State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1552

AN ACT

AMENDING SECTION 43-1147, ARIZONA REvised STATUTES; RELATING TO ALLOCATION OF BUSINESS INCOME FOR TAX PURPOSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 43-1147, Arizona Revised Statutes, is amended to read:

43-1147. Situs of sales of other than tangible personal property

A. EXCEPT AS PROVIDED BY SUBSECTION B, sales, other than sales of tangible personal property, are in this state if any EITHER of the following apply:

1. The income producing activity is performed in this state.
2. The income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

B. IN LIEU OF SUBSECTION A, A MULTISTATE SERVICE PROVIDER MAY ELECT TO TREAT SALES FROM SERVICES AS BEING IN THIS STATE TO THE EXTENT THAT THE PURCHASER OF THE SERVICE RECEIVED THE BENEFIT OF THE SERVICE IN THIS STATE AS FOLLOWS:

1. THE ELECTION MUST BE MADE ON THE TAXPAYER’S INCOME TAX RETURN. THE ELECTION IS:
   (a) EFFECTIVE RETROACTIVELY FOR THE FULL TAXABLE YEAR OF THE INCOME TAX RETURN ON WHICH THE ELECTION IS MADE.
   (b) BINDING ON THE TAXPAYER FOR AT LEAST FIVE CONSECUTIVE TAXABLE YEARS, REGARDLESS OF WHETHER THE TAXPAYER NO LONGER MEETS THE PERCENTAGE THRESHOLD PRESCRIBED BY PARAGRAPH 3, SUBDIVISION (a) OF THIS SUBSECTION DURING THAT TIME PERIOD, EXCEPT AS PROVIDED BY PARAGRAPH 2 OF THIS SUBSECTION.

2. THE ELECTION MAY BE TERMINATED AS FOLLOWS:
   (a) WITHOUT THE PERMISSION OF THE DEPARTMENT AFTER THE ELECTION HAS BEEN IN EFFECT FOR FIVE CONSECUTIVE TAXABLE YEARS.
   (b) WITHOUT THE PERMISSION OF THE DEPARTMENT ON THE ACQUISITION OR MERGER OF THE TAXPAYER.
   (c) WITH THE PERMISSION OF THE DEPARTMENT BEFORE THE EXPIRATION OF FIVE CONSECUTIVE TAXABLE YEARS.
   (d) THE TERMINATION MUST BE MADE ON THE TAXPAYER’S INCOME TAX RETURN FOR THE FIRST TAXABLE YEAR IN WHICH THE ELECTION IS TERMINATED.

3. FOR THE PURPOSES OF THIS SUBSECTION:
   (a) “MULTISTATE SERVICE PROVIDER” MEANS A TAXPAYER THAT DERIVES MORE THAN EIGHTY-FIVE PER CENT OF ITS SALES FROM SERVICES PROVIDED TO PURCHASERS WHO RECEIVE THE BENEFIT OF THE SERVICE OUTSIDE THIS STATE IN THE TAXABLE YEAR OF ELECTION, AND INCLUDES ALL TAXPAYERS REQUIRED TO FILE A COMBINED RETURN PURSUANT TO SECTION 43-942 AND ALL MEMBERS OF AN AFFILIATED GROUP INCLUDED IN A CONSOLIDATED RETURN PURSUANT TO SECTION 43-947. IN CALCULATING THE EIGHTY-FIVE PER CENT, SALES TO STUDENTS RECEIVING EDUCATIONAL SERVICES AT CAMPUSES PHYSICALLY LOCATED IN THIS STATE SHALL BE EXCLUDED FROM THE CALCULATION.

Sec. 2. Effect on prior law
The provisions of this act are not intended to affect, and shall not be cited or considered in, the construction or interpretation of section 43-1147, Arizona Revised Statutes, for taxable periods before the effective date of this act.

Sec. 3. Effective date
This act is effective and applies to taxable years beginning from and after December 31, 2011.