R.S. §§ 42-5075(B)(21)(state TPT) and 42-6004(C)(7)(city tax) for development fees. The major change is to allow a deduction not just for the development fees actually paid by the contractor but also for development fees credited by the city or town in exchange for the contractor’s construction of the public infrastructure. These changes apply retroactively to taxable periods beginning from and after August 31, 2006.

House Bill 2622 (Ariz. Sess. Laws 2008, Chapter 255). *New Exemption for Design Phase Services or Professional Services Related to Prime Contracting.*

Construction contracts frequently include preconstruction services, such as advice given during the design phase, which may include advice on the budget, design, construction management plans, cost estimates, etc. The Department of Revenue has taken the position that such “preconstruction” services performed by a contractor as a part of the construction contract may be taxable under the prime contracting classification.. This Bill adds a new section to A.R.S. § 42-5075 that provides a statutory exemption for these types of “professional” and “design phase” preconstruction services. However,

the professional service or design phase service contract must be executed before construction begins.. This legislation also defines “design phase” and “construction” phase activities and only those activities that fall within the design phase qualify for the deduction. Professional services are also defined to mean architect, assayer, engineer, geologist, land surveying or landscape architect services. The legislation applies retroactively to taxable periods beginning from and after December 31, 2000.

House Bill 2732 (Ariz. Sess. Laws 2008, Chapter 246). *Alters the Exemption for Out-of-State Sales of Motor Vehicles to Nonresidents.*

Under current sales tax law, a nonresident may purchase a motor vehicle in Arizona and Arizona sales tax will not apply if (1) the nonresident secures a special 90-day nonresident registration permit for the vehicle and (2) the nonresident’s home state does not allow a corresponding use tax exemption for Arizona sales tax on purchases of the vehicle. A.R.S. § 42-5061(A)(28). This Bill clarifies the conditions for obtaining the special 90-day nonresidential permit and clarifies that a motor vehicle dealer who complies with statutory requirements is relieved of tax liability on the sale of a vehicle to a nonresident purchaser. A.R.S. § 28-2154.01(B). The current statute requires the dealer to inform the purchaser of the tax liability, but this Bill clarifies that it must do so in writing. A.R.S. § 28-2154.01(H). The Bill prohibits the Department from initiating or continuing an action against a dealer who presents satisfactory evidence of compliance with the statutory requirements for out of state vehicle deliveries. A.R.S. § 28-2154.01(H).

Additionally, the amendment to A.R.S. § 42-5009(I) establishes documentation requirements necessary to qualify for the state and city tax exemptions. The new provisions also include in the definition of a “resident” any person who is registered to vote in Arizona. A.R.S. 28-2000(1)(g). The Bill also allows a vehicle owner to designate a beneficiary of title by filing an attachment with the certificate of title. A.R.S. § 28-2055(B). Lastly, the Bill also contains a retroactive provision clarifying the documentation that will satisfy exemption for nonresident vehicle sales made between August 25, 2004 and September 26, 2008.

Senate Bill 1340 (Ariz. Sess. Laws 2008, Chapter 194). *Exemption for Internet Applications Designed for Educational Purposes.* This Bill exempts application services that are designed to assess or test student learning or to promote curriculum design or enhancement, purchased by any school district, charter school, community college or state university from the retail classification (A.R.S. § 42-5061(A)(55)), the telecommunications classification (A.R.S. § 42-5064(A)(2)), the rental property classifications (A.R.S. § 42-5071(B)(2)(a)), and use tax (A.R.S. § 42-5159(A)(50)). This Bill applies retroactively to taxable periods beginning from and after December 31, 1999.

Property Tax

House Bill 2103 (Ariz. Sess. Laws 2008, Chapter 60). *2008 Tax Corrections Act.*

This Bill makes the following changes to the property tax statutes:

- (i) Reinstates the definitions used in calculating additional state aid to education that were incorrectly referenced after the passage of property valuation protection for senior property owners. A.R.S. § 15-972(H).
- (ii) Removes obsolete references to “unsecured” personal property.
- (iii) Specifies that Indian-owned, low-income housing properties that are exempt from property tax are exempt from filing an annual affidavit. A.R.S. § 42-11153.
- (iv) Clarifies that accelerated depreciation for personal property applies to class 2 properties (agricultural). A.R.S. § 42-13054(B)(2).
- (v) Corrects references in A.R.S. § 42-12152(A)(b)(i) to the federal farm program.
- (vi) Adds, retroactive to property tax years beginning after December 31, 2006, a cross-reference clarifying the classification of property used for the manufacturing bio-diesel fuel as class 6 with a 5% assessment rate. A.R.S. § 42-15006(1).

House Bill 2130 (Ariz. Sess. Laws 2008, Chapter 49). *Residential Property Classification; Adds Definition of Homesite Area.*

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:

- (i) up to 10 acres on a single parcel of real property on which the residential improvement is located.
- (ii) more than 10, but not more than 40, acres in a single parcel of real property on which the residential improvement is located if it is zoned exclusively for residential purposes, contains legal restrictions or contains physical conditions that prevent the division of the parcel. A.R.S. § 42-12003.

These provisions become effective on January 1, 2009.

House Bill 2191 (Ariz. Sess. Laws 2008, Chapter 178). *Property Classification: Increases Number of Rooms from 4 to 6 for Bed and Breakfast Classification.*

This Bill increases the allowable number of rooms (from four to six) that an owner-occupied bed and breakfast may rent and still qualify for a class 4 assessment ratio (10%). A.R.S. § 42-12004(A)(5).

House Bill 2330 (Ariz. Sess. Laws 2008, Chapter 252). *Property Tax Exemption for Nonprofit Charter Schools Applies When Property Purchased.*

The Arizona Constitution exempts from property tax any educational, charitable and religious associations or institutions not used or held for profit. Charter schools are public schools, however, the majority of these schools are owned and operated by nonprofit organizations. If the nonprofit charter school owns property used for educational purposes, it is exempt from property tax. At issue was the timing of the property tax exemption. The exemption is not applied in the first year of ownership if the property was recorded after January 1 of each year. This Bill clarifies that the property tax exemption applies from the date the nonprofit organization acquired ownership of the property. A.R.S. § 42-11104(C).

House Bill 2351 (Ariz. Sess. Laws 2008, Chapter 65). *Interest on Subsequent Years Taxes Bear Interest at Rate Stated in Prior Certificate of Purchase.*

This Bill specifies that when subsequent year’s taxes are paid by a certificate holder the amount of subsequent year’s taxes bears interest at the same rate as stated in the certificate of purchase from the first day of the month following the purchase of the subsequent tax lien. A.R.S. §§ 42-18114, 42-18121.

House Bill 2523 (Ariz. Sess. Laws 2008, Chapter 174). *Tax Deeds on Residential Property Can Be Sold to Adjoining Property Owner.*

The Bill allows the Board of Supervisors to sell tax deeds of delinquent property that are held by the State to the owner of adjoining property that is used for residential purposes if certain requirements are met. The Bill also allows county treasurers, in counties with two million or more persons, to use their specific county’s taxpayer information fund for the purposes of alerting taxpayers that their parcel or of an adjacent parcel is for sale at a tax deed sale. A.R.S. § 11-495(B)(5). In addition, it specifies that information about delinquent property held by the may also be posted on a county treasurer’s website. A.R.S. § 42-18303. This provision is effective on May 8, 2008.

House Bill 2614 (Ariz. Sess. Laws 2008, Chapter 306). *Extends the Expiration Date to 2040 for the Property Tax Valuation Incentive for Renewable Energy Equipment.*

2000 legislation provided a package of tax incentives for solar energy equipment. As part of this package, the Legislature enacted a new property tax valuation methodology for renewable energy equipment (solar or wind). The valuation method is currently set to expire on December 31, 2011. The Bill continues the existing and favorable valuation treatment of taxable energy equipment (at 20% of its normal depreciation cost) until 2040. A.R.S. §§ 42-12056, 42-14155.

Senate Bill 1189 (Ariz. Sess. Laws 2008, Chapter 83). *Expands the Exemption for Burial Sites to Include Historic Burial Sites and Historic Private Cemeteries From Property Tax Assessment.*

The Bill expands the exemption for cemeteries to include historic burial sites and historic private cemeteries. It also requires the State Historic Preservation officer to make recommendations concerning exemption status for such burial sites and private cemeteries. A.R.S. §§ 41-511.04, 42-11110.

Senate Bill 1450 (Ariz. Sess. Laws 2008, Chapter 297). Formation of a Regional Attraction District. This Bill allows for formation of a tax levying public improvement district, called a Regional Attraction District (“RAD”). RAD’s main purpose is to establish and operate a permanent amusement park (Regional Attraction Venue or “RAV”). The Bill permits the RAD to issue \$750 million in negotiable revenue bonds. To pay off the bonds, the RAD is authorized to levy a 10% excise tax in addition to the existing state transaction privilege tax. The Bill provides a property tax exemption for the RAV property, however, the statute’s formulation allows, in lieu of property tax, voluntary tax payments to taxing jurisdictions based on the valuation of the property in the theme park area. At the same time, it requires in lieu of payment to taxing jurisdictions on the valuation of property located outside the theme park area. The Bill also provides guidelines for establishing the board of directors, district’s operations, bonding, and financial mechanisms.

MISCELLANEOUS TAX PROVISIONS

House Bill 2103 (Ariz. Sess. Laws 2008, Chapter 60). *2008 Tax Corrections Act; Luxury Tax.*

This Bill makes the following changes to the luxury tax statutes:

- (i) Clarifies statutes regarding the failure to affix proper luxury tax stamps on cigarettes and other tobacco products. A.R.S. § 12-1124.
- (ii) Inserts a cross reference in A.R.S. § 4-205.08(F) and clarifies the requirement of domestic microbreweries that sell or deliver beer to pay all luxury and TPTs.

House Bill 2317 (Ariz. Sess. Laws 2008, Chapter 38). *Establishes Procedural Guidelines for Inspection of Cigarette Tax Stamps.*

A.R.S. § 42-3203 requires an official tax stamp to be placed on tobacco products, including cigarette packages or containers, for which luxury taxes are imposed. The Department oversees the regulation and inspection of all cigarette tax stamps to ensure compliance with Arizona law. Its procedures for compliance inspections are published in the Arizona Luxury Tax Procedure LTP 07-1, dated June 29, 2007. This Bill codifies provisions of LTP 07-1 regarding the Department’s presumptions used during compliance inspections of cigarette distributors’ and retailers’ inventories of stamped cigarette packages.

House Bill 2483 (Ariz. Sess. Laws 2008, Chapter 159). *New Standard for Cigarette Ignition Propensity; Authorizes Disclosure of Confidential Tax Return Information to State Fire Marshal.*

This Bill provides for testing and manufacturer certification requirements, civil penalties for violation, and designates the State Fire Marshal to approve and oversee the program. The Bill prohibits the offer for sale or actual sale of cigarettes in Arizona unless written certification is filed with the state fire marshal showing that proper testing and standards have been met. The Bill also authorizes the disclosure of tax return information to the state fire marshal for these purposes. A.R.S. §§ 41-2170, 41-2170.01 to 41-2170.08, and 42-2003. The Bill is effective August 1, 2009.

House Bill 2638 (Ariz. Sess. Laws 2008, Chapter 151). *Extends the Municipal Tax Incentive Prohibition.*

Current A.R.S. § 42-6010 penalizes municipalities that offer or provide sales tax incentives to a business as an inducement or in exchange for locating or relocating a retail business facility in the city or town that is located entirely within the boundary of any metropolitan area with a population greater than two million persons Maricopa County). This Bill extends the prohibition for offering or providing municipal tax incentives to retailers. The new definition modifies city’s or town’s boundaries to “at least 65% of the land area within a city’s or town’s exterior boundaries located within the exterior boundary of a metropolitan statistical area having a population of more than two million persons.” The key reason for redefining the “land area” was to prevent cities that are not completely within the boundaries of the metropolitan area from taking advantage of the statutory language and their geography in applying statutory exemptions.

House Bill 2745 (Ariz. Sess. Laws 2008, Chapter 152). *Amendments to the Employer Sanctions Bill Enacted In 2007; Business that is not in Compliance that Has Received municipal Economic Assistance Must Repay.*

This Bill is an emergency measure that makes numerous changes to the Legal Arizona Workers Act, modifies the crimes of taking the identity of another person or entity and trafficking in the identity of another person or entity, creates the Enhanced Employer Compliance Program, addresses employees paid in cash, the use of E-Verify, and prohibits the issuing of business licenses in Arizona before certain documents have been presented. One of the important changes, which relates to monetary incentives, is a new provision that requires an employer to provide proof of registration with and participation in E-Verify in order to receive an economic development incentive from a government entity. A government entity that determines that an employer is not in compliance must notify the employer by certified mail of the determination and of the employer's right to appeal. On a final determination of noncompliance, the employer must repay all monies received as an economic development incentive to the government entity within thirty days.

House Bill 2391 (Ariz. Sess. Laws 2008, Chapter 290). *Budget Reconciliation; Makes Changes to Research Tax Credits.*

This Bill makes changes relating to general revenues to implement the FY 2008-09 budget, including specifying a minimum urban revenue sharing calculation for cities and towns. It also makes the following changes to the Research Tax Credit:

- (i) Increases, for TY 2010, both the corporate and individual income research tax credit from 20% to 22% of qualified expenses up to \$2.5 million.
- (ii) Increases, for TY 2010, both the corporate and individual income research tax credits from \$500,000 plus 11%, to \$550,000, plus 13% of the excess of \$2.5 million.
- (iii) Increases, beginning TY 2011, the corporate and individual income tax credits to 24% of qualified expenses up to \$2.5 million.
- (iv) Increases, beginning TY 2011, the corporate and individual income tax credits to \$750,000, plus 15% of the excess of \$2.5 million.
- (v) Repeals the changes to the research and development tax credits beginning on January 1, 2018, and stores current credit evaluation methodology.

ADMINISTRATION

House Bill 2692 (Ariz. Sess. Laws 2008, Chapter 221). *Establishes New Taxpayer Information Rulings Which Can be Requested Anonymously.*

Currently there are several types of advice that the Department may provide to taxpayers: guidance in the form of private taxpayer rulings, information letters, tax information notices, publications and oral advice. Since 1994, private taxpayer rulings have been available to the public after all the information identifying the particular taxpayer has been redacted. Similar to a private taxpayer ruling, the Department issues information letters in response to written requests. However, the Department issued a General Tax Ruling on November 19, 2007 that precludes the issuance of an information letter to a taxpayer representative if the taxpayer is not disclosed. Instead, the Department issues a statement of general guidance, which does not pertain to the particular client and provides only general advice. There are circumstances that might require anonymity, for instance during potential acquisitions or mergers parties are bound by confidentiality. Taking into consideration occasional anonymity requirements, this Bill allows the Department to issue a new form of specific taxpayer guidance called a taxpayer information ruling, which (like a private taxpayers ruling) provides specific tax determinations based on the specific fact situations of requesting taxpayers. However, taxpayers may request a *taxpayer information ruling* anonymously. If they wish for the ruling to become binding for purposes of abating tax, interest and penalties, the taxpayer must still reveal its identity to the Department after issuance of the ruling. A.R.S. § 42-2101.

CASES

Transaction Privilege Tax and Use Tax

Excell Agent Services, L.L.C. v. Arizona Department of Revenue, No. 1CA-TX 07-0003, 2008 WL 4108082 (Ariz. Ct. App. Sept. 4, 2008). *A company that provides information that is transmitted, but does not actually transmit the information itself, does not qualify for tax exemptions under the telecommunications classification.*

Excell Agent Services (a business that furnishes outsourced directory assistance to telecommunication companies) purchased equipment from different sources. Excell argued that it is entitled to the exemption for telecommunications equipment under A.R.S. § 42-5061.B.3 (sales tax) and A.R.S. § 42-5159.B.3 (use tax). These statutes allow an exemption for certain telecommunications equipment, such as central office switching equipment and carrier equipment sold to persons engaged in business classified under the "telecommunications" classification. The question posed before the court was whether or not Excell can be classified under the telecommunications classification. A.R.S. § 42-5064(E)

(4) defines “intrastate telecommunication services” as *transmitting* signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio waves, light waves or other electromagnetic means if the information transmitted originates and terminates in this state. The Court of Appeals interpreted the definition of “*transmitting*” in accordance with the term’s usage in A.R.S. § 42-5064(E)(4), and found that Excell provides information that is transmitted, but it does not actually transmit the information. AT&T and Sprint own the telephone lines over which Excell provides directory assistance. Therefore, AT&T and Sprint are the companies that transmit the information provided by Excell, and it is these companies that are engaged in the telecommunication business rather than Excell. Since the Court determined that Excell was not a “telecommunications company” it was not entitled to the equipment exemption.

Personal Liability

Arizona Department of Revenue v. Action Marine Inc., 218 Ariz. 141, 181 P.3d 188 (2008). *Corporate officers or directors are personally liable for failing to remit the money collected from corporation’s customers to pay TPT.*

There is no express statutory provision imposing personal liability for a corporation’s sales tax liability on a shareholder, officer or director of a corporation. In recent years, the Department has tried to use A.R.S. § 42-5028 to hold officers and directors liable for the sales tax collected from customers but not remitted to the Department. In many of those cases, the Tax Court upheld the Department’s position. However, when the Tax Court held against Action Marine, Inc. on this issue, it appealed. The Court of Appeals reversed the Tax Court, reasoning that officers and directors did not fit into the definition of “person” liable under the statute. On further appeal, the Supreme Court also reviewed the meaning of “person” defined in A.R.S. § 42-500(8), considering the statute’s context, language, subject matter and historical background. The Supreme Court overturned the Court of Appeals and held that A.R.S. § 42-5028 allows the Department to hold corporate officers or directors personally liable for unpaid TPT in certain circumstances.

Property Tax

Southwest Airlines Co. v. Arizona Department of Revenue, 217 Ariz. 451, 175 P.3d 700 (Ct. App. 2008). *Avionics software may be taxed as a part of aircraft.*

In this case, the value of avionics software installed on airplane flight computers was valued by the Department along with the airplane for personal property tax purposes. The taxpayer argued that under the *Honeywell* case, software is exempt from personal property taxation. The software was preinstalled on the airplanes when the

taxpayer purchased them and the manufacturer’s invoices did not separately itemize the software’s price. The taxpayer had avionics software within each airplane as part of the aircraft’s “airworthiness certification.” The application software assisted the pilot with the cockpit controls and was loaded onto the aircraft’s flight computer. Because the software was a part of the flight computer, the court reasoned that it formed a part of the “airframe” of the aircraft, and as a part of the aircraft, the software was not exempt from taxation. Thus, the Court of Appeals affirmed the tax court’s decision.

Tucson Botanical Gardens, Inc. v. Pima County, 218 Ariz. 523, 189 P.3d 1096 (Ct. App. 2008). *As long as the taxpayer’s principal or primary use of its property is for the designated exempt purpose, the taxpayer is entitled to the exemption notwithstanding the occasional or incidental use of its property for other purposes.*

The issue presented in this appeal is whether, for tax year 2005 the Tucson Botanical Gardens (“TBG”), a qualified non-profit charitable organization, was entitled to the tax exemption allowed under A.R.S. § 42-11116 on that portion of its property it operates as a gift shop, uses to exhibit art for sale, and rents to third-parties for various activities such as weddings, private meetings or parties. The County argued that the TBG’s gift shop and meeting areas were not exempt from taxation because it did not use them exclusively for botanical garden purposes but used and held them profit. The issue was whether the occasional use of the gift shop and meeting rooms for weddings, private meetings or parties disqualified those facilities from exemption.

The Court interpreted the meaning of the phrase “*used for those purposes and not used or held for profit*” as a question of law. Arizona law exempts the property of a botanical garden only if used for botanical garden purposes. The Court noted that by focusing on the nature of a few of the items sold in the gift shop and TBG’s incidental use of the meeting areas, the County has failed to consider the primary use TBG makes of the gift shop and meeting areas. In interpreting and applying tax exemption statutes, courts have consistently recognized that taxpayers may claim the exemption despite some non-exempt use as long as the taxpayers is *primarily* using the property in the manner specified by the Legislature. The Legislature’s use of the word “*primary*” reflects its understanding that a charitable institution may allow occasional use of its property by a non-exempt third party without forfeiting its right to the exemption. In addition, there is no express language defining “not used or held for profit.” The court relied upon A.R.S. § 42-11154 to determine non-profit status for purposes of this requirement for the exemption. Here, TBG is both the sole owner and only user of the gift shop. TBG owns the meeting areas and is the primary user of that space. Because its nonprofit status was never in question, the meeting areas and gift shop constitute property “not used or held for profit”

under A.R.S. § 42-11154(2). Thus, the Court of Appeals affirmed the tax court's decision.

Duke Energy Arlington Valley, LLC v. Arizona Department of Revenue, No. 1 CA-TX 07-0009, 2008 WL 2737165 (Ariz. Ct. App. July 15, 2008). *Depreciation tables described in A.R.S. § 42-14156(A)(3) are not rules that are subject to the Administrative Procedure Act ("APA"), but rather guidelines.*

The taxpayers operate electric generation facilities in Arizona. The Department issued notices of value for each of the facilities at issue for the tax year 2005 utilizing depreciation tables that prescribed a 25 year economic life. The taxpayers filed a complaint for declaratory judgment, asking that the tables utilized in preparing the property valuation be declared invalid. The taxpayer's argument consisted of two points: (1) the tables are formal administrative rules under A.R.S. § 41-1001(17) and not informal guidelines and (2) are invalid because the Department did not comply with the requirements of the APA in promulgating the tables. The Department argued that the tables were not a rule, but rather a guideline. The Court of Appeals held that the tables are guidelines and not rules for two reasons. First, the language of the statute makes it clear that the Legislature intended that they operate as guidelines rather than rules, and second, the tables operate more as guidelines than rules. The Court in its reasoning indicated (with subsequent statutory examples) that the Legislature is capable of requiring the Department to adopt rules when it so desires, and the Legislature has made it clear that when it wants a guideline to be adopted by rule, it does so explicitly. Besides the unambiguous language of A.R.S. § 42-14156(A)(3), the tables did not completely implement the statute, but rather constituted one element in the process of arriving at a value for the personal property. A.R.S. § 42-14156(A)(4) states that "[i]n addition to the computation prescribed in paragraph ... 3 of this subsection, the taxpayer may submit documentation showing the need for, and the department shall consider, an additional adjustment to recognize obsolescence using standard appraisal methods and techniques." The court noted that this also shows that tables at issue function as guidelines rather than rules.

DEPARTMENT OF REVENUE RULINGS AND DECISIONS

Transaction Privilege Tax Rulings

TPR 08-1 (Sets Out the Department's Nexus Position Regarding a Remote Vendor's Obligation to Collect the Arizona Use Tax on Sales Made into the State).

Provides a general discussion of current nexus cases and standards for sales and excise tax purposes and sets out the Department's nexus position based on these sources. Essentially, if the remote vendor has some type of physi-

cal presence in Arizona wither itself or through agents, it will be required to collect the Arizona use tax on sales into the state.

Individual Income Tax Procedures

ITP 08-1 (Procedure for Calculating the Credit for Taxes Paid to Another State or Country by Arizona Individual Resident)

Compliments Arizona Form 309 and provides step-by-step guidance for determining the amounts required to be entered on Arizona Form 309. This procedure supercedes and rescinds ITP 07-1.

Transaction Privilege Tax Procedures

TPP 08-1 (Procedure for Documenting Nontaxable Sales of Motor Vehicles to Nonresidents and Native Americans)

Provides guidance regarding the taxability of Arizona sales of motor vehicles to nonresidents and Native Americans, and explains the documentation (certificates) necessary for sales that qualify for a statutory deduction.

DECISIONS OF THE DIRECTOR

Individual Income Tax Decisions

Case No. 200700002-I (1/15/2008) - Held that the taxpayer is not entitled to a deduction for moneys paid into a 401(k) account nor is the taxpayer entitled to a deduction for moneys repaid to its family members.

On this appeal, the taxpayer challenged the amount and propriety of a deficiency assessment for tax year 2001. The taxpayer excluded the monies paid into a 401(k) from the income reported on a federal tax return. The taxpayer also took a deduction on its Arizona return for that same 401(k) contribution. The Director's Analysis showed that there was no provision in Arizona law that would allow a taxpayer a deduction for 401(k) contributions that were already excluded from its taxable income. Regarding the deductions for monies the taxpayer repaid to its family members, the Director stated that there is no general provision in Arizona law to allow a deduction for such repayment. On the side issue, the Director held that the taxpayer's income was not exempt under Article 19 of the tax treaty between China and the US because the taxpayer was a resident of Arizona prior to 1994, and any exemption under Article 19 would have expired in 1997 or before.

Case No. 200700195-I (3/07/2008) - Held that distributions to a full-year Arizona resident from an IRA that is comprised of contributions made before the taxpayer became an Arizona resident cannot be subtracted from Arizona gross income.

In this case, the taxpayers disputed the disallowance of their subtraction from income pertaining to an IRA distribution they received in 2002 while residents of

Arizona. Taxpayers alleged that they contributed to the IRA at issue in the 1980s while they were residents of Pennsylvania. As a result, the taxpayers argued that the distributions from the IRA were not taxable in Arizona. The taxpayers supported their position with a letter dated March 12, 1990 from the Department's tax analysts stating that, according to current laws, distributions of principal or cost of an IRA account are not taxable to the extent that contributions to the IRA account were based upon compensation earned in another state prior to Arizona residency. A change in the law occurred after the letter was issued, and thus the statute and the Income Tax Ruling ("ITR") upon which the letter was based were obsolete. A more recent ruling (ITR 93-27) held that in the tax years following 1990, "income distributions from an IRA to a full-year Arizona resident which are comprised of contributions made before the taxpayer became an Arizona resident *cannot be subtracted* from the taxpayer's Arizona gross income." Thus, the new ITR 93-27 superseded the earlier ruling upon which the response letter was based.

Transaction Privilege Tax Decisions

Case 2007000120-S (3/14/2008) - Held that a contractor with dominion over sales proceeds can assign the proceeds to another party, but that does not exclude the proceeds from sales tax.

The taxpayer was a homebuilder that owned 3 lots, built homes on the lots and sold them. The taxpayer constructed and sold the homes as a part of a venture with a partner that provided financing for the home construction. At the time of closing of the sales, a portion of the sale proceeds were paid to the partner. The Department assessed tax on the total sale price, giving the proper land deduction. The taxpayer asserted that it did not actually receive the proceeds from home sales and that the tax should be assessed on the party who received the proceeds—the partner. However, the Hearing Officer concluded that the taxpayer was subject to TPT on the proceeds from the sale of the homes. Regardless of where the taxpayer directed the funds, they had dominion over the funds as the contractor and seller of the homes, and thus, the taxpayer was deemed to have received the gross receipts from the home sales.

Case No. 200700045-S (9/8/2008) – Held that the taxpayers by giving Forms 5005 to the off-site contractors assumed the off-site contractors liability.

The owner of real property provided the various off-site contractors (for roads, utilities, etc.) with Prime Contractor Certificates, Forms 5005 (given by the prime contractor to exempt subcontractors). The Department on audit of the off-site contractors determined that they were not exempt subcontractors but honored the Forms 5005 and thereafter went to the taxpayers and assessed tax against them on the amounts they paid the off-site

contractors. The taxpayers argued that they were taxable prime contractors and that the off-site contractors were actual subcontractors and that the Forms 5005 were properly given. The taxpayers were the contracting arm of the dual marketing arm, contracting arm structure that sold the completed homes and lots to the marketing arm and paid tax on the sale proceeds, which proceeds included an allocated per home amount for the off-site improvements. The taxpayers argued that under these circumstances, the off-site contractors were exempt subcontractors. The Director, however, ignored the fact that the taxpayers were taxable prime contractors and paid sales tax on the amounts it received from the marketing arm that it used to pay the off-site contractors and held the taxpayers liable for the tax on the amounts paid the off-site contractors.

Case No. 200700085-S (10/8/20078 - Held that construction manager taxable under prime contracting classification of fees. The taxpayer was hired as a construction manager or advisor to use its contracting knowledge to assist the owner in supervising or coordinating several construction projects. The Director held that the taxpayer met the definition of prime contractor because it supervised and coordinated the work and thus was taxable on its construction manager fees. Also, the taxpayer was a part owner of one of the projects and was held liable for the use tax on its purchases of building materials from retailers who knew him to be a contractor and did not charge tax on those purchases.

Corporate Tax Decisions

Case No. 200700083C (03/27/2008) – Held that an out-of-state franchisor that receives licensing and royalty fees from Arizona franchisees has sufficient nexus with Arizona for income tax purposes.

The issue in this appeal is whether an out-of-state franchisor that receives licensing and royalty fees from his four franchisees within the state has sufficient nexus such that Arizona may impose its income tax. The taxpayer asserted that the US Supreme Court in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) requires a taxpayer to be *physically present* in the state in order to meet the substantial nexus requirement. Here, the Hearing Officer analyzed similar cases in other jurisdictions and the nature of the income tax itself. It held that the physical presence requirement articulated in *Quill* applies to sales and use tax cases, but does not apply to income tax cases. Thus, the Hearing Officer found that the taxpayer has "substantial nexus" with Arizona, as required under *Complete Auto's* four-part test. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). Therefore, Arizona is not prohibited by the Commerce Clause from imposing a corporate income tax upon the taxpayer for the royalty and licensing fees received from its Arizona franchisees.

Case No. 200700189-C (04/30/2008) – Held that the taxpayer may not take the research and development credit, under A.R.S. § 43-1168, because the taxpayer relied on unsubstantiated estimates to calculate the credit; additionally, the taxpayer could not show that it had engaged in R&D in Arizona in prior years.

The taxpayer amended its Arizona tax return to report changes in its federal taxable income and to claim the Arizona credit for increased research activities (“R&D credit”) for the tax year 2002. However, the refund was denied because the taxpayer provided insufficient evidence that it had engaged in R&D activity prior to 2002 (calculation of the R&D credit depends upon the number of years that the taxpayer participated in qualified research activity). The Department determined that 2002 was the first year that the taxpayer documented research activity in Arizona. Using the statutory formula, the calculation of the R&D credit for 2002 was zero. Based on a Tax Credit Study performed in 2006, the taxpayer argued that it had engaged in qualified research activities in Arizona since 1994 through other entities it had acquired. However, neither the taxpayer nor the study presented any verifiable data establishing the types

and amounts of R&D activity that existed prior to 2002. Alternatively, the taxpayer argued that since the IRS accepted the taxpayer’s methodology, Arizona is obligated to accept the taxpayer’s calculation method as well. The Hearing Officer noted that there is no law providing that Arizona must grant a refund because the IRS granted a refund of federal taxes on a similarly based refund claim. Furthermore, the Hearing Officer indicated that the taxpayer did not comply with Treas. Reg. § 1.41-4(d), where a taxpayer must document in advance (or in early stages) that the research project meets the specific parameters set forth in the statute. The taxpayer provided no such documentation, nor was such documentation referred to in the Study.

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

Stephoe'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

{Phoenix Office}

Attorney Contact	Phone	E-mail
Pat Derdenger	602.257.5209	pderdenger@steptoe.com
Dawn Gabel	602.257.5231	dgabel@steptoe.com
Bennett Cooper	602.257.5217	bcooper@steptoe.com
Frank Crociata	602.257.5261	fcrociata@steptoe.com
Benjamin Gardner	602.257.5291	bgardner@steptoe.com

STEPTOE & JOHNSON ^{LLP}
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