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James G. Busby Jr. is a state and local tax attorney at the Cavanagh Law Firm in Phoenix. Busby previously worked in the SALT departments at Arthur Andersen and Deloitte & Touche. Before entering private practice in 1999, Busby was the chief auditor in charge of transaction privilege (sales) tax

audits at the Arizona Department of Revenue. He can be contacted at JBusby@CavanaghLaw.com.

In this edition of SALT From My Saddle, Busby explains recent changes to Arizona's government property lease excise tax, which applies to some government-owned properties leased to private parties.

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Properties owned by federal, state, county, and municipal governments are not subject to Arizona's property tax.¹ Some Arizona municipalities have used this tax exemption to persuade businesses to locate in their jurisdictions by taking title to buildings constructed on government-owned land and then leasing them back to the businesses.

Businesses that enter these agreements benefit by not paying property taxes. Municipalities that enter them benefit from the development and from jobs and sales taxes generated by construction of the building and ongoing business operations, even though they forgo their minor

share of the property taxes that the development otherwise would engender.

The Government Property Lease Excise Tax

In 1996, to appease property owners who do not benefit and end up paying higher property tax rates because these agreements reduce the tax base, and because it was concerned that the possessory interest tax it previously enacted to address this issue may have violated the uniformity clause of Arizona's constitution by providing statutory exemptions from the tax not authorized by Arizona's constitution, the Arizona Legislature enacted a government property lease excise tax (GPLET).²

Every city, town, county, and stadium district that holds title to one or more buildings located on land that they or another political subdivision of the state own that are available for use for any commercial, residential rental, or industrial purpose must levy the tax — unless an exemption or abatement applies.³

As its name suggests, rather than an ad valorem tax on property, GPLET is an excise tax — applying at various rates per square foot based on the type of building involved, and on a per-space basis for parking garages and parking decks.⁴ Similar to property taxes, GPLET is distributed in part to the county, municipality, community colleges, and school districts where the building is located.⁵

Properties in statutorily defined "slum or blighted areas" within the "central business district" of a city or town may qualify for a GPLET abatement for eight years from when the

² Laws 1996, Ch. 349.

³ Ariz. Rev. Stat. sections 42-6201 and 42-6202.

⁴ Ariz. Rev. Stat. section 42-6203.

⁵ Ariz. Rev. Stat. section 42-6205.

¹ Arizona Constitution, Art. 9, section 2.1.

certificate of occupancy was issued.⁶ Then, historically anyway, GPLET rates generally resulted in a much lower tax burden for the remainder of the lease period than if the property had been subject to property tax.

In 2010 the Legislature significantly increased GPLET rates for new leases entered on or after June 1 of that year.⁷ But depending on the building's value and the property tax rates where it is located, even the new GPLET rates may result in a lower tax liability than if the property had been subject to property tax.

2017 GPLET Reforms

In response to ongoing complaints by property owners who do not qualify for GPLET treatment and the 2015 Report to the Arizona Legislature from Arizona's Auditor General regarding the state's GPLET program,⁸ the Legislature recently enacted several changes to Arizona's GPLET statutes, effective August 9, 2017:

- Government lessors must maintain public databases of all properties in their jurisdictions that qualify for GPLET treatment, or post the lease agreements online, and submit a link to the Department of Revenue to post that information on its website.⁹
- The DOR must certify leases that qualify for the lower GPLET rates intended for leases that were entered before June 1, 2010.¹⁰
- Government lessors, rather than the business that occupies the building, must calculate the GPLET payment due.¹¹
- Delinquent GPLET payments are subject to interest at the same rate applied to delinquent property tax payments (16 percent) rather than the rate charged by the IRS (currently 4 percent).¹²

- Except for grandfathered properties, (a) the lease period for properties that qualify for a tax abatement may not exceed eight years even if the lease is transferred to another party during that period; (b) the government lessor must convey the building and the underlying land to the private party within 12 months of expiration of the lease; and (c) the property shall not later qualify for other favorable property tax treatment regardless of its location or condition.¹³ ■

⁶ Ariz. Rev. Stat. section 42-6209.

⁷ Laws 2010, Ch. 321.

⁸ The report is available online at: https://www.azauditor.gov/sites/default/files/15-307_Report.pdf.

⁹ Laws 2017, Ch. 120, section 1.

¹⁰ Laws 2017, Ch. 120, section 2.

¹¹ Laws 2017, Ch. 120, section 3.

¹² *Id.*

¹³ Laws 2017, Ch. 120, section 5.