State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 2

SENATE BILL 1046

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; definitions

A. EXCEPT AS PROVIDED BY SUBSECTION B OF THIS SECTION, 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. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2013, A MULTISTATE SERVICE PROVIDER MAY ELECT TO TREAT SALES FROM SERVICES AS BEING IN THIS STATE BASED ON A COMBINATION OF INCOME PRODUCING ACTIVITY SALES AND MARKET SALES. IF THE ELECTION UNDER THIS SUBSECTION IS MADE PURSUANT TO SUBSECTION C OF THIS SECTION, THE SALES OF SERVICES THAT ARE IN THIS STATE SHALL BE DETERMINED FOR TAXABLE YEARS BEGINNING FROM AND AFTER:

1. DECEMBER 31, 2013 THROUGH DECEMBER 31, 2014 BY THE SUM OF THE FOLLOWING:
   (a) EIGHTY-FIVE PER CENT OF THE MARKET SALES.
   (b) FIFTEEN PER CENT OF THE INCOME PRODUCING ACTIVITY SALES.
2. DECEMBER 31, 2014 THROUGH DECEMBER 31, 2015 BY THE SUM OF THE FOLLOWING:
   (a) NINETY PER CENT OF THE MARKET SALES.
   (b) TEN PER CENT OF THE INCOME PRODUCING ACTIVITY SALES.
3. DECEMBER 31, 2015 THROUGH DECEMBER 31, 2016 BY THE SUM OF THE FOLLOWING:
   (a) NINETY-FIVE PER CENT OF THE MARKET SALES.
   (b) FIVE PER CENT OF THE INCOME PRODUCING ACTIVITY SALES.
4. DECEMBER 31, 2016 BY ONE HUNDRED PER CENT OF THE MARKET SALES.

C. A MULTISTATE SERVICE PROVIDER MAY ELECT TO TREAT SALES FROM SERVICES AS BEING IN THIS STATE UNDER SUBSECTION B OF THIS SECTION AS FOLLOWS:

1. THE ELECTION MUST BE MADE ON THE TAXPAYER'S TIMELY FILED ORIGINAL 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 OF A MULTISTATE SERVICE PROVIDER DURING THAT TIME PERIOD, EXCEPT AS PROVIDED BY PARAGRAPH 2 OF THIS SUBSECTION. TO CONTINUE WITH THE ELECTION AFTER THE FIVE CONSECUTIVE TAXABLE YEARS, THE TAXPAYER MUST MEET THE QUALIFICATIONS TO BE CONSIDERED A MULTISTATE SERVICE PROVIDER AND RENEW THE ELECTION FOR ANOTHER FIVE CONSECUTIVE TAXABLE YEARS.
2. DURING THE ELECTION PERIOD, THE ELECTION MAY BE TERMINATED AS
FOLLOWS:
(a) WITHOUT THE PERMISSION OF THE DEPARTMENT ON THE ACQUISITION OR
MERGER OF THE TAXPAYER.
(b) WITH THE PERMISSION OF THE DEPARTMENT BEFORE THE EXPIRATION OF
FIVE CONSECUTIVE TAXABLE YEARS.
D. FOR THE PURPOSES OF THIS SECTION:
1. "INCOME PRODUCING ACTIVITY SALES" MEANS THE TOTAL SALES FROM
SERVICES THAT ARE SALES IN THIS STATE UNDER SUBSECTION A OF THIS SECTION.
2. "MARKET SALES" MEANS THE TOTAL SALES FROM SERVICES FOR WHICH THE
PURCHASER RECEIVED THE BENEFIT OF THE SERVICE IN THIS STATE.
3. "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 REPORT
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.
4. "RECEIVED THE BENEFIT OF THE SERVICE IN THIS STATE" MEANS THE
SERVICES ARE RECEIVED BY THE PURCHASER IN THIS STATE. IF THE STATE WHERE THE
SERVICES ARE RECEIVED CANNOT BE READILY DETERMINED, THE SERVICES ARE
CONSIDERED TO BE RECEIVED AT THE HOME OF THE CUSTOMER OR, IN THE CASE OF A
BUSINESS, THE OFFICE OF THE CUSTOMER FROM WHICH THE SERVICES WERE ORDERED IN
THE REGULAR COURSE OF THE CUSTOMER'S TRADE OR BUSINESS. IF THE ORDERING
LOCATION CANNOT BE DETERMINED, THE SERVICES ARE CONSIDERED TO BE RECEIVED AT
THE HOME OR OFFICE OF THE CUSTOMER TO WHICH THE SERVICES WERE BILLED.

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, 2013.

APPROVED BY THE GOVERNOR FEBRUARY 21, 2012.