



Will Arizona's Legislature Clarify the Taxation of Digital Goods and Services?

In this month's state and local tax (SALT) column, Busby addresses the status of Arizona's efforts to clarify the application of the state's sales tax to digital goods and services. The author helped draft this proposed legislation.

The Arizona Joint Legislative Ad Hoc Study Committee on the Taxation of Digital Goods and Services completed its work and issued its recommendations in December.

Legislation Introduced

With broad support from the state's business community, key lawmakers introduced legislation to clarify the application of Arizona's sales tax to digital goods and services in January.

House Ways & Means Chair, Michelle Ugenti-Rita (R), and Senate Finance Committee Chair, David Farnsworth (R) co-chaired the committee and dropped companion bills in their respective chambers that would update Arizona's tax statutes to address and stimulate this burgeoning area of our economy.

Ugenti-Rita stressed the need for clarity and the importance of alleviating administrative burdens in order to "foster continued growth in Arizona's technology economy." Arguing that "Arizona's tax statutes have not kept pace" with our digital economy, Farnsworth emphasized that "we need to ensure that Arizona has a modern tax environment that is predictable, transparent and fair for all taxpayers."

Senate President Steve Yarbrough (R) indicated his commitment to working with the Governor, the House and his fellow Senators to pass legislation on this important issue. And business-friendly Gov. Doug Ducey (R) is likely to sign the legislation, which would promote the growth of the digital economy, if it makes it to his desk.

Key Provisions

While the bills still could be amended and may not even pass, if approved in their current form, they would:

- define "prewritten computer software" and permit the Department of Revenue and the cities to impose retail sales taxes on proceeds from prewritten computer software regardless of delivery method;
- define and prohibit DOR and the cities from taxing proceeds from "specified digital services," including software as a service, platform as a service, infrastructure as a service, application service providers, hosting services, data storage management, data processing and information services, streaming services, digital authentication services, and any other cloud-based or other remotely accessed computing services;
- define "specified digital goods" to include digital audio-visual works, digital audio works and digital books;
- permit DOR and the cities to tax proceeds from sales of "specified digital goods" such as retail sales when they are transferred in whole to a customer;
- prohibit DOR and the cities from taxing proceeds from "specified digital



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goods” when they are merely streamed or accessed remotely rather than transferred in whole;

Will the Legislation Pass?

The Arizona House of Representatives approved HB 2479 via a wide margin on February 28. Then, on March 1, minutes before the Senate was scheduled to vote on its version of this legislation, SB 1392, the Joint Legislative Budget Committee released a fiscal note. Because some Senators who were expected to vote in favor of the legislation were concerned by the fiscal note — which suggested that this bill would result in a significant loss to the state general fund — Senate leaders postponed the vote.

Since then, the data and assumptions utilized to develop the fiscal note have been questioned. If the fiscal note is withdrawn or revised downward, then this legislation is likely to pass. Otherwise, it is not likely to pass. By the time this column is published, we should know the status of this legislation. ■