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ARIZONA TAX RESEARCH ASSOCIATION

NEWSLETTER

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ATRA's 2014 Legislative Program Update

HB2395 property tax calculations; school districts (Lesko)

Sponsored by Rep. Debbie Lesko, HB2395 is an ATRA-backed measure intended to ensure that K-12 school primary property taxes are levied in accordance with all applicable state statutes. As introduced, HB2395 would have required the county school superintendent to file and certify in writing to the Property Tax Oversight Commission (PTOC) on or before July 10 of each year the superintendent's estimate of the amount of school monies required by each school district for the ensuing year based on the proposed budgets adopted by the governing boards of the school districts. The property tax information provided by the superintendent would be required to include the calculation of primary property taxes, as well as the amount to be levied for the Minimum Qualifying Tax Rate (MQTR), if applicable. In order to catch errors in those calculations in a timely manner, HB2395 requires PTOC to review and approve, and recalculate if necessary the property tax calculations provided by the superintendent. PTOC would then be required to file the finalized amounts to be levied for each school district from the primary property tax, including the MQTR, to the board of supervisors on or before the third Monday in August of each year.

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Sales Tax Uniformity

More Than a Local Control Issue

Uniform base has broader policy implications

The 2013 Legislative session was highlighted by the passage of historic legislation (House Bill 2111) that reformed the administration of Arizona's complicated transaction privilege tax (TPT). That legislation capped a year-long effort that began with the work of Governor Brewer's TPT Simplification Task Force that worked months to develop recommendations to improve Arizona's TPT system.

Despite the fact that the Task Force focused considerable time and energy on the lack of uniformity in Arizona's state and local sales tax structure, the legislative effort in 2013 focused primarily on simplifying the collection and auditing of Arizona's TPT system. The TPT Task Force report noted Arizona is one of only three states that allows an independent municipal sales tax that employs a tax base that is different than the state. In addition to the difference in tax treatment between the State of Arizona and the Model City Tax Code (MCTC), multijurisdictional businesses are often burdened with tax differences across cities as well. For decades, the Arizona business community has expressed on-going concern about the enormous administrative costs associated with the lack of uniformity of Arizona's state and local TPT tax base.

From a historical perspective, the pressure to create uniformity between the state and city tax bases came solely from the business community burdened with extraordinary compliance costs. However, as the Task Force noted, the pressure to create greater uniformity in the TPT base now comes from Congress where proposals to allow states to tax remote sales

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ATRA worked with the Arizona Association of Counties (AACO) on an amendment to address the opposition noted by the county school superintendents as the bill progressed through the House. As a result, the deadline for the county school superintendents to submit the property tax information to PTOC was extended from July 10 to July 25. Additionally, the county school superintendents will maintain the responsibility of forwarding the finalized property tax rates and levies to the county board of supervisors in August. *HB2395 passed the House and currently awaits a hearing in Senate Finance.*

HB2379 special districts; secondary levy limits (Olson)

As introduced, HB2379 would have limited the secondary levies of certain countywide special taxing districts to the same percentage growth as the existing constitutional levy limits placed on county primary property tax levies. Although the bill passed the House Ways & Means Committee despite much opposition by the counties, Rep. Justin Olson requested that the bill be reassigned to the Ways & Means Committee in order to offer a strike-everything amendment to replace the secondary levy limits on library, jail, juvenile jail, and public health services districts with the truth-in-taxation (TNT) requirements that currently apply to the county primary property tax levies. With this change, the counties would be subject to the TNT publication and hearing requirements in order to notify taxpayers of the tax increase. The strike-everything amendment eliminated the opposition of every county except Pima. *The bill has failed to clear Rep. Robson's Rules Committee.*

SB1316 financial reporting; political subdivisions (S. Pierce)

Sponsored by Senator Steve Pierce, SB1316 establishes a penalty for a county, community college, city or town that fails to comply with the financial reporting filing requirement of eight months (includes extension granted by the Auditor General) by disallowing the jurisdiction from adopting a general fund budget in the subsequent fiscal year in excess of the current year's general fund budget. Requires jurisdictions to post the financial reports to their websites within seven days of filing the report with the Auditor General and the reports must be maintained on the jurisdiction's website for at least 60 months. Additionally, all cities and towns will be required to post their financial audits on their website rather than on the website of an association of cities and towns.

At the time of this newsletter, only seven of Arizona's fifteen counties had completed their FY 2013 financial audits (according to the Auditor General's website), seven counties had their FY 2012 audits posted, and the most recent audit for one county was from FY 2011. It is impossible for taxpayers to participate in the budgeting process without the availability of timely audits and it is intended that SB1316 will incentivize local governments to adhere to the existing statutory filing deadline. *SB1316 currently awaits Senate COW.*

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LEGISLATIVE PROGRAM, *Continued from Page 2***SB1182 school district overrides; bonds; information (Yarbrough)**

Sponsored by Senator Steve Yarbrough, SB1182 specifies that the purpose statement for the request of a K-12 override election and all bond election publicity pamphlets reflect only factual information in a neutral manner and any advocacy for the election is strictly limited to the arguments in the pro and con statements. As introduced, SB1182 would have limited the continuation of K-12 override elections to once during the life of the existing override; however, that provision was removed in Senate COW to address the opposition to that provision. *SB1182 passed the Senate and currently awaits a hearing in the House Education Committee.*

HB2378 municipal taxes and fees; prohibition (Olson)

Sponsored by Rep. Justin Olson, HB2378 specifies that a municipality is prohibited from assessing a municipal-wide parcel tax or fee on property based on the size or value of real property for any public service provided by the municipality, retroactive to December 31, 2013. *HB2378 passed the House with a vote of 55-0 and currently awaits a hearing in Senate Finance.*

Other Legislation ATRA Supports**HB2283 TPT; postmark; filing by mail (Lesko)**

As amended in the House Ways & Means Committee, HB2283 specifies that any tax filings that are not postmarked by the United States Post Office are considered timely if performed by the taxpayer within five days after the due date. This proposal is intended to address a recent issue regarding the intermittent application of postmarks by the U.S. Postal Service. *HB2283 passed the House 58-0.*

HB2438/SB1480 schools; transporting district conversion (Gowan/Griffin)

This legislative proposal would allow the conversion of a school district to a transporting school district if a petition is signed by at least 10% of the qualified electors to request a special election to implement the conversion. To qualify for such a conversion, the county school superintendent must certify that the school district must have had less than 100 students enrolled for the past three years and that space is available in the school district receiving the transported students. Once the petition is certified, the superintendent must call a special election no later than 90 days before the general election. If the election is successful, the school district and governing board remain in tact; however, the entire student population must be transported to other school districts.

This legislative proposal is intended to address a recent issue that occurred in Clifton Unified School District in which the governing board more than doubled its tax rate despite opposition from the community. This proposal would place control in the hands of the taxpaying community rather than a three-member school board. *SB1480 is a similar proposal except that it places restrictions on budget increases upon submission of the petition. HB2438 awaits House Third Read and SB1480 passed the Senate.*

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LEGISLATIVE PROGRAM, *Continued from Page 3***Legislation ATRA Opposes****HB2586 corporate tax credits; annual reporting (Mitchell)**

Effective from and after December 31, 2013, HB2586 requires the Department of Revenue to annually report to the Governor and Legislature the information associated with corporations that qualify for a variety of tax credits in any taxable year that are equal to or greater than \$5,000. The required information in the report must include the name of each corporation, the amount of the credit claimed, and the amount of the credit carryforward. ATRA argued in committee that the appropriate time to debate the merits of tax credits, including the impacts to the State General Fund, is when they are being considered by the Legislature. Subsequent to their becoming law, taxpayers should not be subjected to a public shaming exercise if they make use of legal tax credits. *HB2586 awaits floor debate in the House.*

SB1412 accelerated depreciation; class 6 property (Yarbrough)

SB1412 extends the significant benefits of locally assessed accelerated depreciation for personal class 6 property acquired during or after tax year 2014 and initially classified during or after tax year 2015. Additionally, beginning in valuation year 2015, the Department of Revenue is required to reduce the minimum value of class 6 property valued by the assessor by 2.5% each year. Interestingly, the proponents are arguing the merits of this bill on equity grounds. The current tax advantage for property taxpayer's fortunate enough to be placed in class 6 is a 76% reduction in liability. Obviously, the passage of SB1412 would result in additional greater disparities between business properties in class 1 and class 6. *SB1412 awaits Senate COW.*

SB1303 property valuation; class six (Yarbrough)

SB1303 is yet another in a long line of attempts by various businesses to escape class 1 and be placed in the much more friendly class 6. This year's version of the flight to class 6 comes from Grand Canyon University. SB1303 provides a property tax break to a regionally accredited institution of higher education with at least one university campus in this state that has more than 2,000 students residing on campus (only Grand Canyon University). Upon meeting the requirements, the real and personal property owned by the institution is classified under class 6, which is assessed at 5%, compared to other for-profit university property as well as most business property, which is classified under class 1 and is currently assessed at 19.5%.

Typically, the expansion of class 6 for businesses have been to attract a particular business or industry to Arizona. SB1303 provides a dramatic reduction in tax liability for an existing business while not extending the same treatment to other similarly situated businesses. Under Article 9, Section 1 of the Arizona Constitution, "all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax." While the courts have given the Legislature broad discretion in creating different classes of property, they have also cautioned that those distinctions in use, purpose or industry must be "real" and not be "arbitrary, specious or fanciful." In fact, the courts have invalidated disparate tax treatment between similar businesses in the same taxing jurisdiction based solely on the timing and size of the investment. ATRA believes the distinction created in SB1303 could have just such an infirmity. *SB1303 passed the Senate and currently awaits a hearing in the House Ways & Means Committee.*

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(Marketplace Fairness Act) include requirements for states and municipalities to adopt a common tax base.

Currently, the major differences between the state and city tax bases are in the following areas: Advertising; Speculative Builder; Commercial Lease; Food for Home Consumption; Residential Rental; and License for Use. In addition to these tax base differences, there are also multiple definitions on a number of taxes that are imposed at both the state and city level.

Regrettably, the recognition that Arizona's multiple tax bases overly complicates compliance and impedes the state's ability to avail itself of the potential authority granted by Congress to tax remote sales, was fleeting. In the first session following the major TPT reform debate, Arizona cities and towns are arguing for yet another distinction between the state and city TPT codes. Governor Brewer is advocating for an exemption from the TPT for electricity used in manufacturing and smelting (SB1413). Following her high profile effort to reform Arizona's TPT system, Governor Brewer's proposal, not surprisingly, called for a uniform application of the electricity exemption at both the state and local level. The Arizona League of Cities and Towns has strongly objected to the uniform application of the exemption, arguing that individual cities should be allowed to make that decision.

As the TPT Task Force learned, Arizona's TPT system didn't become complicated and chaotic overnight. Rather, it was a result of a myriad of changes that occurred over several decades — changes that were often rationalized with a singular focus on local control. As each TPT base change resulting in less uniformity was made, the taxation principals of simplicity, efficiency and competitiveness were often viewed as nothing more than minor collateral damage. However, taken collectively, the changes have left the system so fragmented that the challenge to reform the system and create uniformity that is standard in most states is daunting.

Last year's House Bill 2111 was great progress in the path toward reforming Arizona's TPT system. Further reform is necessary but it clearly won't happen if policymakers return to the errors of the past.