

# STATE OF ARIZONA

Arizona Department of Revenue



## ARIZONA TRANSACTION PRIVILEGE TAX PROCEDURE TPP 24-1

Katie Hobbs  
Governor

Robert Woods  
Director

(This Procedure Supersedes and Rescinds Arizona Transaction Privilege Tax Procedure TPP 08-1)

Procedure for Documenting Nontaxable Sales of Motor Vehicles  
To Nonresidents and Native Americans

### **ISSUE:**

This procedure provides guidance regarding the taxability of Arizona sales of motor vehicles to nonresidents and Native Americans, and explains the documentation necessary for sales that qualify for a statutory deduction.

### **APPLICABLE LAW AND DISCUSSION:**

#### ***State transaction privilege tax; county excise tax***

Arizona's transaction privilege tax ("TPT") differs from the sales tax imposed by most states. It is a tax on the privilege of conducting business in the State of Arizona and is imposed on the seller's gross proceeds of sales or gross income derived from the business. The seller may pass the economic burden of the tax on to the purchaser, but the seller is ultimately liable to Arizona for the TPT. The TPT is imposed under sixteen separate business classifications, including the retail classification which imposes the TPT on income derived from sales of tangible personal property at retail. Additionally, Arizona Revised Statutes ("A.R.S.") § 42-6102 provides that the state's TPT provisions shall govern the imposition of county excise taxes. Accordingly, all sales subject to TPT are also subject to applicable county excise taxes.

A.R.S. § 42-5061, *Retail classification*, imposes TPT on the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. Income derived from sales of tangible personal property is subject to the transaction privilege tax under the retail classification unless a statutory deduction from the tax base applies. There are six retail deductions related to the sale of motor vehicles.<sup>1</sup> Of the following six deductions under the retail classification, five apply to income derived from sales of motor vehicles to nonresidents of Arizona, and a separate deduction applies to income derived from the sale of a motor vehicle to Native Americans:

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<sup>1</sup> A *motor vehicle* is "[a] self-propelled vehicle," but "[d]oes not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard." A.R.S. § 28-101(50). This definition thus embraces, for example, golf carts, *see* A.R.S. § 28-101(37), and motorcycles, *see* A.R.S. § 28-101(47).

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1. Sales to nonresidents of motor vehicles shipped or delivered out of state. A.R.S. § 42-5061(A)(14)(a)<sup>2</sup> provides a deduction from a retailer's tax base for income derived from "[s]ales of motor vehicles to nonresidents of this state for use outside this state if ... the motor vehicle dealer ships or delivers the motor vehicle to a destination out of this state." This deduction may apply to the sale of a motor vehicle to a nonresident from another U.S. state or foreign country if the motor vehicle dealer retains proper documentation from the nonresident as to their nonresident status and the motor vehicle dealer maintains documentation of its delivery of the vehicle to an out-of-state location. For this deduction, the motor vehicle dealer must arrange for shipment to a location out of this state—if the purchaser independently arranges for the delivery of the vehicle from Arizona to an out-of-state location, this statutory deduction will not apply.

Such sales are also deductible for city privilege tax purposes. *See infra* p. 6 ¶ 1.

2. Sales to nonresidents of commercial motor vehicles used in interstate commerce. Effective October 1, 2022, A.R.S. § 42-5061(A)(14)(b) provides a deduction for income derived from the sale of a motor vehicle to a nonresident of this state where the "the vehicle, trailer or semitrailer has a gross vehicle weight rating of more than ten thousand pounds, is used or maintained to transport property in the furtherance of interstate commerce and otherwise meets the definition of commercial motor vehicle as defined in section 28-5201."

A.R.S. § 28-5201 defines a commercial motor vehicle as "a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed in section 28-5432, subsection B and that includes ... (b) A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce."

To substantiate this deduction, the motor vehicle dealer should retain proper documentation from the nonresident purchaser as to their nonresident status, documentation that the vehicle's gross vehicle weight rating is ten thousand one or more pounds, and that the purchaser will use the vehicle in the furtherance of interstate commerce. A motor vehicle dealer should review a purchaser's U.S. DOT number and MC/MX Number(s) and ensure that the purchaser is authorized to operate in interstate commerce at the Federal Motor Carrier Safety Administration's Safety and Fitness Electronic Records (SAFER) System using the following [link](#).

Such sales are also deductible for city privilege tax purposes. *See infra* p. 6 ¶ 2.

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<sup>2</sup> Beginning October 1, 2022 this section was renumbered from A.R.S. § 42-5061(A)(14) to A.R.S. § 42-5061(A)(14)(a).

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3. Sales of motor vehicles to nonresidents whose state of residence **does not** provide reciprocity. A.R.S. § 42-5061(A)(28) provides a deduction for income derived from the sale of a motor vehicle to “[a] nonresident of this state if the purchaser’s state<sup>3</sup> of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by §§ 28-2154 and 28-2154.01.” The Department’s website provides a listing of the states that *do not* provide reciprocity at <https://azdor.gov/business/transaction-privilege-tax/motor-vehicle-sales>. This statutory deduction applies only to nonresidents from other U.S. states, and does not apply to nonresidents from other countries such as Canada or Mexico.

Such sales are **not** deductible for city privilege tax purposes. *See infra* p. 6 ¶ 3.

4. Auction sales to nonresidents of motor vehicles shipped or delivered out of state. A.R.S. § 42-5061(A)(44) provides a deduction for income derived from “[s]ales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicle passes or its free on board point.” This deduction applies to the sale of a motor vehicle to a nonresident from any U.S. state or foreign country if the motor vehicle dealer obtains proper documentation from the nonresident and maintains documentation of the delivery or shipment of the vehicle to an out-of-state location. Either the motor vehicle dealer or the purchaser may arrange for the delivery or shipment of the vehicle to an out-of-state location.

Such sales are also deductible for city privilege tax purposes. *See infra* p. 6 ¶ 5.

5. Sales of motor vehicles to nonresidents whose state of residence **does** provide reciprocity. A.R.S. § 42-5061(U) provides that for sales of motor vehicles to nonresidents from certain states, a deduction from the tax base is allowed so that the amount of state transaction privilege tax that applies to the sale is the same as the state excise tax that would apply in the purchaser’s state, as follows:

In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser’s state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser’s state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser’s state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall be deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction

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<sup>3</sup> A.R.S. § 1-215(38) provides that the term “state,” as used in the statutes and laws of Arizona, includes the District of Columbia and the territories.

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privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

See “Reciprocity” section, below, for further discussion. Also, this statutory deduction applies only to nonresidents from other U.S. states, and does not apply to nonresidents from other countries such as Canada or Mexico.

Such sales are not deductible for city privilege tax purposes. *See infra* p. 6 ¶ 4.

6. Sales of motor vehicles to an enrolled member of an Indian tribe who resides on the Indian reservation. A.R.S. § 42-5122(6) provides that a sale of a motor vehicle to an enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe is not subject to state transaction privilege tax, county excise tax or state use tax.

A.R.S. § 28-2154(C) provides that an enrolled member of an Indian tribe, who resides on the Indian reservation established for that tribe and who purchases an unregistered vehicle in Arizona for removal to the Indian reservation, shall obtain a special ninety-day nonresident registration permit for the vehicle. However, the motor vehicle dealer is not required to obtain a nonresident affidavit or a certificate prescribed by A.R.S. § 42-5009(H) (see below) before issuing the nonresident registration permit if the enrolled tribal member resides on an Indian reservation located within Arizona. If a co-purchaser of the vehicle is not an enrolled member of a Native American tribe residing on the Arizona reservation established for that tribe, then unless another deduction applies, 50% of the net sales price is subject to the state’s transaction privilege tax (or other percentage if more than two persons are purchasing), with such percentage determined by a fraction, the numerator of which is the number of purchasers who are enrolled members of an Indian tribe who reside on the reservation established for that tribe and the denominator of which is the total number of purchasers.

Note that A.R.S. § 42-5122(6) only applies to individual enrolled members of an Indian tribe who reside on the Indian reservation, and not to Indian entities.<sup>4</sup> A.R.S. § 42-5122(5) provides a deduction for “Retail sales of tangible personal property to an Indian tribe, a tribally owned business, a tribal entity or an affiliated Indian” but only “if the sale of tangible personal property takes place on an Indian reservation. A sale is deemed to take place on an Indian reservation if the tangible personal property is ordered from and delivered on an Indian reservation.” Accordingly, an Indian entity may only claim the deduction provided in A.R.S. § 42-5122(5) when purchasing a motor vehicle in Arizona and the motor vehicle is ordered from and delivered to the reservation.

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<sup>4</sup> See A.R.S. § 42-5121(1) (defining *Affiliated Indian* as “an individual Native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established”).

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Such sales are subject to city privilege tax if the tribal member takes possession of the vehicle off the reservation but are not subject to city privilege tax if the tribal member takes possession of the vehicle on the reservation. *See infra* pp. 6–7 ¶ 6.

#### ***City privilege tax***

As with the state’s TPT, city privilege taxes are imposed on the vendor for the privilege of engaging in business in the city. The Model City Tax Code (“MCTC”) was created in order to impose and administer city privilege taxes. Similar to Arizona’s TPT, city privilege taxes are imposed “upon persons on account of their business activities.” *See* MCTC § -400(a)(1). All Arizona cities follow the MCTC in the imposition of their privilege tax based upon their local ordinances. However, certain options exist, allowing each city to alter or qualify the imposition of its privilege tax.<sup>5</sup>

A.R.S. § 42-6017 addresses city privilege taxes in relation to the retail classification. It provides that “[e]xcept as provided in this section, section 42-5061 supersedes all city or town ordinances or other local laws insofar as the ordinances or local laws now or hereafter relate to the taxation of business activities classified under section 42-5061.” Accordingly, all the deductions described above apply to city privilege tax unless A.R.S. § 42-6017 specifically allows the cities to apply city privilege tax.

Under A.R.S. § 42-6017(C)(6), cities are allowed to tax the gross proceeds of sales or gross income derived from the sale of a motor vehicle to the following:

- (a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by chapter 5, article 1 of this title and if the nonresident has secured a special ninety-day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01. This subdivision does not apply if the purchaser takes possession of the vehicle outside of this state.
- (b) An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe, except if possession of the vehicle is received on the enrolled member's Indian reservation.

Accordingly, for each of the deductions from state TPT and county excise tax identified above, city privilege tax is applicable as follows:

1. Sales to nonresidents of motor vehicles shipped or delivered out of state. A.R.S. § 42-6004(A)(4) and MCTC § 460(L) both provide a deduction from city privilege tax for income derived from “sales of motor vehicles to nonresidents of this state for use outside this state if ... the motor vehicle dealer ships or

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<sup>5</sup> *See* MCTC found at <https://azdor.gov/model-city-tax-code/index-articles-and-regulations>.

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delivers the motor vehicle to a destination outside this state.” Further, A.R.S. § 42-6017 does not specifically allow cities to tax such transactions. Accordingly, sales to nonresidents of motor vehicles shipped or delivered out of state are also deductible for city privilege tax purposes.

2. Sales to nonresidents of commercial motor vehicles used in interstate commerce. A.R.S. § 42-6017 does not specifically allow cities to tax sales to nonresidents of commercial motor vehicles used in interstate commerce. Accordingly, the deduction for such sales per A.R.S. §§ 42-5061(A)(14)(b) and 42-6004(A)(4)(b) apply to cities and are therefore deductible for city privilege tax purposes.

3. Sales of motor vehicles to nonresidents whose state of residence **does not** provide reciprocity. A.R.S. § 42-6017(C)(6) specifically allows cities to tax sales of motor vehicles to nonresidents whose state of residence does not provide reciprocity. Accordingly, the deduction for such sales per A.R.S. § 42-5061(A)(28) does not apply to cities, and cities may apply city privilege tax to such sales.

4. Auction sales to nonresidents of motor vehicles shipped or delivered out of state. A.R.S. § 42-6017 supersedes all city or town ordinances relating to the taxation of retail sales. As a result, the income derived from sales at auction to nonresidents for use outside of Arizona are deductible for city tax purposes.

5. Sales of motor vehicles to nonresidents whose state of residence **does** provide reciprocity. A.R.S. § 42-5061(U), which provides a deduction for sales of motor vehicles to nonresidents whose state of residence does provide reciprocity, only applies to state TPT, and not to county excise tax or city privilege taxes. This is because the reciprocity is based on the statutory provisions of the respective states and not the local jurisdictions within the states. As a result, that deduction applies to state privilege tax only. Accordingly, the deduction for such sales per A.R.S. § 42-5061(U) does not apply to cities, and such sales are subject to city privilege tax.

6. Sales of motor vehicles to an enrolled member of an Indian tribe who resides on the Indian reservation. As stated above, A.R.S. § 42-6017(C)(6) allows cities to tax sales of motor vehicles to “[a]n enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe, except if possession of the vehicle is received on the enrolled member’s Indian reservation.” Further, the state transaction privilege tax deduction provided by A.R.S. § 42-5122(6) for “a sale of a motor vehicle to an enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe” only applies to state and county privilege taxes due to the provision of A.R.S. § 42-6017(C)(6). Accordingly, such sales where the enrolled member of the Indian tribe takes possession of the vehicle off of the reservation are subject to city privilege tax.

Note, however, the deduction in A.R.S. § 42-5122(5) for “[r]etail sales of tangible personal property to an Indian tribe, a tribally owned business, a tribal entity or an affiliated Indian” applies only “if the sale of tangible personal property takes place on an Indian reservation. A sale is deemed to take place on an

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Indian reservation if the tangible personal property is ordered from and delivered on an Indian reservation.” A.R.S. § 42-6017 does not allow cities to tax such sales. Accordingly, if a sale of a motor vehicle to an enrolled member of an Indian tribe occurs on a reservation, such sale is deductible for city privilege tax purposes and the motor vehicle dealer should retain a properly completed Form 5000 from the purchaser to substantiate the deduction<sup>6</sup>.

### ***Servicemembers Civil Relief Act***

The Arizona transaction privilege tax statutes do not provide a specific statutory deduction regarding sales of motor vehicles to nonresident military service members stationed at an Arizona facility. However, the Servicemembers Civil Relief Act of 2003<sup>7</sup> allows a nonresident member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or other commissioned corps<sup>8</sup>, and their spouse, who is stationed at a military facility in Arizona to retain his nonresident status for tax purposes in regard to any personal property brought into Arizona. 50 U.S.C. App. § 571, *Residence for tax purposes*, states in pertinent part:

(a) RESIDENCE OR DOMICILE.

- (1) In general – A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.
- (2) Spouses – A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember’s military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.

...

(f)(2) TAXATION. – The term “taxation” includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember’s State of domicile or residence.

Therefore, depending on the service member’s specific state of residence or domicile, one of the statutory deductions for sales of motor vehicles to nonresidents discussed above may apply to the sale of a motor

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<sup>6</sup> Arizona Transaction Privilege Tax Procedure **TPP 17-1** provides guidance regarding the procedure for use of exemption certificates like the Form 5000.

<sup>7</sup> Public Law 108-189, 50 United States Code App. §§ 501-596; which updated the *Soldiers and Sailors Civil Relief Act of 1940*.

<sup>8</sup> “Other commissioned corps” is defined in 50 U.S.C. § 101(a)(5) as service members of the National Oceanic and Atmospheric Administration and the Public Health Service.

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vehicle to a nonresident military person, or their spouse, stationed in Arizona, if the motor vehicle is purchased to be registered in the nonresident service member's state of domicile or residence. However, in addition to the proper documentation required by the nonresident motor vehicle sales deductions, a copy of the service member's official military orders indicating that the person is currently stationed at an Arizona facility but that their state of residence is a state other than Arizona, must also be provided to the motor vehicle dealer.

A nonresident spouse who purchases a motor vehicle may also qualify for the deduction, if purchasing the vehicle separately from the service member, by providing to the motor vehicle dealer the proper documentation required by the nonresident motor vehicle sales deduction and a copy of their spouse's official military orders indicating that their spouse is stationed at an Arizona facility but that their state of residence is a state other than Arizona.

Service members stationed in other states that purchase motor vehicles in Arizona may also qualify for nonresident motor vehicle sales deductions. Their official military orders indicating the location of where they are stationed and their chosen place of residence may be used in determining their place of residence as it relates to the specific deduction being claimed (*e.g.*, whether the state of residence has reciprocity with Arizona as it relates to the deduction in A.R.S. § 42-5061(U), discussed in further detail below, etc.).

The Servicemembers Civil Relief Act does not apply to service members of foreign militaries or their spouses, and a vehicle purchased by foreign military members will be taxable unless it qualifies under a separate deduction. Although treaties may provide foreign military service members' deductions from income tax, property tax, or other taxes that depend upon residency or domicile, such treaties do not extend to transaction privilege tax. Foreign military service members are entitled to any deduction that otherwise may be available.

### ***Reciprocity***<sup>9</sup>

As stated above, A.R.S. § 42-5061(U) provides a deduction for sales of motor vehicles to nonresidents whose state of residence has "reciprocity" with Arizona. "Reciprocity" refers to the way a state will tax its residents' purchases in another state. Like most other states, Arizona imposes a state use tax<sup>10</sup> on the purchaser of a motor vehicle that is bought in another state and then registered in Arizona. Also, like many other states, Arizona's use tax provisions allow a "credit" for the amount of state tax paid to a retailer in the state of purchase. This credit is applied against the purchaser's Arizona use tax liability. By this means,

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<sup>9</sup> This term is relevant for several of the deductions from tax discussed in this Procedure (See Categories 1, 2, and 3).

<sup>10</sup> The Arizona use tax was enacted to protect Arizona vendors that are subject to the state's transaction privilege tax from unfair competition with vendors in states that either have lower tax rates than Arizona or do not impose an excise tax. As of 2008, both the Arizona transaction privilege tax and the Arizona use tax are imposed at the rate of 5.6%.



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the total amount of state tax that is paid by the Arizona purchaser will at least equal the 5.6%<sup>11</sup> Arizona transaction privilege tax rate, thereby protecting Arizona vendors. Other states that 1) have similar taxes and 2) provide credit for the amount of state tax their residents pay to out-of-state retailers, are considered to provide “**reciprocity**” with states that have similar credit provisions. Providing reciprocity does not mean that there is a transfer of taxes between states.

The Department’s **website** provides a listing of these states and their respective tax rates. **Please note, this reciprocity is based on the statutory provisions of the respective states and not the local jurisdictions within the states; as a result, this deduction applies to state privilege tax only. Such sales are still subject to Arizona county and city privilege taxes.**

The deduction provided by A.R.S. § 42-5061(U) reduces the retailer’s tax base. The Arizona county excise tax, which per A.R.S. § 42-6102 follows the state’s transaction privilege tax provisions, will then apply to the reduced tax base and will be proportionately decreased.

To assist motor vehicle dealers in the tax computation process for sales to nonresidents under A.R.S. § 42-5061(U), the Department’s website provides **worksheets** that compute the amounts of Arizona transaction privilege tax and county excise tax that apply. The **worksheets** also compute the deduction amount that is taken on the *Transaction Privilege, Use, and Severance Tax Return* (Form TPT-2) for each sale. A motor vehicle dealer should review the computations and disclaimers regarding the use of the worksheets.

A.R.S. § 42-5061(U) does not apply to the sale of a motor vehicle to a resident from a reciprocal state that has a higher state tax rate than Arizona’s 5.6% transaction privilege tax rate (i.e., this transaction is fully subject to the combined state, county and city rate where the vehicle is purchased).<sup>12</sup> Therefore, when a nonresident from one of these states purchases and takes delivery of a motor vehicle in Arizona, there is no applicable statutory deduction from transaction privilege tax. However, because the nonresident’s reciprocal state will provide a credit against its excise tax for the amount of state transaction privilege tax that was paid in Arizona, only the balance of tax will be owed to the nonresident’s state. Though no deduction would be applicable, because the purchaser takes delivery of the motor vehicle in Arizona and will take the vehicle out of the state, the purchaser will need the special ninety-day nonresident registration permit issued pursuant to A.R.S. §§ 28-2154 and 28-2154.01 in order to legally drive the vehicle out of the state.

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<sup>11</sup> Or the Arizona transaction privilege tax and use tax rate currently in effect, if that rate has changed.

<sup>12</sup> Please note, while reciprocity is provided between the states, it is not extended to local jurisdictions (i.e., this is still taxable by Arizona counties and cities).

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#### ***Special 90-day Nonresident Registration Permit***

The deductions in A.R.S. §§ 42-5061(A)(28) and 42-5061(U) require the purchaser to obtain, and the motor vehicle dealer to retain a copy of, a special ninety-day nonresident registration permit as prescribed by A.R.S. §§ 28-2154 and 28-2154.01 to allow the vehicle to be driven out of the state by the purchaser. Under A.R.S. § 28-2154, this special registration may be obtained by application to a motor vehicle dealer, the payment of fees, and the completion of a nonresident affidavit. If a nonresident purchaser has completed the Arizona Department of Revenue certificate prescribed by A.R.S. § 42-5009(H) that is required for the tax deduction (i.e., Forms 5011 and 5012, discussed below), this certificate will satisfy the tax deduction requirements.

A.R.S. § 28-2154.01(H) states that if a motor vehicle purchaser registers the vehicle in Arizona within 365 days after the issuance of the special ninety-day nonresident registration permit, the purchaser is liable in an amount equal to any tax, penalty, and interest that the motor vehicle dealer would have been required to pay under title 42, chapter 5 and under articles IV and VI of the Model City Tax Code (credit is allowed for any tax that was paid at the time of sale). At the time of issuing the special ninety-day nonresident registration permit, a motor vehicle dealer or authorized third party shall inform the purchaser in writing of the purchaser's contingent liability. Note that if the purchaser has completed the Form 5011, they have been informed of the purchaser's liability through the affirmations made therein.

#### ***Sales to Nonresident Entities***

Sales to a bona fide nonresident entity (e.g., corporation, partnership) that is formed or incorporated outside of the state, and whose business locations<sup>13</sup> are outside of the state, may qualify for any of the transaction privilege tax statutory deductions mentioned in this procedure, as applicable. The entity's representative (i.e. corporate officer, partner, L.L.C. member) must be a nonresident of Arizona, must possess a driver's license from the same jurisdiction as that in which the nonresident entity is located<sup>14</sup>, and must complete a Form 5011 or Form 5012. Payment for the motor vehicle must be made by the nonresident entity in the form of a business check or credit card issued in the entity's name, or financing must be done in the name of the nonresident entity. Copies of the entity's articles of incorporation, a valid out-of-state business license, or other official documentation may be used to substantiate that the business is a nonresident entity.

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<sup>13</sup> A *business location* is a physical space that a person can occupy such as an office or a room in a house and in which business is carried on.

<sup>14</sup> If the entity representative's driver's license is not from the same jurisdiction as that in which the nonresident entity is located, the sale may be deductible if the representative is a nonresident, has their own nonresident driver's license, and wants to purchase the vehicle in their own name. Otherwise, the motor vehicle sale will not be deductible.

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#### ***Sales made in Interstate or Foreign Commerce***

A.R.S. § 42-5061(A)(24) provides a deduction for “[t]angible personal property [including motor vehicles] sold in interstate or foreign commerce if prohibited from being so taxed by the constitution of the United States or the constitution of this state.” To qualify for the deduction, Arizona Administrative Code (A.A.C.) Rule R15-5-170 states that (1) the order must be received from a location outside of Arizona and then (2) the property purchased must be shipped or delivered to a location outside of Arizona for use outside the state. Sales which qualify as being in interstate or foreign commerce under A.R.S. § 42-5061(A)(24) and A.A.C. R15-5-170 do not require the deduction forms discussed within this Procedure. Rather, suitable records must be kept to substantiate the deduction, examples of which are provided in A.A.C. R15-5-170(C).

#### ***Taxable Sales to Nonresidents and Native Americans.***

Sales of motor vehicles to nonresidents or Native Americans that do not qualify pursuant to the detailed requirements of the above categories are subject to state transaction privilege tax, county excise tax, and city privilege tax, unless a separate statutory deduction or exclusion applies. For the sale of a motor vehicle by a retailer to a nonresident that does not qualify for deduction from transaction privilege tax, the completion of either Arizona Form 5011 or 5012 (affidavit of nonresidency) is unnecessary. For these taxable sales, the motor vehicle dealer may issue the special ninety-day nonresident registration permit by completing the normal documentation required by the Arizona Department of Transportation.

#### **DEPARTMENT CERTIFICATES; LIABILITY; PENALTIES:**

A.R.S. § 42-5009 authorizes the Arizona Department of Revenue (“Department”) to prescribe forms for certificates used to document information to establish entitlement to deductions from the tax base. Pursuant to A.R.S. § 42-5009, subsections (C) and (H), the Department has prescribed the following certificates that may be used to establish the necessary criteria for the deductions provided by A.R.S. § 42-5061, paragraphs (A)(14)(a) and (b), (A)(28), (A)(44), and subsection (U)<sup>15</sup>. If a motor vehicle dealer seeks to establish entitlement to an deduction through the use of a certificate that is not prescribed by the Department or other documentation that is not addressed by this procedure, the burden of proof will remain with the motor vehicle dealer to show, through documentation or otherwise, the validity of the claimed deduction.

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<sup>15</sup> These certificates are also used for city privilege tax deductions when applicable.

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#### ***Nonresident Certificates:***

**Form 5011 - Certificate to Establish Residency in Another U.S. State**

**Form 5012 - Certificate to Establish Residency in a Foreign Country**

These certificates require the motor vehicle dealer to provide pertinent information about the motor vehicle, the amount of the sale, and the purchaser's driver's license. The nonresident purchaser is then required to complete the certificate by providing information about the purchaser's out-of-state residence and auto insurance. The purchaser must answer a series of questions to ensure that the purchaser does not qualify as a resident of Arizona, and must sign the "Affirmations of Purchaser" statement on the second page of the certificate. For deductible sales of motor vehicles to nonresidents of Arizona, all persons listed as buyers on the sales documents must separately qualify as nonresidents of Arizona by completing a Form 5011 or Form 5012.

#### ***Certificate for Sale to a Native American:***

**Form 5013 - Certificate to Establish Native American Status and Residence on Arizona Reservation**

This certificate is completed by the Native American purchaser, and co-purchaser if applicable. If the co-purchaser of the vehicle is not an enrolled member of a Native American tribe residing on the Arizona reservation established for that tribe, then unless another deduction applies, 50% of the net sales price<sup>16</sup> is subject to the state's transaction privilege tax. The purchaser(s) must sign the certification statement at the bottom of the certificate.

#### ***Out-of-State Delivery Certificate:***

**Form 5010 - Certificate to Establish Out-of-State Delivery of Motor Vehicle to Nonresident**

This certificate is required to document the motor vehicle dealer's out-of-state delivery of a motor vehicle to a nonresident purchaser, pursuant to A.R.S. §§ 42-5061(A)(14)(a) and 42-6004(A)(4)(a). If the motor vehicle dealer or their agent is personally delivering the vehicle to the nonresident purchaser, the form must be completed and then signed by both parties and notarized in the state of delivery. If the motor vehicle dealer instead contracts with a licensed auto transporter or common carrier for the delivery of the vehicle from Arizona to an out-of-state location, the motor vehicle dealer may complete the form and have it witnessed by an Arizona notary public, but must maintain the bill of lading and any other

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<sup>16</sup> Or other percentage if there are more than two purchasers, where such percentage is determined by a fraction, the numerator of which is the number of purchasers who are enrolled members of an Indian tribe who reside on the reservation established for that tribe and the denominator of which is the total number of purchasers.

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documentation that confirms the out-of-state delivery. For this latter situation, the purchaser is not required to sign Form 5010.

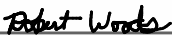
Note that the deduction under A.R.S. § 42-5061(A)(44) allows either the motor vehicle dealer or the purchaser to arrange for delivery of the vehicle to a destination outside of the state. In this situation, a Form 5010 is not required but the motor vehicle dealer must retain (or request from the purchaser, if the purchaser arranges delivery) the bill of lading or other documentation substantiating the out-of-state delivery.

### ***Consequences with Regard to False or Inaccurate Certificates***

Substantial penalties and other statutory provisions that govern the inappropriate or fraudulent use of Forms 5010, 5011, 5012, or 5013 may apply to the motor vehicle dealer and/or the purchaser. If the motor vehicle dealer has complied with all statutory provisions, the requirements of this procedure, and Arizona Transaction Privilege Tax Procedure TPP 17-1<sup>17</sup>, A.R.S. § 42-5009 provides that the dealer is relieved of liability and the purchaser can be held liable for an amount equal to any tax, penalty and interest that the motor vehicle dealer would have been required to pay. A.R.S. § 42-1125 imposes civil penalties that may apply to the motor vehicle dealer related to late or improperly filing and submitting taxes to the Department. A.R.S. § 42-1127 describes criminal violations that may apply with regard to false or fraudulent documents.

### **PROCEDURE:**

The statutory deductions discussed in this procedure apply only to *retail sales* of motor vehicles to nonresidents and Native Americans. These deductions do not apply to rentals or leases of motor vehicles. The attached table (Attachment “A”) applies the applicable law and the foregoing analysis to establish the substantiating documentation necessary for sales that qualify for the above-discussed statutory deductions.

  
Robert Woods (May 10, 2024 14:42 PDT)

Robert Woods, Director

Signed: May 10, 2024

### **Explanatory Notice**

**The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative**

<sup>17</sup> TPP 17-1 can be found at the Department’s website at <https://azdor.gov/legal/procedures/tpp-17-1>.

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**rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.**

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<b>Attachment "A" to TPP 24-1 Documentation Necessary to Substantiate Deduction</b>					
Category	A Form 5011 (non-resident affidavit) completed by each purchaser	A copy of the special ninety-day nonresident ADOT registration permit	A legible copy of a current valid driver's license issued by another jurisdiction	Properly completed Form 5010/shipping/delivery documentation	Properly completed Form 5013 (Native American certificate)
Sales to nonresidents for use outside of Arizona when the <u>motor vehicle dealer delivers</u> the vehicle to an out-of-state location. A.R.S. § 42-5061(A)(14)(a). <b>ALSO APPLIES TO CITIES.</b>	Yes	No	Yes	Yes and the bill of lading, if applicable.	No
Sales to nonresidents from other countries for use outside Arizona when the motor vehicle dealer delivers the vehicle to an out-of-state location. A.R.S. § 42-5061(A)(14)(a). <b>ALSO APPLIES TO CITIES.</b>	Yes (Form 5012)	No	Yes	Yes and the bill of lading, if applicable.	No
Sales to nonresidents of a commercial vehicle, trailer or semitrailer with a gross weight of 10,001 lbs. or more for use in interstate commerce. A.R.S. § 42-5061(A)(14)(b). <b>ALSO APPLIES TO CITIES.</b> Check for authorization to operate in interstate commerce using <a href="#">this link</a> .	Yes (must complete entirety of Section 1 of Form 5011).	Yes	Yes	No	No
Sales to nonresidents from other U.S. states that do not provide "reciprocity". A.R.S. § 42-5061(A)(28). <b>DOES NOT APPLY TO CITIES.</b>	Yes	Yes	Yes	No	No
Sales to nonresidents from other U.S. states that do provide "reciprocity" and have a <u>lower</u> state tax rate than Arizona <sup>18</sup> . A.R.S. § 42-5061(U). <b>DOES NOT APPLY TO CITIES.</b>	Yes	Yes	Yes	No	No
Sales to nonresidents from other U.S. states that do provide "reciprocity," but have a state tax rate that is higher than Arizona. A.R.S. § 42-5061(U). <b>DOES NOT APPLY TO CITIES.</b>	No deduction.	Yes, but no deduction.	No deduction.	No deduction.	No deduction.
Sales at auction to nonresidents for use outside of Arizona if the vehicle is shipped or delivered outside this state. A.R.S. § 42-5061(A)(44). <b>ALSO APPLIES TO CITIES.</b>	Yes	No	Yes	Yes or (bill of lading if purchaser arranges shipping).	No

<sup>18</sup> The worksheet for calculating the tax when selling to a nonresident from another U.S. state that does provide reciprocity and has a lower state tax rate than Arizona can be found at <https://azdor.gov/business/transaction-privilege-tax/motor-vehicle-sales>.

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<b>Attachment "A" to TPP 24-1 Documentation Necessary to Substantiate Deduction</b>					
Category	A Form 5011 (non-resident affidavit) completed by each purchaser	A copy of the special ninety-day nonresident ADOT registration permit	A legible copy of a current valid driver's license issued by another jurisdiction	Properly completed Form 5010/shipping/delivery documentation	Properly completed Form 5013 (Native American certificate)
Sales to an enrolled member of an Indian tribe who resides on the reservation located in Arizona created for the tribe, where the vehicle <b>IS NOT</b> delivered to the reservation. A.R.S. § 42-5122(6). <b><u>DOES NOT APPLY TO CITIES.</u></b>	No	Yes	Yes	No	Yes
Sales to an enrolled member of an Indian tribe who resides on the reservation located in Arizona created for the tribe, where the vehicle <b>IS</b> delivered to the reservation. A.R.S. § 42-5122(5). <b>ALSO APPLIES TO CITIES.</b>	No	No	Yes	Yes-Bill of Lading.	Yes
Sales to an enrolled member of an Indian tribe who resides on the reservation located <b>outside</b> of Arizona created for the tribe, where the vehicle <b>IS NOT</b> delivered to the reservation. A.R.S. § 42-5122(6). <b><u>DOES NOT APPLY TO CITIES.</u></b>	Yes	Yes	Yes	No	Yes
Sales to an enrolled member of an Indian tribe who resides on the reservation located <b>outside</b> of Arizona created for the tribe, where the vehicle <b>IS</b> delivered to the reservation. A.R.S. § 42-5122(5). <b>ALSO APPLIES TO CITIES.</b>	Yes	No	Yes	Yes-Bill of Lading.	Yes
Sales to nonresident military personnel (or their spouse) stationed in Arizona. A.R.S. §§ 42-5061(A)(28), 42-5061(U). <b><u>DOES NOT APPLY TO CITIES.</u></b>	Yes (including military orders).	Yes	Yes	No	No
Sales to nonresident military personnel (or their spouse) stationed <b>outside</b> of Arizona. A.R.S. §§ 42-5061(A)(28), 42-5061(U). <b><u>DOES NOT APPLY TO CITIES.</u></b>	Yes (including military orders).	Yes	Yes	No	No