

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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 43-1147. Situs of sales of other than tangible personal
5 property

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

9 1. The income producing activity is performed in this state.

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

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

17 1. THE ELECTION MUST BE MADE ON THE TAXPAYER'S INCOME TAX RETURN. THE
18 ELECTION IS:

19 (a) EFFECTIVE RETROACTIVELY FOR THE FULL TAXABLE YEAR OF THE INCOME
20 TAX RETURN ON WHICH THE ELECTION IS MADE.

21 (b) BINDING ON THE TAXPAYER FOR AT LEAST FIVE CONSECUTIVE TAXABLE
22 YEARS, REGARDLESS OF WHETHER THE TAXPAYER NO LONGER MEETS THE PERCENTAGE
23 THRESHOLD PRESCRIBED BY PARAGRAPH 3, SUBDIVISION (a) OF THIS SUBSECTION
24 DURING THAT TIME PERIOD, EXCEPT AS PROVIDED BY PARAGRAPH 2 OF THIS
25 SUBSECTION.

26 2. THE ELECTION MAY BE TERMINATED AS FOLLOWS:

27 (a) WITHOUT THE PERMISSION OF THE DEPARTMENT AFTER THE ELECTION HAS
28 BEEN IN EFFECT FOR FIVE CONSECUTIVE TAXABLE YEARS.

29 (b) WITHOUT THE PERMISSION OF THE DEPARTMENT ON THE ACQUISITION OR
30 MERGER OF THE TAXPAYER.

31 (c) WITH THE PERMISSION OF THE DEPARTMENT BEFORE THE EXPIRATION OF
32 FIVE CONSECUTIVE TAXABLE YEARS.

33 (d) THE TERMINATION MUST BE MADE ON THE TAXPAYER'S INCOME TAX RETURN
34 FOR THE FIRST TAXABLE YEAR IN WHICH THE ELECTION IS TERMINATED.

35 3. FOR THE PURPOSES OF THIS SUBSECTION:

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

1 (b) "RECEIVED THE BENEFIT OF THE SERVICE IN THIS STATE" MEANS THE
2 SERVICES ARE RECEIVED BY THE PURCHASER IN THIS STATE. IF THE STATE WHERE THE
3 SERVICES ARE RECEIVED CANNOT BE READILY DETERMINED, THE SERVICES ARE
4 CONSIDERED TO BE RECEIVED AT THE HOME OF THE CUSTOMER OR, IN THE CASE OF A
5 BUSINESS, THE OFFICE OF THE CUSTOMER FROM WHICH THE SERVICES WERE ORDERED IN
6 THE REGULAR COURSE OF THE CUSTOMER'S TRADE OR BUSINESS. IF THE ORDERING
7 LOCATION CANNOT BE DETERMINED, THE SERVICES ARE CONSIDERED TO BE RECEIVED AT
8 THE HOME OR OFFICE OF THE CUSTOMER TO WHICH THE SERVICES WERE BILLED.

9 Sec. 2. Effect on prior law

10 The provisions of this act are not intended to affect, and shall not be
11 cited or considered in, the construction or interpretation of section
12 43-1147, Arizona Revised Statutes, for taxable periods before the effective
13 date of this act.

14 Sec. 3. Effective date

15 This act is effective and applies to taxable years beginning from and
16 after December 31, 2011.