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ARIZONA TAX RESEARCH ASSOCIATION

ARIZONA TRANSACTION PRIVILEGE TAX RULING

TPR 23-X

The following are excerpts from the ADOR Draft TPR 23-X on TPT Sourcing:

Business location

Although no controlling precedent defines *business location*, in the tax case *ACN Opportunity, LLC v. Employment Department*, the Oregon Supreme Court, in construing a statute containing the phrase “maintains a business location,” did define the term.²⁶ The state legislature had not defined *business location*, so the court “assume[d] that the legislature intended to give [the term its] ordinary meaning[.]”²⁷ Turning therefore to a reliable dictionary, the court discovered that “[i]n part, *Webster’s* defines ‘location’ to mean ‘a position or site occupied or available for occupancy (as by a building) or marked by some distinguishing feature.’”²⁸ Relying on that definition, the court recognized that “a business location must be a physical space that a person can occupy, such as an office or a room in a house.”²⁹

The Arizona Legislature likewise has not defined *business location* for the purposes of sourcing a retail sale. Following the rules of statutory construction observed in Arizona, as by the *ACN Opportunity* court, the term must be given its ordinary meaning.³⁰ The Department accordingly adopts Oregon’s approach and also adds to that court’s definition the commonsense clarification that a business location is a location where the taxpayer’s business is carried on. Specifically, a *business location* is a physical space that a person can occupy such as an office or a room in a house and in which business is carried on.

Receipt of order

Just as *business location* is undefined in the statute, so too is *receipt of order*. In the paradigmatic case—i.e., where a retailer has a brick-and-mortar storefront—there can be little doubt about the fact of receipt. However, the difficulty arises where a retailer lacks such a storefront, such that (1) all orders are submitted online, and (2) those orders are transmitted to servers before being handled by business personnel.

Just as contract formation requires manifestation of assent, so too does order receipt require manifestation of such receipt. And, just as the manifestation of assent generally requires no act, the manifestation of receipt also typically requires no act, as in a traditional receipt of in-person order at a brick-and-mortar retail storefront. Contrastingly, if order information is remotely transmitted to a seller through one or more servers, manifestation of receipt by act is required in order to establish the receipt of the order. Thus, for example, where order information is submitted to servers that transmit the information to a business location where employees (or agents) of a seller act on that order information, order receipt is established by the business location sufficient to satisfy A.R.S. § 42-5040(A)(1) and to enable the Department to satisfy its levying and collection duties under A.R.S. § 42-5008(A).

So, if order information is submitted to one or more servers, a subsequent physical act by the vendor in response to that order information at a business location is necessary in order to manifest receipt and thereby establish order receipt.

*Sourcing Retail Sales of TPP – Online Businesses*³¹

A specialized case of retail sourcing arises where a retailer lacks a brick-and-mortar storefront, such that (1) all orders are submitted online, and (2) those orders are transmitted to servers before being handled by business personnel. Under such circumstances, the servers themselves do *not* establish a business location at which the order is received, such that the sales are not sourced to the servers.

Servers alone neither establish a business location nor receive orders. A *business location* is a physical place that a person can occupy—such as an office or a room in a house—and in which business is carried on.³² Because a server is not itself such a physical place, it neither is, nor establishes, a business location. And just as contract formation requires manifestation of assent, so too does order receipt require manifestation of receipt.³³ “Receipt” by servers therefore does not constitute receipt of order. Instead, order receipt is established by the actions of the employees (or agents) at the business location sufficient to satisfy A.R.S. § 42-5040(A)(1): where order information is submitted to servers that subsequently transmit the information to a business location at which employees (or agents) act on that order information, regardless of whatever intermediate events may occur.