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ARIZONA TAX RESEARCH ASSOCIATION

NEWSLETTER VOLUME 63 NUMBER 4 MAY 2003

SENATE DEFEAT OF HB2357 ALLOWS EXPANSION OF UNLIMITED SCHOOL PROPERTY TAXES

Bill would have stopped spread of districts claiming deseg/OCR exemption from budget limits

The Arizona State Senate defeated a measure that would have limited the spread of districts claiming statutory authority to levy unlimited property taxes without voter approval.

Under state law, school districts may levy an unlimited amount of property taxes for an unlimited amount of time in excess of the state's limits without voter approval if the district has either a court order of desegregation or an administrative agreement with the U.S. Department of Education's Office for Civil Rights (OCR).

Currently, 19 school districts are exercising such authority. Legislative staff have estimated that 12 districts currently have OCR agreements that would allow them to levy property taxes in excess of their budget limits.

As amended in conference committee, HB 2357, sponsored by Representative Steve Huffman, would have restricted the current taxing authority for deseg orders or OCR agreements to those already levying the tax.

Any district not currently levying the tax would need to use their current authority for secondary property taxes — requiring voter approval — if the district wanted to exceed its budget limits.

A two-year freeze on deseg/OCR levies, put in place last year with the enactment of HB 2550, will still be in effect for FY 2003-2004.

Once the caps come off, if the past is any indication, taxpayers can expect to see significant growth in these property tax levies and in the number of districts using their OCR agreements to access the property tax.

The following senators voted to defeat HB 2357, in effect allowing an expansion in the number of school districts with unlimited property taxes:

Linda Aguirre, D – Phoenix
Carolyn S. Allen, R – Scottsdale
Marsha Arzberger, D – Wilcox
Timothy S. Bee, R – Tucson
Bill Brotherton, D – Phoenix
Jack A. Brown, D – St. Johns
Robert Cannell, D – Yuma
Jorge Luis Garcia, D – Tucson
Gabrielle Giffords, D – Tucson
Barbara Leff, R – Paradise Valley
Slade Mead, R - Phoenix
Harry E. Mitchell, D – Tempe
Pete Rios, D – Hayden
Victor Soltero, D – Tucson
Jay Tibshraeny, R – Chandler

TNT compliance bill makes it to finish line

Puts much-needed teeth in laws requiring public notice for tax increases

The governor signed SB 1331 into law this month, enacting consequences for noncompliance with the state's truth in taxation (TNT) laws.

Sponsored by Senator Dean Martin, SB 1331 provides explicit administrative oversight to the Property Tax Oversight Commission (PTOC).

The legislation also prohibits counties, cities, or community colleges that failed to comply with the TNT laws from levying "an amount of primary property taxes that exceeds the preceding year's amount, except for amounts attributable to new construction."

In other words, these taxing jurisdictions cannot exceed the TNT limit unless they followed the law and property announced their intention to increase taxes.

Originally enacted in 1996, TNT laws have occasionally been sidestepped by a handful of local governments.

ATRA subcommittee reviews implications of SSTP in Arizona

by Barb Dickerson

Discussions concerning the implications of adopting the Streamlined Sales Tax Project (SSTP) in Arizona are starting to heat up. Last month the ATRA Tax Practitioners Committee heard from Vince Perez of the Department of Revenue (DOR) who informed the group that the Department has been actively monitoring the progress of the project and that the Department is ready to begin discussions with Arizona cities.

ATRA's SSTP subcommittee recently met for the first time to review the adopted agreement. Discussions among the group included some of the possible impacts that the agreement could have on Arizona taxpayers. The following points reflect some of the first issues raised by the subcommittee.

UNIFORM DEFINITIONS WITHIN TAX LAWS

SSTP: Legislatures decide what is taxable or exempt, but participating states agree to use common definitions for key items in the tax base and not deviate from those definitions.

Arizona: The SSTP agreement provides uniform definitions under the retail classification but fails to provide uniform definitions for other items, such as machinery and equipment, chemicals, and services (excluding telecommunications). Arizona would be bound by any future definitions if the Legislature adopts the SSTP.

RATE SIMPLIFICATION

SSTP: States will be allowed only one state rate and a limited second rate for food and drugs after 12/31/05.

Arizona: Since the uniform rate would apply to all classifications, there would be a tax increase in areas such as commercial lease or nonmetalliferous mining and a decrease in transient lodging. There is an exception for sales/use taxes levied on electricity, piped artificial or natural gas or heating fuels and sales of motor vehicles, aircraft, watercraft and modular, manufactured or mobile homes. Setting the uniform rate will be difficult since retail rates currently range from a low of 7.3% to a high of 10.10%.

STATE LEVEL ADMINISTRATION OF ALL STATE AND LOCAL SALES AND USE TAXES

SSTP: Each state must provide a central point of administration and there must be a common tax base. There would also be uniform rules for recovery of bad debts, which would be given the federal definition under IRC § 166.

Arizona: There is question as to whether the cities would agree to central administration and a common base. Arizona currently allows a bad debt deduction only to accrual basis taxpayers and the SSTP does not make this distinction.

UNIFORM SOURCING RULES

SSTP: Sourcing rules will be destination/ delivery based and uniform for tangible personal property, digital property, and services.

Arizona: This would change city sourcing rules dramatically. For leases, the first payment is where the "sale" occurs and subsequent payments follow the primary property location. If a physical or digital product will have multiple points of use, the purchaser will either have to remit tax under a direct pay permit or provide the seller with a Multiple Points of Use (MPU) exemption certificate and self-remit the tax on an apportioned basis.

SIMPLIFIED EXEMPTION ADMINISTRATION FOR USE AND ENTITY BASED EXEMPTIONS

SSTP: Sellers are relieved of "good faith" requirements and purchasers will be responsible for paying tax, penalty, and interest for claiming incorrect exemptions. States will have a uniform exemption certificate in paper and electronic form.

Arizona: A single uniform exemption certificate probably will not cover all of the issues from the various classifications, particularly contracting. States must provide for direct pay permits, which has always had the Department of Revenue concerned about loss of privilege tax status and sales to the US Government.

UNIFORM AUDIT PROCEDURES

SSTP: Under SSTP, there are three methods of remittance: 1) use of a certified service provider (CSP) wherein a seller selects an agent to perform all the seller's sales or use tax functions other than the obligation to remit tax; 2) use of a certified automated system (CAS), wherein the seller chooses the system used to calculate the amount of tax due on transactions or; 3) the seller uses its own proprietary automated sales tax system, which has been certified as a CAS. Sellers who utilize one of the certified technology models will either not be audited or will have limited scope audits. States may conduct joint audits of large multistate businesses.

See SSTP, page 4

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MAJOR STATE TAX RATES *(Jan. 1, 2003)*

	Income Tax					Property Tax**	
	Corporate	Individual	Sales Tax	Gasoline ✓	Cigarettes	Residential	Industrial
Alabama	6.5 %	2 to 5 %	4 % +	18 ¢ + *	16.5 ¢	0.471%	1.148%
Alaska	1 to 9.4	No	No +	8	100	1.223%	1.674%
ARIZONA	**6.968**	**2.87 to 5.04**	**5.6 + (f)**	**18**	**118**	**0.870%**	**2.981%**
Arkansas	1 to 6.5	1 to 7	5.125 +	21.5 *	34	0.779%	1.313%
California	8.84	1 to 9.3	7.25 + (f)	18 s +	87	0.894%	1.000%
Colorado	4.63	4.63 of fed. tax. inc.	2.9 + (f)	22 *	20 ns	0.403%	1.363%
Connecticut	7.5	3 to 4.5	6 (f)	25 *	111	2.574%	3.338%
Delaware	8.7	2.2 to 5.95	No	23 *	24	0.856%	0.581%
Florida	5.5	No	6 + (f)	14.1 + *	33.9	1.609%	2.060%
Georgia	6	1 to 6	4 + (f)	7.5 s	12	0.910%	1.722%
Hawaii	4.4 to 6.4	1.4 to 8.25	4 +	16 s +	120	0.201%	0.470%
Idaho	7.6	1.6 to 7.8	5	25	28	0.807%	1.278%
Illinois	7.3	3 of fed. AGI	6.25 + (fr)	19.3 s + *	98	1.959%	3.198%
Indiana	8.5	3.4 of fed. AGI	6 (f)	18 s *	55.5	0.952%	2.424%
Iowa	6 to 12	0.36 to 8.98	5 + (f)	20.1 *	36	1.513%	2.022%
Kansas	4 to 7.35	3.5 to 6.45	5.3 +	23 *	70	0.909%	2.842%
Kentucky	4 to 8.25	2 to 6	6 + (f)	16.4 *	3	0.659%	0.681%
Louisiana	4 to 8	2 to 6	4 +	20	36	0.664%	2.334%
Maine	3.5 to 8.93	2 to 8.5	5 (f)	22 *	100	1.627%	1.916%
Maryland	7	2 to 4.75	5 (f)	23.5 *	100	1.641%	1.397%
Massachusetts	9.5	5.3	5 (f)	21	151	0.294%	2.169%
Michigan	1.9	4	6 (f)	19 s *	125	2.019%	3.178%
Minnesota	9.8	5.35 to 7.85	6.5 + (f)	20	48	0.707%	1.756%
Mississippi	3 to 5	3 to 5	7	18.4 +	18	1.000%	2.029%
Missouri	6.25	1.5 to 6	4.225 + (fr)	17.03	17	1.007%	2.181%
Montana	6.75	2 to 11	No	27.75 + *	18	0.823%	1.187%
Nebraska	5.58 to 7.81	2.56 to 6.84	5.5 + (f)	25.5	64	1.455%	1.617%
Nevada	No	No	6.5 + (f)	23 + *	35	0.820%	0.895%
New Hampshire	8.5	No (a)	No	19	52	1.753%	1.168%
New Jersey	9	1.4 to 6.37	6 (f)	14.5 *	150	1.905%	1.476%
New Mexico	4.8 to 7.6	1.7 to 8.2	5	18 + *	21	0.830%	1.137%
New York	7.5	4 to 6.85	4 + (f)	29.65 s + *	150	1.259%	2.098%
North Carolina	6.9	6 to 8.25	4.5 + (fr)	23.4	5	0.893%	0.987%
North Dakota	3 to 10.5	2.1 to 5.54	5 (f)	21	44	1.488%	1.064%
Ohio	5.1 to 8.5	0.743 to 7.5	5 + (f)	22	55	1.029%	1.756%
Oklahoma	6	0.5 to 7.0	4.5 +	17 *	23	0.841%	1.379%
Oregon	6.6	5 to 9	No	24 +	128	1.591%	1.697%
Pennsylvania	9.99	2.8	6 + (f)	25.9	100	1.927%	1.284%
Rhode Island	9	25 of fed. inc. tax	7 (f)	31	132	1.484%	2.006%
South Carolina	5	2.5 to 7	5 +	16.75	7	0.744%	2.968%
South Dakota	No	No	4 +	22 +	33	1.273%	1.195%
Tennessee	6.5	No (a)	7 + (fr)	21.4 + *	20	1.316%	2.036%
Texas	No	No	6.25 + (f)	20	41	2.023%	2.956%
Utah	5	2.3 to 7	4.75 +	24.5	69.5	0.593%	1.127%
Vermont	7.0 to 9.75	3.6 to 9.5	5 (f)	20 s *	93	1.594%	2.192%
Virginia	6	2 to 5.75	4.5 + (fr)	17.5 s + *	2.5	0.828%	0.987%
Washington	No	No	6.5 + (f)	23 s +	142.5	0.724%	0.803%
West Virginia	9	3 to 6.5	6	25.35	17	0.521%	1.605%
Wisconsin	7.9	4.6 to 6.75	5 + (f)	31.1	77	1.980%	1.562%
Wyoming	No	No	4 +	14	12	0.542%	0.699%

\+ Local option sales taxes may be levied in addition
s Sales taxes levied in addition
✓ Total taxes applied to motor fuel
(f) Food exempt or (fr) taxed at lower rate
ns No sales tax in addition
* Diesel fuel taxed at different rate
** 2002 effective tax rates for Phoenix residential property with full cash value of $150,000 and Phoenix industrial property with a value of $25 million, plus $12.5 million in machinery and equipment, $10 million in inventories, and $2.5 million in fixtures. Data compiled and published by the Minnesota Taxpayers Association.
(a) New Hampshire personal income tax only on specified interest and dividend income. Tennessee personal income tax only on stocks and bonds dividend income.

Note: Corporate income taxes do not include other business taxes that effectively serve as income taxes, such as the corporate franchise tax in Texas and Washington's business tax and occupation tax.

Sources: Wyoming Taxpayers Association; Minnesota Taxpayers Association; Federation of Tax Administrators; Tax Foundation; and American Petroleum Institute.

SSTP

Continued from page 2

Arizona: There are concerns as to whether or not these models will be able to handle all of the Arizona classifications, so that, in fact, there is one filing. In addition, some thought has to be given to whether there will be a SSTP compliance system and a separate system for classifications other than retail, TPP leasing, and telecommunications. There also may be the possibility of a cash flow delay as the result of using any of these third party models. Another concern exists as to whether the state can agree to automatically conform to SSTP provisions and/or give up its audit prerogative under the Arizona Constitution (Art. 9, Sec. 1 states the power of taxation shall never be surrendered, suspended or contracted away). This constitutional provision is the reason that the Legislature must act every year on whether Arizona will conform to the Internal Revenue Code. The Legislature does not automatically conform every year because of revenue impacts or equity issues. A final consideration consists of the probability of the cities giving up their audit prerogative.

STATE FUNDING OF THE SYSTEM

SSTP: States will assume responsibility for funding some of the technology models.

Arizona: Consideration has to be given to the cost and impact to the BRITS project.

WHAT'S NEXT

The agreement among the states goes into effect when ten states comprising at least 20% of the population of all the states imposing a sales tax come into compliance. Collection of sales/use tax by remote sellers (Internet/catalog) remains voluntary until either Congress or the Supreme Court acts to make the collections mandatory.

Since Congress regulates interstate commerce under the US Constitution, the Supreme Court is likely to throw the responsibility to that body as it did in the Quill decision. So far, ten states comprising 10.5% of the population have adopted SSTP, but some of the largest states have either backed away (Texas) or are not really in the game yet (California).

Barb Dickerson is Director of the Multistate Tax Services Group at Deloitte & Touche and Chair of ATRA's Tax Practitioners Committee

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THE WAVE OF TAX REFORM

With huge budget deficits looming in the background, the talk of tax reform is in the air in many states.

Join us for a discussion with two nationally recognized experts on tax reform efforts across the country and a report from the Governor's Citizen Finance Review Commission (CFRC).

Harley Duncan, Executive Director, Federation of Tax Administrators, Robert Cline, National Director of State & Local Tax Policy, Ernst & Young *and* Bill Post, Co-Chairman of CFRC; Chairman & CEO of Pinnacle West Capital Corp.

Wednesday, June 25, 2003

11:30 Registration 12:00 Luncheon

Phoenix Airport Marriott
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Attire: Business

- -

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