

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SUPERIOR COURT OF THE STATE OF ARIZONA  
IN THE ARIZONA TAX COURT**

APACHE HOTEL, LLC, an Arizona limited liability company, KVS Hotels, LLC, an Arizona limited liability company; DYSART HOTEL, LLC, an Arizona limited liability company; and COUNTRY CLUB HOTEL, LLC, an Arizona limited liability company, all individually and in a representative capacity,

Plaintiffs,

v.

ARIZONA DEPARTMENT OF REVENUE, a political subdivision of the State of Arizona,

Defendant,

SPORTS AND TOURISM AUTHORITY dba THE ARIZONA SPORTS AND TOURISM AUTHORITY, a political subdivision of the State of Arizona,

Defendant-Intervenor.

No. TX2013-000650

**NOTICE OF CLASS CERTIFICATION  
[HOTEL TAX I]**

(Assigned to the  
Honorable Christopher Whitten)

1 NOTICE IS HEREBY GIVEN THAT A CLASS HAS BEEN CERTIFIED in the above  
2 entitled action. This Notice is given pursuant to Arizona Rule of Civil Procedure 23. The  
3 plaintiffs are Apache Hotel, LLC, KVS Hotels, LLC, Dysart Hotel, LLC, and Country Club  
4 Hotel, LLC ("Plaintiffs"). Plaintiffs have brought an action, individually and in a  
5 representative capacity, asserting that the hotel surcharge imposed under A.R.S. § 5-840  
6 violates the Dormant Commerce Clause of the United States Constitution (the "Action").  
7 The defendant is the Arizona Department of Revenue ("Defendant"). The defendant-in-  
8 intervention is the Tourism and Sports Authority dba the Arizona Sports and Tourism  
9 Authority ("Defendant-in-Intervention"). Defendant and Defendant-in-Intervention have  
10 denied that this hotel surcharge violates the United States Constitution.

11 This notice is not an expression of any opinion by the Court as to the merits of the Action.  
12 By directing that this Notice be given, the Court is not suggesting that the claims being  
13 asserted by Plaintiffs are meritorious. The merits of Plaintiffs' claims will be determined in  
14 the course of the proceedings. The purpose of this Notice is to inform you of the Court's  
15 order certifying the class and to notify you of certain rights and responsibilities you may  
16 have.

17 1. Class Certification: Pursuant to the order of the Honorable Christopher Whitten, it  
18 was determined that this action shall proceed as a class action. The members of this class are  
19 defined as follows:

20 All individuals and entities that have paid any taxes to the Arizona Department  
21 of Revenue pursuant to A.R.S. § 5-840 that were reported under class code 025  
22 of the Arizona transaction privilege tax return during the period from April  
23 2008 through February 2012 (the "Class").

24 All members of the Class automatically will be included in the class unless they request to be  
25 excluded. Members of the Class are entitled to the benefits of the litigation and may be  
26 bound by any subsequent orders or judgments binding the Class whether favorable or  
27 unfavorable.

28 2. Excluding Yourself from the Class: You will be considered a member of the Class  
unless you request to be excluded or "opt out" of the litigation. A person who requests  
exclusion will not be included in any judgment. If you decide to exclude yourself from the  
class, you will remain free to pursue on your own behalf whatever legal rights you may have.

To be excluded from the Class, a class member must sign and submit the attached opt out  
form stating that the class member has elected to "opt out" or desires to be excluded from  
the Class. This request must include your name, address, and transaction privilege tax  
license number. The request to be excluded must be postmarked on or before December 30,  
2016, and mailed to:

Arizona Attorney General's Office  
Attention: Hotel Surcharge Class Action  
1275 W. Washington St.  
Phoenix, Arizona 85007

If you do not request exclusion, you may, if you desire, be represented by your own attorney.  
The cost of individual representation by your own attorney will be at your own expense.

1 3. Class Counsel: Counsel for Plaintiffs and for the members of the Class are:

2 Gregory D. Hanley  
3 KICKHAM HANLEY PLLC  
4 300 Balmoral Centre  
5 32121 Woodward Avenue  
6 Royal Oak, MI 48073

7 and  
8 Shawn K. Aiken  
9 AIKEN SCHENK HAWKINS & RICCIARDI P.C.  
10 2390 East Camelback Road, Suite 400  
11 Phoenix, Arizona 85016

12 All questions or other communications concerning this notice should be sent to class  
13 counsel.

14 The attorneys' fees for Plaintiffs and Class members are contingent on success. The  
15 expenses that are incurred in the prosecution of this action are being advanced by Plaintiffs'  
16 attorneys. If you remain a Class member, you will have no personal liability for attorneys'  
17 fees and expenses in the event Plaintiffs and the Class do not prevail. If Plaintiffs and the  
18 Class do prevail, recovery for the benefit of the Class will be first subject to deductions for  
19 the expenses of prosecuting the litigation and attorneys' fees as may be allowed by the  
20 Court. Class counsel will seek from the Court an award of reasonable attorneys' fees to be  
21 paid out of the amount recovered from the class. Such fees will be determined by the Court.

22 4. Record Requests: The Arizona Department of Revenue may request documents  
23 relating to the Action. As a Class member, you must preserve relevant documents and  
24 provide such documents to the Department upon written request.

25 5. Discovery Obligations: You are expected to respond to any discovery requests  
26 propounded by Defendant and/or Defendant-in-Intervention as part of your class member  
27 obligations, with the exception of any requests successfully objected to by Plaintiffs

28 6. Disclosure Authorization: With respect to those Class members who do not opt-out  
of the class action, it may be necessary for the Department to disclose and discuss  
confidential information relating to members of the Action to Class counsel. This  
information may be shared with Plaintiffs and other representatives who might be engaged to  
review the records on behalf of counsel. In order to disclose such information, the Class  
member must complete the attached disclosure authorization form and mail it to:

Arizona Attorney General's Office  
Attention: Hotel Surcharge Class Action  
1275 West Washington St.  
Phoenix, Arizona 85007

7. Claims Forms: In the event that Plaintiffs and the Class prevail in this case, you may  
be entitled to a refund. To analyze the amount of such refund, you will be required to  
complete a claim form, which will be provided to you if and when such event occurs.

8. Change of Address: If you change your address before this case is finally resolved or  
this Notice reached you at an address other than the address printed on the Notice you  
should immediately notify the Arizona Attorney General's Office by letter to:

1 Arizona Attorney General's Office  
2 Attention: Hotel Surcharge Class Action  
3 1275 W. Washington St.  
Phoenix, Arizona 85007  
4 Fax: (602) 542-1726

5 9. Examination of Papers: All of the above descriptions of allegations, responses and  
6 other matters in this Action, are only summaries and do not include all important matters  
7 relating to the action. The pleadings and other papers filed in this Action are public records  
8 and are available for inspection during regular business hours at the Clerk's Office,  
9 Maricopa County Superior Court Customer Service Center at 601 W. Jackson Street,  
10 Phoenix, Arizona 85003. If you have any further questions with respect to this Action or  
11 about this Notice, you may direct such questions to Elena Cordero, Paralegal, at Aiken  
12 Schenk Hawkins & Ricciardi P.C.

13 PLEASE DO NOT TELEPHONE THE JUDGE OR THE COURT CLERK'S OFFICE.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DISCLOSURE AUTHORIZATION**

Hotel Surcharge Class Action

*Apache Hotel, LLC, et. al, v. Arizona Department of Revenue*

Arizona Tax Court No. TX2013-000650 [Hotel Tax I].

As a member of the class action, it may be necessary for the Department to disclose and discuss confidential information as defined under A.R.S. § 42-2001 to Class counsel. In order to disclose such information, you must complete this form and submit it to:

Arizona Attorney General's Office  
Attention: Hotel Surcharge Class Action  
1275 West Washington St.  
Phoenix, Arizona 85007

**CLASS MEMBER**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Transaction Privilege Tax License Number: \_\_\_\_\_

**DISCLOSURE OF CONFIDENTIAL INFORMATION**

Please select one of the two options listed below concerning the extent to which you authorize disclosure of confidential information by checking the appropriate box:

I hereby authorize the Department to release my name and contact information to Class counsel.

I hereby authorize the Department to disclose and discuss any and all confidential tax information relating to the class action to Class Counsel. I further understand that this information may be submitted to the Court in this action and may be shared with the Class Representative.

**RECORD REQUESTS**

The Department of Revenue may request documents relating to the class action. I understand that class members must preserve relevant documents and provide such documents to the Department upon written request.

**SIGNATURE**

I hereby certify to the Arizona Department of Revenue that I am authorized to receive and discuss any and all confidential information concerning the above-mentioned corporation(s), limited liability company(ies), trust(s), partnership(s), and/or individual(s) pursuant to A.R.S. § 42-2003(A).

---

SIGNATURE

DATE

---

PRINT NAME

---

TITLE

**ELECTION TO OPT OUT OF CLASS ACTION**  
Hotel Surcharge Class Action

ONLY COMPLETE THIS OPT OUT FORM IF YOU WANT TO OPT OUT OF THE CLASS ACTION KNOWN AS *Apache Hotel, LLC, et. al. v. Arizona Department of Revenue*, Arizona Tax Court No. TX2013-000650 [Hotel Tax I]. If you opt out, you will not be included in any judgment, whether favorable or unfavorable.

**Please type or print the following identifying information:**

Taxpayer Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
\_\_\_\_\_

Transaction Privilege Tax License Number: \_\_\_\_\_

The above referenced taxpayer hereby elects to opt out and not be included in this class action.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

**THIS FORM MUST BE POSTMARKED TO:**

Arizona Attorney General's Office  
Attention: Hotel Surcharge Class Action  
1275 W. Washington St.  
Phoenix, Arizona 85007

**ON OR BEFORE DECEMBER 30, 2016, OR ELSE YOU WILL LOSE YOUR RIGHT TO OPT OUT OF THE ACTION.**