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ARIZONA TAX RESEARCH ASSOCIATION

ATRA SUPPORTS HB2147
Utility Pole Attachments – TPT Exemption

A court case ruled that billboards are considered tangible personal property rather than improvements to real property and any revenues from rental activities are subject to TPT under the personal property rental classification (*ADOR v. Arizona Outdoor*). The premise behind the court ruling is that billboards do not qualify as real property improvements because they are not permanently attached to the ground.

Consequently, a recent audit by the Department of Revenue of an electric co-op extended this decision to utility poles, indicating that charges for any third-party attachment to a utility pole are considered revenues from leasing personal property and therefore subject to TPT. However, utility pole attachment agreements are legally different from billboard rentals, and as a result, cannot be treated the same way. Unlike a traditional billboard lease in which an advertising company acquires an exclusive right to use the billboard for a period of time, joint pole usage agreements do not acquire the same property rights. First, the attaching party must move its facilities at the request of other users or the pole owner to create space for other users. In addition, the attaching party must vacate a pole when conditions or uses of the pole change and the owner requests removal. Finally, the rates paid under joint pole agreements are dictated by federal law in many cases and the license simply provides the right to attach to the pole without trespassing.

The proposed legislation under HB2147 will reverse the improper application of the court's ruling and restore the proper treatment of joint pole usage agreements under TPT. Without this clarification, secondary users of every utility pole in this state, and ultimately the end customers of electric power, cable television and telecommunications services, will be exposed to millions of dollars in added annual costs.

ATRA ASKS LAWMAKERS TO VOTE YES ON HB2147!