



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.B. 1350

technical corrections; taxation
(NOW: online lodging; administration; definitions)

Purpose

Beginning January 1, 2017, establishes the administration for online homesharing transactions.

Background

The transaction privilege tax (TPT) is a gross receipts tax levied on certain persons for the privilege of conducting business in the state. Although TPT is commonly referred to as Arizona's sales tax, it differs from the "true" sales tax as it is imposed upon the seller rather than the buyer of the taxable item. Although the seller may pass the burden of the tax onto the buyer, the seller is the party that remains ultimately liable to the state for the tax.

TPT is currently imposed under 16 separate business classifications: retail, transporting, utilities, telecommunications, publication, job printing, pipeline, private car line, commercial lease, transient lodging, personal property rental, mining, amusement, restaurant, prime contracting, and owner builder sales.

Pursuant to statute, every person who receives gross proceeds of sales or gross income on which TPT is imposed and who desires to engage or continue in business must apply for an annual TPT license from the Department of Revenue (DOR). Also, a person desiring to engage or continue in business within a municipality that imposes municipal taxes must apply to DOR for an annual municipal privilege tax license.

The impact to the state General Fund associated with this legislation is unknown.

Provisions

Administration

1. Permits any online lodging marketplace to register with DOR for the payment of taxes levied by the state and municipalities with respect to any online lodging transaction facilitated by the online lodging marketplace.
2. Requires any online lodging marketplace that has registered with DOR to remit the applicable taxes with respect to each online lodging transaction facilitated by the online lodging marketplace.

3. Requires a registered online lodging marketplace to report its taxes monthly and remit the aggregate total amounts for each respective jurisdiction for each month.
4. Stipulates that an online lodging marketplace does not need to list any online lodging separately on the monthly TPT returns.
5. Requires any registered online lodging marketplace to remit the tax imposed pursuant to the commercial lease classification for each online lodging transaction that involves a lease or rental for consideration of the right to use or occupy real property for 30 or more consecutive days.
6. Requires any registered online lodging marketplace to remit the tax imposed pursuant to the transient lodging classification for each online lodging transaction that involves a lease or rental of transient lodging.
7. Stipulates that a city, town or county cannot prohibit, restrict the use of or regulate vacation rentals or short-term rentals based solely on their classification, use or occupancy.
8. Prohibits a city, town or county from regulating vacation rentals if the regulation is narrowly tailored to protect the public health and safety.

Taxation

7. Specifies that the transient lodging classifications do not include the activities of any online lodging marketplace.
8. Requires the gross proceeds or gross income received by an online lodging operator from any online lodging transaction for which the online lodging operator has received written notice or documentation from a registered online lodging marketplace has or will remit the applicable tax to DOR to be deducted from the tax base under the transient lodging classifications.
9. Allows a city, town or other taxing jurisdiction to levy TPT, use, franchise or other similar tax or fee as provided by the Model City Tax Code on online lodging operators subject to the following:
 - a) the adopted tax must be uniform with the state tax treatment of online lodging operators and online lodging transactions;
 - b) the adopted tax must be administered, collected and enforced by DOR and remitted to the city, town or other tax jurisdiction in a uniform manner;
 - c) the adopted tax must be uniform upon online lodging operators and other subjects of the same class within the jurisdictional boundaries of the city, town or other taxing jurisdictions;
 - d) any adopted tax must be subject to provisions regarding the auditing, judicial enforcement and registration relating to online lodging marketplaces; and
 - e) prohibits online lodging operators from being subject to tax for any online lodging transaction for which an online lodging operator has received written notice or documentation from an online lodging marketplace that it has or will remit the applicable tax.

11. Requires an online lodging operator to be entitled to an exclusion from any applicable taxes for any online lodging transaction facilitated by an online lodging marketplace for which the operator has obtained written notice that the marketplace is registered with DOR to collect taxes for all transactions.
10. Classifies real and personal property and improvements that are used for residential purposes, that are leased or rented to lodgers as class four, except for:
 - a) property occupied by the owner of the property as the owner's primary residence and included in class three; and
 - b) property used for commercial purposes and included in class one.

Audits

11. Stipulates that an online lodging marketplace, its returns and payments of taxes to DOR must be subject to audit by DOR.
12. Requires audits of an online lodging marketplace to be conducted solely on the basis of the online lodging marketplace tax identification number and cannot be conducted directly or indirectly on any individual online lodging operator or any occupant to whom lodgings are furnished through an online lodging marketplace.
13. Stipulates that an online lodging operator is not required to disclose any personally identifiable information relating to any online lodging operator or occupant to whom lodgings are furnished in exchange for occupancy.
14. Prohibits DOR from disclosing information provided by an online lodging marketplace without the written consent of the online lodging marketplace.
15. Requires DOR to issue all audit assessments on behalf of all taxing jurisdictions in a single notice to the online lodging marketplace.
16. Requires appeals of audit assessments to be directed to DOR.
15. Defines terms.
16. Makes technical and conforming changes.
17. Becomes effective on January 1, 2017.

Amendments Adopted by Committee

- Adopted the strike everything amendment.

Amendments Adopted by Committee of the Whole

1. Preempts local governments from banning short term rentals.

2. Reinserts current statute requiring property owners to obtain TPT licenses even if they are exclusively operating on an online homesharing site.
3. Add clarifying language regarding the classification of property used for online lodging transactions.
4. Clarifies that the commercial lease tax is not applicable to transactions.
5. Makes technical and conforming changes.

Senate Action

FIN 2/17/16 DPA/SE 5-0-0

Prepared by Senate Research

March 9, 2016

BR/lrs