

Major Changes to Arizona's Exemptions For Sales to Nonresidents

by James G. Busby Jr.



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In this edition of *SALT From My Saddle*, Busby addresses the recent legislative changes that significantly restricted Arizona's transaction privilege (sales) tax exemption for sales to nonresidents and explains how to document Arizona's exemption for sales in interstate or foreign commerce.

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For many years, Arizona offered a broad sales tax exemption for "sales to nonresidents of this state for use outside the state if the vendor ships or delivers the tangible personal property out of this state."¹

The exemption applied to sales of all types of tangible personal property, and it even applied to sales to nonresidents who were visiting the state as long as their vendor shipped the property sold outside the state for use outside the state.²

Major Recent Limitation to the Exemption

Effective January 1, 2015, Arizona limited its sales tax exemption for sales to nonresidents to sales of motor vehicles to nonresidents by a motor vehicle dealer who delivered the vehicle to a destination outside the state.³

Minor Recent Expansion of the Exemption

In 2016 the State Legislature added an exemption that enables nonresidents to purchase "works of fine art," as that term is statutorily defined, at art auctions or from galleries in Arizona for use outside the state tax-free as long as the vendor ships or delivers the item to a destination outside the state. This new exemption is effective September 1, 2016.⁴

Even with the minor expansion of the exemption for sales to nonresidents, it is still just a vestige of what it was before 2015. Nonresidents are no longer allowed to purchase anything they want tax-free while visiting the state so long as the vendor ships the items they purchase out of state.

Sales in Interstate or Foreign Commerce Are Still Exempt

While Arizona vendors are no longer able to sell as many items tax-free to nonresidents who are visiting the state, Arizona's exemption for sales in interstate or foreign commerce was not affected by the recent legislative changes because the exemption is based on the due process and commerce clauses of the U.S. Constitution.⁵

When an Arizona retailer receives an order from a location outside the state and ships or delivers the product to a location outside the state for use outside the state, its receipts from that sale qualify for Arizona's exemption for sales in interstate or foreign commerce.⁶

Documenting Sales in Interstate or Foreign Commerce

To substantiate Arizona's exemption for sales in interstate or foreign commerce, the Arizona Department of Revenue recommends particular documentation. According to the DOR, suitable records for substantiating the receipt of an order from out of state may include purchase orders, letters, or written memoranda concerning the receipt of orders placed by telephone. Suitable records for substantiating out-of-state shipments include:

¹A.R.S. section 42-5061(A)(13), as in effect through December 31, 2014.

²A.A.C. R15-5-175.

³Laws 2013, Ch. 255, section 13.

⁴Laws 2016, Ch. 368.

⁵A.R.S. section 42-5061(A)(24).

⁶A.A.C. R15-5-170.

- internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;
- common carrier's receipt or bill of lading;
- parcel post receipt;
- export declaration;
- receipt from a licensed broker; or
- proof of export or import signed by a customs officer.⁷

Practice Tip

Significant statutory changes and limitations to Arizona's exemption for sales to nonresidents recently were implemented, and it is easy to confuse Arizona's exemption for sales to nonresidents with its exemption for sales in interstate or foreign commerce. Tax professionals should help guide their clients through the changes to Arizona's exemption for sales to nonresidents, and help distinguish Arizona's exemption for sales to nonresidents from its exemption for sales in interstate or foreign commerce. ■

⁷*Id.*

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