Make Clear in Law the Taxation of Digital Goods & Services

- AZ presently lacks statutory clarity in its taxation of digital goods and services
- AZ only has one adopted rule, taxing prewritten software delivered by any means (R15-5-1548)
- AZ has no laws or rules related to Digital Goods or Digital Services, only private taxpayer rulings
- Private letter rulings arbitrarily making some SaaS/Cloud products taxable is untenable
- Lack of clarity is an economic impediment, creating uncertainty & restricting capital investment

WHAT DOES THE BILL DO?

- Codifies the 2005 rule taxing prewritten software
- Licensed prewritten software is taxable regardless of provisioning method
- Digital goods are taxable regardless of provisioning
- Excludes digital services from tax
- Makes the tax uniform between state & city level
- Similar philosophy as 2018 bill

WHAT IS A DIGITAL GOOD?

- Nationally accepted definitions for consumer digital products
- Audiovisual works
- Audio Works
- Books, Articles, Periodicals
- Visual Works (still images)

-The Legislature can determine what is taxable or the courts may determine NONE of it is

-At least 5 separate legal challenges to ADORs position have been filed

From the Superior Court’s December denial of DOR’s motion to dismiss in Netflix v ADOR:

“Even if, as a matter of law, Plaintiff’s business receipts are derived from “tangible personal property,” it is not clear that they are taxable under A.R.S. §42-5071. In order to be so, the receipts must be from the lease of rental of the property. In order to so qualify, the taxpayer’s customer must have “exclusive use and control” of the property for a time period. On this issue, Plaintiff has pled facts which, if true, would allow a conclusion that its property is not rented or leased.” TX 2018-000073

“Finally, in order to be taxable under A.R.S. §42-5071, the Plaintiff’s business activity must, in their essence, not be in the nature of a service. Again, on this issue, Plaintiff has plead fact which allow a conclusion that its activity is more of a service that it is a lease or rental of personal property.”

Court may agree streaming goods are services, which then requires a Constitutional amendment to make them taxable in the future. This bill deems them goods in law and subject to tax.
ORGANIZATIONS IN SUPPORT OF SB1460

Amazon
American Airlines
Americans for Prosperity
Arizona Chamber of Commerce
Arizona Mortgage Lenders Assn
Arizona Public Service
Arizona Tax Research Association
Arizona Technology Council
AT&T
ADP
Baselayer Technology
Council on State Taxation
Cox Communications
Cox Automotive
Dish Network
East Valley Chambers of Commerce
Freeport McMoRan

GoDaddy
Goldwater Institute
Homebuilders Assn of Central AZ
Intel
IO Data Centers
Iron Mountain Data Centers
Microsoft Corporation
National Fed of Independent Business
ON Semiconductor
Phoenix Chamber of Commerce
Salt River Project
Southwest Cable Communications Assn
T-Mobile
Tucson Metro Chamber of Commerce
University of Phoenix
UNS Energy Corp.

WHAT ABOUT OTHER STATES?

• 33 states tax prewritten software (delivered electronically)
• 27 states tax digital goods
• 23 states tax video streaming
• 4 states tax SaaS/remote software
  – 13 have attempted via rule
  – 25 have exempted via rule
  – 4 states exempted in law

WHY NOT TAX ALL DIGITAL PRODUCTS?

• Taxing services provided online is unfair and likely against federal law (ITFA)
• Under Prop 126, would require a Const. amendment
• Very few states tax cloud services or remotely accessed software; such a move would make AZ economically uncompetitive
• NCSL has advised states not to tax SaaS/Remotely Accessed software. Just 4 states have done so.

DOES ARIZONA GAIN OR LOSE MONEY?

• Current position of the State is under litigation; this bill shores up the state’s position
• DOR does not separately account for digital goods so it’s impossible to know precisely
• Licensed prewritten software has been & continues to be taxable
• Some but not all providers of digital goods already collect and remit
• A few “cloud service” or SaaS companies began collecting while many never have; some have since stopped collecting or have brought legal challenges against the state
• Entire tax base for all rentals of personal property is ~$213M & hasn’t grown much in decades; if the state is collecting on digital services, the amount is likely fractional