



Arizona Wayfair Law Perpetuates Some State/City Differences - Pt. 2

In this month's state and local tax (SALT) column, Busby highlights the differences that will remain between Arizona's state and city sales tax bases now that the provisions of H.B. 2757 that relate to Arizona's new economic nexus standards for remote sellers and marketplace facilitators are in effect. This is the second in a series of three articles addressing Arizona's response to the Wayfair decision.

As noted in my last column, Arizona recently amended its tax code to require remote sellers to remit sales tax on proceeds from sales to in-state customers based on economic nexus, adopted marketplace facilitator provisions and preempted localities from imposing retail sales taxes under their own tax codes.

The municipal preemption dramatically simplify the state's sales tax structure under which 91 cities and towns used to impose retail sales taxes under their own tax codes. But many differences remain between the state tax base and the tax bases for various cities and towns.

Exemptions and Optional Items

The only municipal-only sales tax exemption that the Legislature added to the sales and use tax statutes is for paintings, sculptures or similar works of fine art sold by their original artist.

Lawmakers also permitted municipalities with an option to impose sales and use taxes on up to 10 categories of items that the state exempts, including:

1. food for home consumption sold by grocers, through vending machines, or by other types of retailers;
2. textbooks required by any state university or community college sold by bookstores;
3. propagative materials sold to persons who use them to commercially produce agricultural, horticultural, viticultural or floricultural crops in the state;
4. livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons for use or consumption by their own livestock or poultry, for use or consumption in the business of farming, ranching and producing or feeding livestock, poultry or livestock or poultry products or for use or consumption in noncommercial boarding of livestock;
5. implants used as growth promotants and injectable medicines, not already exempt under a particular provision of state law, for livestock or poultry owned by or in possession of persons who are engaged in producing livestock, poultry or livestock or poultry products or who are engaged in feeding livestock or poultry commercially;



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6. neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production;

7. nonmetalliferous mined minerals sold at retail;

8. works of fine art sold at an art auction or gallery in the state to non-residents of the state for use outside the state if the vendor ships or delivers the item to an out-of-state destination;

9. motor vehicles sold to nonresidents if the purchaser's state of residence does not allow a use tax exemption corresponding to Arizona's sales tax and if the nonresident has secured a special 90-day nonresident registration permit for the vehicle — except tax does not apply if the purchaser takes possession of the vehicle outside the state; and

10. motor vehicles sold to enrolled members of Indian tribes who reside on the Indian reservation established for their tribe, unless possession of the vehicle is received on the enrolled members' Indian reservation.

Tax Trap Could Be Resolved

The optional municipal-only sales and use tax exemption for proceeds from sales of paintings, sculptures or similar works of fine art sold by the original artist is included in the retail statute. However, the Arizona Legislature included all of the options for municipalities to tax items not taxed by the state in a separate statute and made no references to these options in the retail statute.

Lawmakers easily could resolve this trap for the unwary during the next legislative session by simply adding a provision in the retail statute that cross-references the statute that adds all of the options for municipalities to tax items not taxed by the state, or by moving those provisions into the retail statute. ■