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*The summaries contained herein are not intended as legal advice on any particular question of law. If you have any questions or concerns about these or related developments, please contact our state and local tax lawyers.*

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### OVERVIEW

The following update provides an overview of Arizona tax developments that occurred in 2018, with a focus on the year's tax legislation and court cases. We trust that you will find this annual compilation of Arizona tax developments useful and interesting. Past editions of our Arizona Tax Update are also available on our website at [State & Local Tax Resources](#).

### SALES AND USE TAX DEVELOPMENTS

#### 2018 LEGISLATION

**House Bill 2003, Chapter 316. Sale of Coal Exempt.** This bill exempts coal from state and municipal transaction privilege taxes (TPT). It establishes a 0.5% county excise tax on the sale of coal for any county that mines or extracts coal within its boundaries. Enactment of the bill is conditional upon approval of the transfer of ownership of the Navajo Generating Station by the Navajo Nation by January 1, 2023. In his signing statement, Gov. Ducey stated his belief that this legislation is essential for the economic success of the Navajo Nation, the Hopi Tribe, and surrounding communities.

**House Bill 2371, Chapter 286. Mobile Food Vendors are Taxable.** This bill adds the business of operating a "mobile food unit" to the restaurant classification. "Mobile food unit" is defined as a food establishment that is readily movable and dispenses food or beverages for immediate consumption from a vehicle. The bill eliminates the TPT exemption for sales of food by a retailer, who is a street or sidewalk vendor and who uses a mobile facility, motor vehicle, or other such conveyance. Municipalities and other taxing jurisdictions are authorized to levy a tax on a person engaging in business as a mobile food vendor. The bill also requires the Department of Health Services to adopt licensing, health, and safety regulations.

**House Bill 2484, Chapter 17. City "Soda Tax" Prohibited.** This bill requires municipal taxes on the retail sale of food, non-alcoholic beverages, and the sale of food for consumption on the premises, to be applied uniformly with respect to all food and non-alcoholic beverage items. It prohibits the assessment of an additional tax with respect to any specific food or non-alcoholic beverage item. Municipalities are prohibited from taxing: (1) the manufacture, wholesale, or distribution of food or food for consumption on the premises; (2) any container or packaging for transporting, protecting, or consuming food or food for consumption on the premises; (3) the sale of food purchased with federal food stamps; and (4) the sale of low or reduced-cost food or drink to eligible elderly or homeless persons or persons with a disability by a business taxable under the restaurant classification.

**Senate Bill 1120, Chapter 249. TPT Exemptions for Sports Organizations Repealed.** This bill clarifies that exemptions from TPT for non-profit organizations associated with a major league baseball team or a national touring professional golfing association do not apply to any organization that is owned, managed, or controlled by a major league baseball team, major league baseball or professional golfing association, or their owners, officers, employees, or agents unless the organization conducted exhibition events that were exempt under the amusements classification in Arizona before January 1, 2018. The bill applies to the following classifications: retail, commercial lease, amusement, and restaurant. The bill is retroactive to periods beginning December 31, 2017 and after.

**Senate Bill 1382, Chapter 189. Online Lodging Marketplace Classification Registration Now Required.** Beginning January 1, 2019, online lodging marketplaces are required (rather than allowed) to register with the Department of Revenue (DOR) for a TPT license. The tax base does not include gross income derived from charges to an occupant who is a transient for the occupancy of any lodging accommodation in Arizona that is classified as Class 1 property for property tax purposes.

**Senate Bill 1390, Chapter 74. Additional 0.6% TPT Rate for Education Extended.** This bill imposes an additional 0.6% rate on the tax base of the following business classifications starting July 1, 2021 through June 30, 2041: amusements, job printing, personal property rental, pipeline, prime contracting, private car line, publication, restaurant, retail, telecommunications, transporting, and utilities. Taxes collected under this rate must be separately accounted and distributed for various public education purposes. The additional TPT rate is not considered local revenues for the purpose of school expenditure limitations. The bill effectively extends the additional TPT rate for education approved by the voters as Prop. 301 in November 2000, with some modifications to the distribution. Prop. 301 was due to expire on June 30, 2021. Since this bill increased taxes, Prop. 108 required a super majority.

**Senate Bill 1409, Chapter 341. MRRRA “Alteration” Restrictions, Application of Classification Amended.** This bill modifies the definition of “alteration” for purposes of the maintenance, repair, replacement, or alteration (MRRRA) exemption to remove the following limitations applicable to commercial contracts: (1) contract cannot directly relate to more than 40% of the existing square footage; and (2) contract cannot increase existing square footage by more than 10%. The prime contracting classification no longer applies to any work or operation performed by a person that is not required to be licensed by the registrar of contractors. The bill is effective January 1, 2019. For bids submitted, contracts entered, or other binding obligations incurred prior to December 31, 2018, the contract must be treated in a manner consistent with the tax requirements prior to December 31, 2018. The bill also specifies that the prime contracting classification does not include any work or operation performed by a person that is not required to be licensed by the registrar of contractors pursuant to section 32-1121.

## 2018 COURT DECISIONS

**Roadsafe Traffic Systems, Inc. v. ADOR, 1 CA-TX 17-0005 (October 23, 2018).** Receipts from traffic control personnel and plans included in personal property rental classification tax base under the *Holmes & Narver* test. At issue in this was whether income from traffic control personnel and plans are subject to tax under the personal property rental classification. The court held that Ariz. Admin. Code R15-5-1502(D) includes “charges for installation, labor, insurance, maintenance, repairs, pick-up, delivery, assembly, set-up, personal property taxes, and penalty fees” in the personal property rental classification tax base. Because “labor” is listed separately, there may be additional types of labor that form part of a rental company’s tax base beyond the specific activities listed. The receipts must also be included under the *Holmes & Narver* test because Roadsafe’s primary business is renting traffic control equipment and it provides flaggers, police officers, and traffic control plans as a supplement.

**Orbitz Worldwide, Inc. v. City of Phoenix, 1 CA-TX 16-0016 & 1-CA-TX 16-0018 (September 6, 2018).** Online travel companies (OTCs) taxable as brokers under the Model City Tax Code (MCTC); not taxable under the transient lodging classification. In this case, the court considered two MCTC provisions that tax the gross income from operating a hotel charging for lodging: (1) MCTC § 444 base hotel tax: “business activity upon every person engaging or continuing in the business...”; and (2) MCTC § 447 additional hotel tax: “the business activity of any hotel engaging or continuing... in the business...” A broker is one “who acts for another for a consideration in the conduct of a business activity taxable under this chapter, and who receives for his/her principal all or part of the gross income from the taxable activity.” The MCTC definition of “person” includes a broker. The court held that the OTCs are liable for tax under § 444 as “brokers” because: they act for hotels by providing advertising, booking, and other hotel services, they accept payment for their services from travelers, they accept consideration for their services from hotels, and they assist hotels with taxable hotel operations. However, OTCs are not taxable under § 447 because they are not “hotels.”

**Empire Southwest LLC v. ADOR, 1 CA-TX 17-002 (May 24, 2018).** Mine fuel and lube truck is exempt as mine equipment. Issue – whether a modified Caterpillar 77G WT truck purchase for use in an open pit copper mine, transporting fuel and lubricants from the mine rim to equipment located in the pit, is

exempt from TPT under A.R.S. § 42-5061(B)(2) (equipment used directly in the process of extracting ores or minerals from the earth). Holding – under the “integrated test rule” established in *Duval Sierrita*, the truck is exempt. The truck is necessary to the mine’s production. The truck is close, physically and casually, to the ore. The truck operates harmoniously with the exempt drills, shovels, loaders, and dozers as part of an integrated synchronized system.

## 2018 DEPARTMENT OF REVENUE TAXPAYER INFORMATION RULINGS

**THE FOLLOWING DEPARTMENT OF REVENUE STATEMENT ACCOMPANIES ALL PRIVATE TAXPAYER RULINGS:** “This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department. This determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department’s making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.”

**LR18-005 (July 2, 2018). Glucose Monitors are Exempt as Durable Medical Equipment.** The issue was whether gross proceeds from the sale of continuous glucose monitoring (CGM) systems are deductible under A.R.S. § 42-5061(A)(13) (durable medical equipment) or § 42-5061(A)(9) (prosthetic appliances) and whether gross proceeds from the sale of replacement sensors used in CGM systems are deductible pursuant to the Ariz. Admin. Code R15-5-156(C). The DOR held that CGM systems that have been approved by the FDA as therapeutic devices and approved by Medicare satisfy the definition of deductible durable medical equipment because CGM systems are primarily and customarily used to serve a medical purpose. The systems are not useful in the absence of illness and are appropriate for use in the home, the component parts can withstand repeated use since all three components comprising the CGM system work as part of an integral system, and CGM systems are normally used in accordance with a prescription. The DOR did not reach the issue of whether CGM systems qualify as a deductible prosthetic appliance.

**LR18-004 (June 12, 2018). Cafeteria Operator Subject to Tax on Subsidies and Administration Fees under the Restaurant Classification.** The issue was a taxpayer is required to collect and remit TPT on the subsidies it receives from an employer as part of a contractual arrangement where the taxpayer operates the employer’s cafeteria and sells food and drink to the employer’s employees. The DOR held that the taxpayer is subject to tax under the restaurant classification on the subsidies, fixed administration fees, and all other revenues it receives from operating the employer’s cafeteria. The DOR explained that gross receipts include the employer subsidies, any administration fees, and all other revenue derived from operating a cafeteria, and that here is no specific exemption or exclusion from the restaurant classification for such subsidies or administration fees.

**LR18-002 (May 31, 2018). Restaurant Mobile Point of Sale Devices. Premium Content is Taxable.** The issue was whether fees charged to restaurant customers for access to premium content on “mobile point of sale devices” are subject to Arizona’s TPT. The device is a tablet that will accommodate tabletop menu, ordering, and payment in some of the taxpayer’s Arizona restaurants. Restaurants have the option to enhance the customer experience by allowing access to premium content, including news, sports, current events, music, and interactive games, for a fee. The DOR held that gross income from fees charged to restaurant customers for access to premium content on “mobile point of sale devices” is subject to tax under the restaurant classification. Fees for premium content are part of a restaurant’s gross income, and no specific exemption or deduction applies.

**LR18-001 (March 28, 2018). Irrigation Systems Qualify for 4” Pipe and Drip Irrigation Lines Deductions.** The question in this ruling was whether certain components of irrigation system used in commercial agricultural production exempt from retail TPT under A.R.S. § 42-5061(B)(6) (4” pipe exemption) or § 42-5061(B)(13) (new agricultural machinery & equipment)? The DOR held that in-line-steel filters (8” to 15”), mainline pipes (8” to 15”), and some sub-mainline pipes qualify for the A.R.S. § 42-5061(B)(6) exemption because they are larger than 4” in diameter and will be used to transport water as part of a commercial agricultural irrigation system. Fittings, seals, and any other parts used in operating those pipes are also exempt. Additionally, because the micro irrigation system (less than 4”) is recognized by the industry as a drip irrigation system,

and its components and operation are the same as other drip irrigation systems, it qualifies as a drip such for purposes of this ruling. A.R.S. § 42-5061(B)(13) exempts items used for commercial agricultural purposes including, drip irrigation *lines*, but § 42-5061(C)(7) specifically exclude motors and pumps used in irrigation *systems* from the sub. (B) exemption. “System” is not defined, and the use of the term ‘systems’ in A.R.S. § 42-5061(C)(7) to make specific exclusions strongly suggests that “line” should have a broader interpretation. “Drip irrigation line” in A.R.S. § 42-5061(B)(13) is interpreted to include other components forming part of a drip irrigation system, with the exception of motors and pumps. The A.R.S. § 42-5061(B)(13) exemption includes the remaining components forming the drip irrigation system.

## PROPERTY TAX DEVELOPMENTS

### 2018 LEGISLATION

#### **House Bill 2126, Chapter 231. Government Property Lease Excise Tax Further Restrictions.**

This bill restricts the size of a central business district. The Government Property Lease Excise Tax (GPLET) eight year abatement only applies to property in a “central business district.” A central business district must: (1) be located in a slum or blighted area; and (2) be “geographically compact.” The bill also clarifies the definition of “geographically compact” to limit the designation of future slum or blighted areas – length cannot be more than twice its width. It specifies that any new designation made after September 30, 2018, automatically terminates after 10 years, unless after a review by the municipality and the designation is formally renewed, modified, or terminated. Any designation that is modified or renewed is subject to subsequent reviews every 10 years. The bill requires municipalities to review each slum or blighted area in which a central business district is located that was designated before September 30, 2018 and renew, modify, or terminate it by October 1, 2020.

**House Bill 2198, Chapter 114. Notice of Sale of Property for Unpaid Taxes Must Include Property Account Number.** This bill states that the notice of sale of real property on which the prior-year taxes years are unpaid and delinquent is required to include the property account number, rather than the legal description of the property. It also requires the county to make a description of the property

associated with a parcel number available to the public on a county website.

**House Bill 2385, Chapter 73. Property Tax Appeals – Court Cannot Increase Value Above Assessor’s Initial Value.** This bill limits the court’s ability to increase a property’s full cash value during a property tax appeal. If a property tax appeal is taken by the county assessor and the court finds that the valuation is insufficient, the full cash value as determined by the court cannot be greater than the full cash value that was appealed by the taxpayer to the Board of Equalization. The bill applies retroactively to property tax appeals that were filed in court beginning January 1, 2017.

**House Bill 2596, Chapter 319. Property Tax Lien Redemption and Abatement.** This bill allows a real property tax lien to be redeemed by any person who wants to pay on behalf of the owner by making a charitable gift. It also allows a personal property tax lien to be removed if the tax levied is more than six years past due and both the county treasurer and county assessor agree the amount of the tax, including interest and penalties, is of de minimis value.

**Senate Bill 1144, Chapter 52. Conservation Easements Recording and Registry Requirements.** This bill requires the holder of a conservation easement to record the easement and to provide the information required for the registration of real property burdened by the easement with the county assessor. The information that must be included in the registry for each parcel is expanded to include: (1) the name of the holder of the conservation easement; (2) the name of any governmental body or charitable corporation with a third-party right of enforcement; and (3) the value of the real property, as determined by an independent appraisal, prior to the creation and recording of the conservation easement.

### 2018 COURT DECISIONS

***Hees v. Maricopa County*, 1CA-TX 17-0004 (October 9, 2018).** Service of process procedures in appeals from the State Board of Equalization (SBOE); responsibility for complying with the statutory procedure for appealing an SBOE decision to tax court falls upon the appealing party. At issue in this case was whether A.R.S. § 42-16209 (10-day service of process requirement) applied to a claim arising from the error correction statutes and where taxpayer failed to serve the

county after initially naming assessor as defendant. The court held that A.R.S. § 42-16209 applies to claims arising from error correction statutes because courts must construe related statutes in the context of the statutory scheme and that the Arizona Rules of Civil Procedure did not apply to negate service requirement. The court further held that the failure to serve the proper defendant following leave to amend complaint was grounds for dismissal and that naming the correct defendant was not an “administrative caption correction” that did not require another personal service.

**SWVP-GTS MR, LLC v. Pinal County, 1 CA-TX 16-0017 (August 14, 2018). Expert testimony not precluded. Tax Court erred when it imposed discovery sanctions on taxpayer precluding it from presenting certain evidence in an agricultural classification case.** At issue in this case was a taxpayer’s appeal of a property classification made by the Pinal County assessor that missed certain discovery deadlines. The Tax Court granted county’s *motion in limine* to preclude taxpayer from presenting certain expert testimony by its expert at trial regarding water sources or the profitability of the taxpayer’s grazing operation. The Court of Appeals held that the Tax Court erred by granting the motion and sanctioning the taxpayer because the county did not demonstrate that it was prejudiced by the taxpayer’s untimely disclosure. The case vacated and remanded to the Tax Court.

## INCOME TAX DEVELOPMENTS

### 2018 LEGISLATION

**House Bill 2191, Chapter 258, and House Bill 2192, Chapter 199. Military Family Relief Fund Tax Credit Extended from 2018 to 2026.** These bills extend the termination date of the Military Family Relief Fund and the individual income tax credit for contributions to the fund from December 31, 2018 to December 31, 2026. They also establish the pre-9/11 veterans subaccount and post-9/11 veterans subaccount of the fund. Donors are required to designate the subaccount to which they are contributing. These bills establish an advisory committee for each subaccount to determine appropriate use of the monies in the subaccount. Finally, the bills establish eligibility criteria for families applying for financial assistance from each subaccount.

**House Bill 2647, Chapter 142. Annual Internal Revenue Code Conformity.** This bill conforms the Arizona income tax structure for all years beginning December 31, 2017 and after to the Internal Revenue Code in effect as of January 1, 2017. **NOTE:** This annual conformity bill did not conform to the federal changes made by the Tax Cut and Jobs Act of 2017 (TCJA), which became effective on January 1, 2018. If the Arizona income tax structure is to conform to the changes made by the TCJA, the Arizona Legislature will need to act quickly (and perhaps by the time that this 2018 Arizona Tax Updates is published, such conformity will have occurred). In the meantime, the Arizona Department of Revenue (ADOR) in a January 10, 2019 announcement, indicated that it had developed all 2018 income tax forms based on the assumption that the legislature would conform to the TCJA. Stay tuned.

**Senate Bill 1405, Chapter 106. Market Sourcing for “MultiState” Service Providers Extended to Credit Card Companies.** Current statutes provide that multistate service providers that derive more than 85% of their sales from out-of-state purchasers may elect market sourcing. “Sales from intangibles” is added to the 85% of sales that must be from outside Arizona in order for a taxpayer to be considered a “multistate service provider.” Sales from intangibles include sales derived from credit and charge card receivables, including fees, merchant discounts, interchanges, interest, and related revenue. The bill is effective January 1, 2020.

### 2018 COURT DECISIONS

**Sun Lakes Marketing L.P. v. State/ADOR, 1 CA-TX 16-0011 (October 19, 2017). Sewage & wastewater collection and treatment facilities qualify for pollution control credit pre-2005.** Taxpayers are developers of master planned communities and claimed pollution control equipment credits for sewage and wastewater collection and treatment facilities. DOR denied claims and taxpayers protested. DOR argued that the taxpayers are not the proper claimants for credits because taxpayers do not, as developers, “use the property in their trade or business to control or prevent pollution.” Taxpayers’ business is developing master planned communities and they are required by law to provide sewage and wastewater collection systems in the planned communities. The court concluded that taxpayers, as part of their real estate development activities, were required to provide such systems, and thus the pollution control property is used in taxpayer’s trade or business.

**Note:** 2005 amendment: The credit now applies (after 2005) only to expenses incurred to prevent, monitor, control or reduce . . . pollution that results from the taxpayer's direct **operating activities.**"

**ADOR v. Bosch, 1 CA-TX 16-0015 (June 13, 2017).** Taxpayer responsible for unpaid income taxes, interest, and penalties. Moral of the story: **File Arizona income tax returns if you file federal income tax returns and appear for administrative hearings after you challenge a proposed assessment.** After taxpayer failed to file Arizona tax returns for 2000 and 2001, ADOR issued proposed income tax assessments to taxpayer based on information it had received from the IRS. Taxpayer disagreed with assessments and requested an administrative hearing, but failed to appear and the hearing officer affirmed the assessments. Ten years later, ADOR filed a tax court complaint against taxpayer for unpaid tax, interest, and penalties, then moved for summary judgment. Taxpayer opposed the motion but failed to offer any evidence showing he had filed returns in 2000 and 2001. Tax court granted ADOR's motion for summary judgment, which the Court of Appeals affirmed.

## MISCELLANEOUS TAXES

### 2018 LEGISLATION

**House Bill 2456, Chapter 138. Extends Rio Nuevo District Funding from 2025 to 2035.** The distribution of TPT revenues to Rio Nuevo will continue until July 1, 2035 or until all authorized debt service payments are completed, whichever is later. Prior law ended distribution on the earlier date of July 1, 2025 or when debt service payments were completed. Public monies received by the district may be used for debt service for bonds issued before January 1, 2025 and for contractual obligations incurred before June 1, 2025. Prior dates were January 1, 2009 and June 1, 2009, respectively. This adds provision that if the property of a county stadium district is not conveyed within six months after the board of directors offers it for disposal after the termination of the district, the property escheats to the State Land Trust for the benefit of the Permanent State School Fund.

**Senate Bill 1294, Chapter 104. Tax Corrections Act of 2018.** Makes corrections to the tax code as recommended by the DOR and Legislative Council. Changes are for clarification or to blend conflicting statutes and are not intended to be substantive.

### **Senate Bill 1385, Chapter 218. Tax Appeals: Can Now Bypass Office of Administrative Hearings (OAH); Changes to the Confidentiality Statute.**

While a tax appeal is pending with the DOR, a person that has had an informal conference with the DOR is permitted to bypass the hearing with the OAH and appeal to the State Board of Tax Appeals (BOTA) or bring a Tax Court action. This does not apply to individual income tax cases. If the DOR fails to schedule a meeting within 45 days of the time a person files a written request to meet with an appeals officer, the person may bypass the meeting and appeal directly to BOTA or Tax Court. This change applies retroactively to all tax disputes filed, pending on, or arising after January 1, 2017. Additionally, retroactive to May 23, 2015, the statute regulating disclosure of confidential taxpayer information is modified to allow the following disclosures of taxpayer information: LLC information to LLC members or managers, and government entity information to the head of the entity or a member of the governing board. Any taxpayer information given during a meeting or telephone call may be disclosed if the taxpayer is present and gives authorization..

### **Senate Bill 1386, Chapter 190. Use of "Zappers" is a Felony.**

Makes it a Class 5 felony to purchase, install, or use an "automated sales suppression device" or "zapper" with the intent to defeat or evade a tax. Automated sales suppression device: a computer software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems. Zapper: the program, plus any device that carries the software program or an internet link to the software program. Makes it a Class 5 felony to sell, license, purchase, install, manufacture, develop, or possess any automated sales suppression device or zapper. Violations are punishable by a fine of up to \$100,000 (\$500,000 if a corporation). Fines collected are deposited in the newly-established Department of Revenue Tax Fraud Interdiction Fund, for the detection of violations and enhancement of tax fraud analytics used to detect violations.

### **Senate Bill 1529, Chapter 283. Tax Provisions in State Budget.**

Makes various changes relating to general revenues for FY2017-18. Retroactive to July 1, 2018, expenses of school districts subject to desegregation orders that are specifically exempt in whole or in part from the revenue control limit and district additional assistance will be funded through secondary property taxes rather than primary property taxes. Secondary property taxes levied for this purpose do not require voter approval and must

be separately delineated on a property owner's property tax statement. Effect on state budget: primary taxes are limited to 1% of the full cash value of the property; overages are funded by state. Secondary property taxes are not subject to 1% limitation; thus, no state funding of overages. Subtractions for computing Arizona adjusted gross income are expanded to include benefits, annuities, and pensions received as retired or retainer pay of members of the uniformed services of the US. Up to \$2,500 for tax years through 2018 and \$3,500 for tax years 2019 and after.

## 2018 COURT DECISIONS

**Saban Rent-A-Car, LLC v. ADOR, 1 CA-TX 16-007 (March 13, 2018).** Car rental surcharge for Cardinal stadium is constitutional. The issues were: (1) whether the car rental surcharge authorized under A.R.S. § 5-839 was invalid under Article IX, Section 14 of the Arizona Constitution (fees relating to registration, operation, or use of vehicles on the public highways or streets must be used for highway/street purposes); and (2) whether the car rental surcharge authorized under A.R.S. § 5-839 was unconstitutional under the Dormant Commerce Clause implied in the United States Constitution. The court held that A.R.S. § 5-839 is not invalid under Article IX, Section 14 of the Arizona Constitution nor under the Dormant Commerce Clause implied by the United States Constitution. Section 14 applies to a tax or fee that is a prerequisite to, or triggered by, the legal operation or use of a vehicle on a public thoroughfare and thus does not apply to the car rental surcharge. A.R.S. § 5-839 and the car rental surcharge are not discriminatory on their face; nor do they cause any discriminatory effects on interstate

commerce.

**State of Arizona Dep't of Revenue v. House, 1 CA-TX 16-0010 (November 21, 2017).** Luxury tax – taxpayer did not timely protest assessment. DOR issued notice of assessment for luxury tax. Taxpayer had 45 days to file a protest, but filed it late. DOR sent taxpayer a letter asking if he wanted to contest DOR's finding that the protest was filed late, but the taxpayer did not respond. Ten years later, DOR brought a collection action in the tax court. Taxpayer argued that the protest was timely. The tax court and the Court of Appeals disagreed and upheld the assessment.

**BSI Holdings, LLC v. Ariz Dep't of Transportation, 1 CA-TX 16-0003 (July 13, 2017).** Aircraft registration license tax – “day” for purposes of determining the aircraft license tax rate includes any fraction of a day. Arizona imposes an annual aircraft license tax on aircraft based in the state pursuant to A.R.S. § 28-8335. The tax is imposed at a graduated rate depending on the total number of days the aircraft is based in Arizona during the calendar year. The Court of Appeals held that “days” for purposes of determining the appropriate rate means “any calendar day during which the aircraft was on the ground in Arizona for any period of time” and not a 24-hour period as argued by the taxpayer.

## 2018 RULINGS

**GTP 18-1: Procedures for Power of Attorney and Disclosure of Confidential Information.** Updates, procedures and forms for taxpayer disclosures and representation (see chart below):

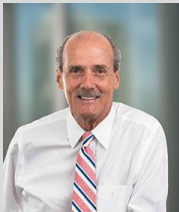
Form	Use	Disclosure/Representation
Form 285	Any tax matter	Disclosure & representation
Form 285A	Audit matters	Disclosure only
Form 285B	Any tax matter	Disclosure only
Form 285C	Any tax matter; authorization to receive confidential information	Disclosure & certification of taxpayer authorization only
Form 285I	Any tax matter; individuals only	Disclosure & representation
Form 285P	Centrally valued property matters	Disclosure & representation
Form 285UP	Unclaimed property matters	Disclosure & representation

**LTR 18-1: Luxury Privilege Tax on Cavendish Tobacco.** The classification and imposition of luxury privilege tax on cavendish tobacco, which is heat and pressure treated tobacco with a sweet taste. Tobacco products composed of cavendish tobacco are classified as cavendish and are taxed at a combined rate of \$0.055 per ounce. Tobacco products that contain, but not entirely comprised of, cavendish tobacco are classified as smoking tobacco and are taxed at a combined rate of \$0.223 per ounce. "Combined rate" refers to tax rates applicable to tobacco products that are not subject to the Indian Reservation Tobacco Tax (IRTT) under A.R.S. § 42-3302. Tobacco products that are subject to the IRTT are taxed at a rate of \$0.113 per ounce for smoking tobacco and \$0.028 per ounce for cavendish.

**TPR 18-1: Taxation of Livestock and Poultry Feed and Supplements; Tax Treatment of Food Producers.** Updates guidance for the amendments made by H.B. 2326 (August 6, 2016), as follows: (1) added exemption to A.R.S. § 42-5061(A)(42) for livestock and poultry feed, salts, vitamins and other additives that are sold to persons for: (a) use or consumption by their own livestock or poultry; (b) use or consumption in the businesses of farming, ranching, and producing or feeding livestock, poultry, or livestock or poultry products; and (c) use or consumption in noncommercial boarding of livestock; and (2) amended definition of "food product" in A.R.S. § 3-561, which is not subject to tax, to include: animal feed grown or raised by the producer and sold as feed for livestock, poultry, or ratites which are purchased or raised for slaughter, including livestock purchased or raised for production or use, such as milk cows, breeding bulls, laying hens, and riding or work horses. Replaces TPP 94-5.

## STATE AND LOCAL TAX GROUP

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



**Pat Derdenger**  
*Partner*  
pderdenger@step toe.com  
+1 602 257 5209



**Karen Lowell**  
*Associate*  
klowell@step toe.com  
+1 602 257 5290