2004 Legislative Summaries

State of Arizona Department of Revenue

This document contains summaries of 2004 legislation from the Forty-sixth Legislature – Second Regular Session.

2004 Legislative Summaries

The following is intended to give a brief summary of the 2004 tax-related legislation impacting the Department of Revenue (DOR) and not intended to discuss the details of any specific enactment. Please refer to the particular legislation for more definitive information.

The general effective date for legislation is August 25, 2004. All legislation will have this effective date unless otherwise noted in the summary.

Administration

Senate Bill 1274 (Chapter 83) Taxpayer Bill Of Rights; Amnesty

SB 1274 makes modifications to the taxpayer bill of rights and clarifies the right of appeal for the tax amnesty program.

With certain prescribed exceptions, DOR has two years from date of initial audit contact to issue a final audit (notice of proposed assessment or proposed overpayment). A final audit (notice of proposed assessment or denial of refund claim) must include the statutory, regulatory and judicial bases for any adjustments made.

These provisions apply retroactively to audits beginning on or after January 1, 2004.

Applications for the tax amnesty program that expired Oct. 31, 2003, are an express waiver of the right to appeal the matters under the amnesty application for the period for which the application was made; taxpayers retain appeal rights on additional tax assessed via a subsequent audit of the period for which the application was made. This provision is effective retroactively to September 18, 2003.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0083.htm

House Bill 2225 (Chapter 161) Probation Absconders; Taxpayer Information

DOR must provide the court with the home address and any additional taxpayer ID numbers used by a

taxpayer whose debt is referred for setoff and who is identified by the court as a probation absconder.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0161.htm

House Bill 2346 (Chapter 70) Spousal Maintenance; Taxpayer Information

Spousal maintenance obligations are included in the list of "overdue support" debts for which a taxpayer's income tax refund may be redirected to fulfill. HB 2346 requires DOR to notify the court if a match is made with a taxpayer who has an overdue debt for spousal maintenance.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0070.htm

House Bill 2382 (Chapter 139) Social Security Numbers; Government Use

HB 2382 limits the government use of complete Social Security numbers to the Arizona Department of Revenue, the Industrial Commission of Arizona or a law enforcement agency of this state, county, city or town. Additionally, HB 2382 allows an agency of this state or county, city, town, or other political subdivisions of this state to disseminate or use the last four numbers of an individual's Social Security Number.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0139.htm

Senate Bill 1361 (Chapter 84) Tax Disputes; Burden Of Proof

SB 1361 creates a new section 42-1255 stating that DOR has the burden of proof in any administrative as well as judicial proceeding regarding any factual issue that is relevant to ascertaining the tax liability of a taxpayer, provided the taxpayer has cooperated and kept proper records. The new section 42-1255 replaces a subsection under which DOR had the burden of proof only in court proceedings.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0084.htm

Income Tax

House Bill 2040 (Chapter 61) 2004 Tax Corrections Act

See summary under multiple tax types.

House Bill 2045 ((Chapter 289) Income Tax Credit Review Schedule

HB 2045 is the annual bill to update the income tax credit review schedule based on the recommendations of the Joint Legislative Income Tax Credit Review Committee. Removes the income tax credits that were reviewed in 2003 and adds these credits to the review schedule in 2008.

Repeals the individual and the corporate income tax credit for corrective action costs for underground storage tanks and makes conforming changes.

Amends A.R.S. § 41-1525 and amends A.R.S. §§ 43-1074 and 43-1161 to allow enterprise zone credits at a zone location unless more than ten percent of the business at the zone location consists of retail sales of tangible personal property.

Amends A.R.S. § 41-1525 and amends A.R.S. §§ 43-1074 and 43-1161 to provide that taxpayers may claim second and third year credits for taxable year 2002 and third year credits for taxable year 2003 when the first year credit was claimed on an

amended return if the qualified employment positions were created prior to January 1, 2002 and certified to the Department of Commerce.

Sections 41-1525, 43-1074 and 43-1161, Arizona Revised Statutes, as amended by this act, apply retroactively to taxable years beginning from and after December 31, 2003.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0289.htm

House Bill 2549 (Chapter 326) Healthy Forests; Tax Credits

See summary under multiple tax types.

Senate Bill 1003 (Chapter 214) Income Tax Exemption; Stillborn Children

SB 1003 provides that a taxpayer is allowed an income tax exemption of \$2,300 for each birth for which a certificate of birth resulting in stillbirth has been issued from the Arizona Department of Health Services if the child otherwise would have been a member of the taxpayer's household. The taxpayer may claim the exemption in the year in which the stillbirth occurred. This act applies retroactively to taxable years beginning from and after December 31, 2003.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0214.htm

Senate Bill 1389 (Chapter 196) Internal Revenue Code; Partial Conformity

SB 1389 is the annual bill to make conforming changes to the state income tax code to correspond with the federal changes to the Internal Revenue Code. The bill:

1. Conforms to the internal revenue code including retroactive conformity to the effective dates of all provisions of the Jobs and Growth Tax Relief Reconciliation Act of 2003, the Military Family Tax Relief Act of 2003, and the Medicare

Prescription Drug, Improvement, and Modernization Act of 2003.

- Suspends the statute of limitations to allow taxpavers to claim refunds resulting from retroactive conformity to the provisions of the Military Family Tax Relief Act of 2003. For federal income tax purposes, P.L. 108-121 amended I.R.C. § 121 to allow an election for military and Foreign Service personnel to ignore the time spent on extended duty (up to 10 years) in order to meet the two-out-of-five year requirement needed to exclude gain on the sale of personal residences. The federal provision is effective for sales or exchanges after May 6, 1997 and provides a one-year period (beginning on the date of enactment) for taxpavers to claim refunds as a result of this provision that are otherwise barred by the statute of limitations. Under the Arizona conformity bill, taxpayers may also file an amended Arizona return at any time before the close of the one-year period beginning on November 11, 2003.
- 3. Requires an add-back of the federal section 179 expense deducted in excess of twenty-five thousand dollars but allows it to be subtracted ratably over a five-year period. Therefore, all taxpayers that deducted I.R.C. § 179 expenses in excess of \$25,000 will have to file an amended Arizona income tax return to add the amount in excess of \$25,000 to Arizona gross income and to take a subtraction for 1/5 of the amount in excess of \$25,000.
- 4. Requires all taxpayers to add the amount of depreciation allowed under I.R.C. § 167(a). The bill also requires taxpayers to compute depreciation for Arizona purposes as if bonus depreciation had not been elected for federal purposes. Therefore, all taxpayers that claim depreciation on the federal return must add that depreciation to Arizona gross income on the Arizona return and then take a subtraction for the allowable amount. This provision is retroactive and applies retroactively to taxable years beginning from and after December 31, 1999. The 2004 income tax returns will be modified to accommodate this adjustment. However, for taxable years prior to 2004, this

- provision will really affect taxpayers that depreciated luxury autos. This amendment will allow taxpayers to depreciate luxury autos for which the taxpayer has claimed federal bonus depreciation using the same depreciation rate that would have been allowed if the taxpayer had not claimed bonus depreciation. These taxpayers will be able to amend a prior year return to make this adjustment, or as an alternative, the taxpayer may elect to recognize the entire cumulative effect of the retroactive change on the tax return for the first taxable year ending on or after December 31, 2003 instead of recognizing the changes on those prior year returns.
- 5. Allows taxpayers to claim a subtraction to reflect the difference in federal and state basis of bonus depreciation property when that property is sold. This provision is retroactive and applies retroactively to taxable years beginning from and after December 31, 1999. A taxpayer may file an amended return to make this adjustment for a prior year, or as an alternative, the taxpayer may elect to recognize the entire cumulative effect of the retroactive change on the tax return for the first taxable year ending on or after December 31, 2003 instead of recognizing the changes on those prior year returns.

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law. Approved By The Governor May 5, 2004.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0196.htm

Transaction Privilege Tax/Use Tax

House Bill 2040 (Chapter 61) 2004 Tax Corrections Act

See summary under multiple tax types.

House Bill 2086 (Chapter 242) Motor Vehicle Warranties; Tax Refunds

HB 2086 allows motor vehicle manufacturers who repurchase vehicles from consumers due to warranty provisions under Arizona's lemon laws apply to DOR for a refund of sales tax if certain conditions are met.

It allows a manufacturer to apply for a refund from the Department if:

- 1. The manufacturer repurchases a vehicle because it is subject to the state's lemon law or for "reasons of consumer satisfaction".
- 2. The manufacturer refunds to the consumer the amount of tax; and
- 3. The manufacturer can provide the Department with "satisfactory proof" that:
 - a. Tax amounts attributed to the sale of the original vehicle were collected from the consumer; and
 - b. The manufacturer refunded the amount of tax to the consumer.

Any refund paid to the manufacturer from these provisions is in lieu of a refund on the vehicle that the dealer would otherwise be entitled to receive.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0242.htm

House Bill 2277 (Chapter 318) Water Supply; Replenishment; Conservation

Other than making numerous changes to the Central Arizona Water Conservation District and the Central Arizona Groundwater Replenishment District statutes, HB 2277 exempts the acquisition of electricity or other forms of energy by the CAWCD to pump CAP water, from transaction privilege tax and use tax retroactive to January 1, 1985 (Section 13 of the Bill.).

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0318.htm

House Bill 2459 (Chapter 143) Auto Dealers; Taxation; Lease Payments

HB 2459 adds a deduction under the personal property rental classification for income received by a motor vehicle dealer for the first month's payment on the lease of the motor vehicle if the lease and payment is assigned to a third party leasing company.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0143.htm

House Bill 2460 (Chapter 296) Registration; Motor Vehicles; Nonresidents

This legislation expands the MVD's 30-Day Nonresident Registration Permit certificates to require a nonresident motor vehicle purchaser to affirm that the vehicle is to be registered in another state within 30 days. If the purchaser registers the vehicle in Arizona within 365 days, the purchaser will be liable for any state transaction privilege tax, county excise tax, penalties and interest that the motor vehicle dealer would have been required to pay. (Any full or partial exemptions from the transaction privilege tax will be negated in this event.) An amendment to the Retail Classification in the transaction privilege tax statutes allows a resident from a state which provides "reciprocity" with Arizona to purchase a motor vehicle and have the transaction privilege tax imposed on the sale equivalent to the tax rate of the purchaser's state.

The bill does not affect the transaction privilege tax exemption for motor vehicles sold to nonresidents and delivered out-of-state, but these nonresident purchasers are subject to the penalty provision above if the vehicle is registered in Arizona within 365 days.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0296.htm

House Bill 2549 (Chapter 326) Healthy Forests; Tax Credits

See summary under multiple tax types

Senate Bill 1001 (Chapter 240) Fertilizer Transport; Transaction Privilege Tax

SB 1001 provides an exemption from tax under the transaction privilege tax for the income received by a railroad for the transportation of fertilizer from one point in Arizona to another point in Arizona.

This provision is effective from and after September 30, 2004.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0240.htm

Senate Bill 1095 (Chapter 305) Teratogen Information Program; Funding; Tax

A small portion of the telecommunications services excise taxes applicable to telecommunications service providers is diverted to fund the Teratogen Information Program, which was established as part of the state Poison Control System under ARS 36-1162.

(Teratogen is defined as a physical, infectious or chemical agent that causes a change in the normal development of a human embryo or fetus.)
The .69% excise tax rate for funding certain telecommunications devices for the impaired is reduced by .01% to .68%.

The .01% reduction will now fund the Teratogen Information Program, making the combined rate the same as before.

This provision applies retroactively to taxable periods beginning from and after June 30, 2004.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0305.htm

Senate Bill 1141 (Chapter 234) Preexisting Transactions; Sales Tax

SB 1141 provides that when a state transaction privilege tax rate increase takes effect for written business contracts, other than prime contracts, that the new tax rate increase would not apply until 120 days after the effective date of the rate increase. Other provisions of the bill specify that:

- This does not apply to any taxpayer that has entered into a contract that contains a provision that entitles the taxpayer to recover the increased tax amount from the purchaser.
- These changes apply regardless of the accounting method used by the taxpayer.
- This section does not apply to any rate increases for county excise taxes.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0234.htm

Senate Bill 1288 (Chapter 337) Bundled Telecommunications Services

Arizona Revised Statutes § 42-5064 imposes transaction privilege tax on the business of providing intrastate telecommunications services. As such, telecommunications businesses must separately show gross income derived from nontaxable interstate calls and other income excluded or exempted from tax in books and records kept in the ordinary course of business.

SB 1288.

- Adds a new methodology for how such businesses can reasonably identify nontaxable charges on *bundled transactions*, which are sales of both taxable and nontaxable services where the business charges a customer a flat "bundled" rate for all the services.
- Allows a business to elect to use allocation percentages derived from its entire service area instead of itemizing for individual calls.
- Allows DOR to request the allocation information and an audit may be performed.
- The telecommunications service provider must waive all rights to a refund on taxes if the taxes

were based on the allocation percentage deemed reasonable at the beginning of the tax year at issue.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0337.htm

Senate Bill 1293 (Chapter 309) Design-Build Contracts; Prime Contracting

SB 1293 provides for an exclusion of actual direct costs of providing architectural or engineering services that are incorporated into a contract. The bill has a definition for the term "direct costs" and contains a retroactivity clause that provides that any refunds are limited to a total of \$100,000. Claims for refunds must be submitted to DOR by December 31, 2004 and:

- The burden of proof is on the taxpayer to establish evidence to qualify for the refund,
- DOR will notify taxpayers of their determination and amount of refund,
- Contains a clause stating the no severability of refund provisions.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0309.htm

Senate Bill 1174 (Chapter 249) Use Fuel Refunds: Use Taxes

SB 1174 requires the Arizona Department of Transportation (ADOT) to collect the use tax on use fuel imposed under Title 42, Chapter 5, Article 4 at the time of the submission of a claim for a refund of use fuel taxes paid to ADOT. ADOT is required to not pay the refund until it determines the difference between the amount of the refund and the amount of the Arizona use tax. ADOT is to deposit the use tax revenues collected to the state treasurer for credit to the state general fund monthly and is to notify ADOR of the amount of use tax collected each month.

If the amount of the refund is less than the amount owed for the use tax, then ADOT is to forward any balance due information to the Arizona Department of Revenue for collection purposes.

This act applies to taxable years beginning from and after December 31, 2004.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0249.htm

Property Tax

House Bill 2040 (Chapter 61) 2004 Tax Corrections Act

See summary under multiple tax types.

House Bill 2258 (Chapter 295) Property Taxes; Exemption; Corrections

HB 2258 makes changes regarding the county assessor's procedures for tax assessments and appeals. The provisions of the bill include:

- Allows property tax agents to act on behalf of the taxpayer to discuss tax matters with the county assessors, DOR or the County or State Board of Equalization.
- Requires the county assessor to make any necessary changes in the tax roll and records from reviews or corrections of errors and omissions, in addition to any changes from judicial and administrative appeals.
- Removes the requirement for the court to hear property appeals within 270 days.
- Includes in the property tax exemption for institutions for the relief of indigent or afflicted any administrative buildings or property.
- Establishes a new property tax exemption for any non-profit organizations that provide financial support for public libraries.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0295.htm

Senate Bill 1004 (Chapter 329) Property Tax Exemption; Widows

SB 1004 increases the value of a home eligible for a \$3,000 property tax exemption for widows, widowers and disabled persons. Specifically, the bill provides:

- An increase in the value of a residence from \$100,000 or less to \$200,000 or less for widows, widowers, or disabled persons to qualify for a \$3,000 property tax exemption.
- On or before December 31 each year, DOR is required to increase this residence assessment limit of \$200,000 based on annual inflation as determined by the GDP price deflator.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0329.htm

Senate Bill 1091 (Chapter 15) Property Tax Corrections

SB 1091 allows county assessors to send notices of valuation error to property owners at any time in the tax year (defined for all property tax purposes as the "calendar year"). A notice of error in property valuation or a notice of claim is effective only during the current year and the 3 immediately preceding years. Even if the taxpayer consents to the correction but disputes the valuation, the tax roll will be corrected and the corrected value will be effective for the current and subsequent years unless a court determines otherwise.

It defines the term "Tax Year" and specifies which tax years are covered in a "Notice of Error" used by the assessors and a "Notice of Claim" used by a taxpayer to request correction of real and personal property tax roll errors.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0015.htm

Multiple Tax Types

House Bill 2040 (Chapter 61) 2004 Tax Corrections Act

HB 2040 makes technical, conforming and clarifying changes to Arizona tax statutes.

Transaction Privilege Tax

- Nonprofit health care organizations are exempt from TPT for construction of their facilities if they meet certain conditions. If conditions are not met within a "reasonable time," then the tax is due. "Reasonable time" is defined as a time limitation that DOR determines and that does not exceed the statute of limitation of the original transaction.
- Clarifies the TPT exemption regarding the sale
 of tangible personal property for programs that
 are exclusively for mentally or physically
 handicapped persons. These programs are for
 training, job placement, rehabilitation or testing.

Property Tax

- Requires DOR to determine the location (or apportionment) of pipeline property by November 30 instead of August 31. Also, clarifies that this is done yearly.
- Clarifies that full cash values of airline and private car companies' properties are public record.
- Eliminates reporting the apportionment of telecommunication companies' valuation from DOR to all local jurisdictions and instead, requires DOR to report the necessary information only to county assessors.

Income Tax

- Clarifies thresholds for requiring individuals to file personal income tax returns.
- The income tax credit for dependent day care services had to be claimed by January 1, 1995.

Repeals this obsolete credit and removes the reference to this credit under additions to Arizona gross income.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0061.htm

House Bill 2549 (Chapter 326) Healthy Forests; Tax Credits

An emergency measure that allows a Healthy Forest Enterprise Assistance Program to be established and provides transaction privilege (TPT), use and income tax incentives for qualified businesses until 2014 and allows the state to contract for electrical energy produced from biomass resources. The bill also authorizes cities, towns and counties to adopt and periodically revise an urban-wildland interface code, makes the State Forester a position separate from the State Land Commissioner, establishes the State Urban-Wildland Fire Safety Committee and requires that the State Forester identify pilot programs to promote forest health.

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law. Approved By The Governor June 3, 2004.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0326.htm

Miscellaneous

Senate Bill 1353 (Chapter 311) Cigarettes; Delivery Sales

Establishes requirements for tobacco product delivery sales, including verification of the purchaser's age, registration and reporting requirements and collection of taxes when they were not already paid. Exempts tribal sales and establishes penalties for non-compliance with provisions.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0311.htm

House Bill 2059 (Chapter 135) Disposition of Proceeds; Abandoned Property

HB 2059 addresses the disposition of excess proceeds from trustee sales that have been deposited with the county treasurer; the presumption of abandonment for certain types of property; and the reporting of excess proceeds to the Arizona Department of Revenue.

The bill stipulates the following:

- Excess proceeds deposited with the county treasurer are presumed abandoned after three years if there is no pending application for distribution.
- Excess proceeds of fifty dollars or less that are presumed abandoned are to be transferred to the county general fund.
- Excess proceeds greater than fifty dollars that are presumed abandoned are to be reported to the Arizona Department of Revenue on or before November 1st of each year. The report shall cover the prior fiscal year and include a copy of all documentation filed with the county treasurer. The county treasurer may assess and deduct a reasonable fee of not more than fifty dollars for the reporting expenses.
- The period for the presumption of abandonment for property held by a court, governmental subdivision, agency or instrumentality, is increased from one to three years.
- Session law at the conclusion of this chaptered legislation provides that the initial reports of excess proceeds presumed abandoned that are due November 1, 2004, derived from a trustee's sale or held by the county treasurer, shall include excess proceeds but no penalties and interest. Such reports shall also include excess proceeds that would have been presumed abandoned within twenty years prior to July 1, 2004.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0135.htm

Senate Bill 1415 (Chapter 284) Withholding Tax Rates; Budget Reconciliation

SB 1415 applies to all employees who are subject to Arizona withholding and their employers. This bill increases all of the withholding rates except for the lowest rate available for employees making less than fifteen thousand dollars annually. The lowest available withholding percentage for these employees remains at 10%, and the higher rates are all increased. The bill also provides session law to require the automatic increase of employees' withholding rates if they do not elect a rate of withholding.

Senate Bill 1415 is effective for tax years beginning from and after December 31, 2004.

The following table illustrates the changes to the withholding tax rates

Current rates	New Rates for 2005
10.0%	10%
18.2%	19%
21.3%	23%
23.3%	25%
29.4%	31%
34.4%	37%

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0284.htm

House Bill 2259 (Chapter 232) County Treasurers; Procedures

This is the annual bill that makes changes to the administrative procedures regarding county treasurers. Specifically, the bill provides:

- The monthly statement of fees collected by the county will be filed on the first day of the month, instead of the last day of the month and the requirement that the statement be filed under oath is removed.
- Changes the fee for a certified copy of a judgment foreclosing the right to redeem from \$10 to \$50 dollars and requires that \$15 of this fee is designated to the county Taxpayers' Information Fund.

- Designates that thirty days after medical examination of a deceased indigent, the public fiduciary of the county, rather than the county treasurer, receive monies and properties found upon the body.
- Clarifies that checks drawn on the county general fund not presented for payment within one year will revert to the county general fund or other appropriate fund
- Retroactive to September 18, 2003, the board of supervisors may allow a claim for the amount of an uncashed check or warrant that is older than one year if they find that the claim is legitimate.
- Allows the county treasurer to require additional supporting information for any person who is making electronic property tax payments in excess of \$25,000. If the electronic fund does not balance with the tax parcel information, the funds will not be accepted and clarifies that if payments are delinquent, interest will accrue.
- Removes the six-month time limit for the sheriff's seizure of property after receiving a tax bill.
- Requires monies derived from the levy of the tax on issued bonds to be deposited to the Debt Service Fund rather than the Interest Fund and the Principal Fund.

http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/2r/laws/0232.htm