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## ARIZONA TRANSACTION PRIVILEGE TAX RULING TPR 19-1

**This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.**

### ISSUE:

Whether property management companies had reasonable cause for not timely filing and/or paying applicable taxes to the Department as a result of confusion or misunderstanding of their filing/payment responsibilities under a new electronic filing/payment system implemented by the Department on January 1, 2018.

### APPLICABLE LAW:

Arizona Revised Statutes (“A.R.S.”) § 42-1004 requires the Department of Revenue (Department) to administer and enforce any laws assigned to it. In administering and enforcing such laws, the statute grants the Department all the powers and duties prescribed by law for such purposes. In addition, the Department is empowered to:

1. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

...

9. Provide an integrated, coordinated and uniform system of tax administration and revenue collection for the state, including a coordinated electronic method of collecting state and municipal transaction privilege and affiliated excise taxes.

A.R.S. § 42-6013 required the Department to create an electronic filing system for property management companies for the collection of municipal taxes with respect to the gross proceeds or gross income derived from individual properties under management on behalf of the property owners. It required the electronic system to provide a consolidated return form that separately identifies each owner's property location and the gross income and deductions for each property location. It also required the property

management company to file the return electronically using the consolidated return form developed by the Department.

Arizona municipalities levy and impose municipal privilege tax under the Model City Tax Code (“MCTC”). A.R.S. § 42-6002 provides that A.R.S. Title 42, chapter 1 and chapter 5, article 1 apply to the administration of municipal privilege taxes, including the requirement that procedures for levy, collection and enforcement of applicable municipal taxes be consistent with the state’s statutes as authorized by chapter 5 of Title 42.

A.R.S. § 42-1125 prescribes the application of various civil penalties for noncompliance with statutory requirements, including penalties for late filing, late payments and failure to file or pay after notice and demand. Pursuant to A.R.S. § 42-1101, these penalties apply to any tax administered by the Department.

A.R.S. § 42-2062 provides that most penalties imposed under A.R.S. § 42-1125 may be waived or abated upon the showing of *reasonable cause* for failure to comply with the statutory requirements.

For purposes of abating the penalties imposed under A.R.S. § 42-1125, GTR 04-2 provides that “reasonable cause” means that the taxpayer exercised ordinary business care and prudence but was nevertheless unable to file the return, furnish the requested information, or provide for payment of a tax liability within the prescribed time.

In addition, for purposes of the transaction privilege, use, severance, telecommunication services taxes as well as municipal and county excise taxes, “reasonable cause” is additionally defined by statute as a reasonable basis for the taxpayer to believe that the tax did not apply to the business activity or storage, use or consumption of taxpayer’s tangible personal property in Arizona. See A.R.S. § 42-1125(Z).

Reasonable cause requires the taxpayer to demonstrate that he exercised ordinary business care and prudence but nevertheless was unable to file the return or pay the tax within the prescribed time. *United States v. Boyle*, 105 S. Ct. 687 (1985).

DISCUSSION AND RULING:

Pursuant to statute, the Department implemented a system to allow property management companies to electronically file and remit city privilege taxes on behalf of property owners. This new electronic process became available to property managers

from and after January 1, 2018. However, due to confusion between what they thought they were required to do under the new process, difficulties with operating the new system and perceived conflicts with their fiduciary responsibilities under real estate law, many property managers failed to file and/or pay on-time or at all and the property owners they represented were assessed penalties for non/late-filing and/or non/late-payment of taxes.

The Department hosted an open forum on March 1, 2019, to determine the extent of the confusion, difficulties and misunderstandings with the system. The Department published a Notice of the forum on its website, posted it in the lobby and sent a copy to real estate organizations as well as to all property management companies registered to collect TPT on behalf of property owners. Additional information could be provided if the interested party sent a request by e-mail or called the Department using a dedicated telephone line. The open forum was held at the Industrial Commission of Arizona and participation was also made available online via WebEx.

During the open forum, the Department heard comments from stakeholders including taxpayers, taxpayer representatives such as property managers, and other interested parties. The comments made by participants in the open forum reflected the extensive efforts made by taxpayers and property managers to transition to the Department's electronic filing and payment process. Despite these efforts, many were unable to successfully submit returns and payments on behalf of property owners by the statutory deadline. Participants expressed that they had experienced technical difficulties using the system that resulted in their failure or inability to timely file or pay applicable taxes and renewal fees. Others experienced difficulty in the process of merging pre-existing city licensing information with new Department licensing information, resulting in unapplied or misapplied credits and liabilities. Participants explained their misunderstanding of the electronic payment filing thresholds and procedures. Finally, participants claimed to have experienced excessive delays in payment processing and error resolution when attempting to follow the new process and utilize the Department's online system.

The Department, having listened to all the comments received by those attending the forum and after consultation with city officials, has determined that the impact of these issues on the property managers' ability to register with the Department and/or electronically file and/or pay the applicable taxes on behalf of property owners constitute a reasonable basis for the failure to timely file and/or pay the applicable taxes.

The Department will issue a notice providing additional information for those property managers affected by this ruling to facilitate the application for the abatement of penalties assessed.

Carlton Woodruff, Interim Director

Signed: April 15, 2019

### **Explanatory Notice**

**The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.**