

Executive Summary
2019 Retail Conformity Amendment
In Response to SD v Wayfair Conforming the Model City Tax Code
to the State's Retail Classification for Remote Sellers

At the February 22, 2019 meeting of the Municipal Tax Code Commission meeting, cities and towns will be presenting an amendment to the Model City Tax Code (MCTC), the "2019 Retail Conformity Amendment". The express purpose of this amendment is to make the MCTC match the State tax base for Retail sales from the perspective of a remote seller. Once approved, a remote seller will only have one tax base to consider when making sales into Arizona, thus satisfying one of the key concerns expressed in the commentary of the *Wayfair* decision.

There will still be some differences between the State and the cities in the Retail field, but these differences will be limited to transactions a remote seller could not engage in. For example, the State has an exemption for sales of fine art by an auction house to an out-of-state buyer for use outside the state. The MCTC has an Option for this exemption, but we are not proposing to make this conforming and exempt in all cities because a remote seller cannot operate an auction house in Arizona and still be considered a remote seller. As such, this difference does not need to be resolved to satisfy the concerns of *Wayfair*.

The following items are being changed in the Model City Tax Code to create conformity with the State's Retail classification from the perspective of remote sellers:

- 1) Adopted State's definition of "prosthetic" which covers items such as prescription drugs, veterinary medicines, durable medical equipment, etc. The prior MCTC language allowed exemption of items that were merely "recommended" rather than prescribed, along with minor differences accumulated over the years.
- 2) Replaced MCTC version of exemption for qualifying hospitals, healthcare organizations, etc. with the broader exemptions provided by State.
- 3) Added an exemption for seeds, seedlings, etc. for commercial production of agricultural, horticultural, viticultural, or floricultural crops.
- 4) Added an exemption for machinery and equipment for persons with developmental disabilities or head injuries to more independent and functional.
- 5) Eliminated Options that allowed taxation of sales of seeds, fertilizer, feed, livestock and poultry sold to persons in the business of farming, ranching, of feeding livestock, poultry and ratites, along with sales of laying hens, milch cows, neat animals, breeding bulls, work and riding horses, etc. Commonly referred to as the "feed store" tax, these options were selected by 65 of the 91 cities and towns, and were particularly common in the rural communities, where the local feed store may be the primary retailer in town.
- 6) Added an exemption for software application services used to test student learning or promote curriculum design purchased by a school district, charter school, community college or state university.
- 7) Added an exemption for fuel used in off-road vehicles used to harvest forest products.

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- 8) Added an exemption for repair parts for equipment used to harvest forest products.
- 9) Added an exemption for sales of coal.
- 10) Made an Option part of the standard language, making sales of agricultural aircraft, tractors, tractor-drawn implements, self-powered implements, machinery and equipment for extracting milk, cooling milk and livestock, and for drip irrigation lines used in production of agricultural, horticultural, viticultural and floricultural crops and products exempt. Eleven cities had this Option while 80 cities previously held these items taxable.
- 11) Added an exemption for machinery and equipment used in the commercial production of livestock, livestock products, or agricultural, horticultural, viticultural or floricultural crops or products.
- 12) Added an exemption for equipment harvesting forest products.
- 13) Eliminated an Option that allowed the exemption of certain government entities from local tax.
- 14) Expanded the exemption for diversion of gas from a pipeline for use in a pipeline business.
- 15) Added and clarified definitions related to the exemption of sales or use of overhead materials used in contracts with the Federal government.
- 16) Added provisions for all of the above to Article VI, Use Tax, wherever the same language existed in the State's use tax statutes.
- 17) Eliminated the MCTC Use tax exemption for the purchase of an item for personal use up to \$1,000.
- 18) Added a Use Tax exemption for up to \$200 per month in items purchased for personal use if purchased from outside the continental limits of the U.S.