

NOTICE OF EXEMPT RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE - TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

<u>1.</u>	<u>Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
	R15-5-101	Renumber
	R15-5-101	Amend
	R15-5-102	Amend
	R15-5-107	Repeal
	R15-5-107	Renumber
	R15-5-111	Amend
	R15-5-112	Amend
	R15-5-151	Amend
	R15-5-155	New Section
	Article 18	Amend
	Article 20	Amend
	R15-5-2001	Renumber
	R15-5-2002	Amend
	R15-5-2003	New Section
	R15-5-2004	Amend
	R15-5-2009	New Section
	R15-5-2201	Amend
	R15-5-2202	Amend
	R15-5-2204	Amend
	R15-5-2205	Amend
	R15-5-2206	Amend
	R15-5-2207	Amend
	R15-5-2212	New Section
	R15-5-2213	Repeal

R15-5-2215	Amend
R15-5-2216	New Section
R15-5-2217	New Section
R15-5-2220	Repeal
R15-5-2301	Amend
R15-5-2302	Amend
R15-5-2310	Amend
R15-5-2350	Repeal

2. Citations to the agency’s statutory rulemaking authority, including the authorizing state (general), the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. §§ 42-1003(F), 42-1005(A)(1); Laws 2019, 1st Reg. Sess., Ch. 273, § 32.

Implementing statute: A.R.S. §§ 42-3004(1), 42-5009(C); Laws 2019, 1st Reg. Sess., Ch. 273, §§ 6, 32.

Statute or session law authorizing the exemption: Laws 2019, 1st Reg. Sess., Ch. 273, § 32.

3. Effective date of the rules and the agency’s reason it selected the effective date:

The effective date of the rules is October 1, 2019, which the Department has selected because it falls after the August 27, 2019 general effective date applicable to the underlying legislation and coincides with the start of the first filing period for affected taxpayers on October 1, 2019.

4. List of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:

None

5. Agency’s contact person who can answer questions about the rulemaking:

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6. Agency's justification and reason why rules should be made, amended, repealed, or renumbered, including an explanation about the rulemaking:

This rulemaking amends existing rules and introduces new rules to accommodate the needs of remote sellers and marketplace facilitators who, beginning October 1, 2019, are required to become licensed with the Department and report and remit Arizona transaction privilege taxes if they meet the dollar thresholds in retail sales to Arizona consumers that are established by Laws 2019, 1st Reg. Sess., Ch. 273 (hereafter referred to in its entirety as "HB 2757"). Additionally, it repeals or updates outmoded, redundant, or potentially confusing language that diminishes the utility of rules that are applicable to remote sellers, marketplace facilitators, and other taxpayers.

Before the enactment of HB 2757, liability for state and local privilege taxes (collectively referred to as "TPT" in this Notice) was based on a taxpayer's physical presence in Arizona, rather than the level of gross sales with Arizona consumers. Consequently, in addition to introducing new provisions addressing the criteria for transaction privilege tax liability, liability relief provisions for remote sellers and marketplace facilitators and filing methodology, the Department reviewed its existing rules on retail sales and reporting and filing requirements and amended or repealed language to accurately reflect its current position vis-à-vis all taxpayers, including remote sellers and marketplace facilitators.

The Department received approval to engage in this rulemaking action as an exception to Executive Order 2019-01, 25 A.A.R. 131 (Jan. 9, 2019) on September 16, 2019. Aside from stylistic, grammatical, or technical corrections intended to be nonsubstantive in nature, the following summary provides a rule-by-rule description of changes from the rules as they had existed before this rulemaking action:

- a. *R15-5-101 (Definitions)*. This rule contains definitions renumbered from R15-5-2001 and is further amended to include cross-references to statutory definitions and to clarify that the definition of the term “retailer” includes manufacturers and wholesalers.
- b. *R15-5-102 (Casual Activities or Sales)*. This rule is amended to clarify that marketplace facilitators and remote sellers cannot be considered as engaging in a casual activity or sale if they regularly make sales at retail of the same type offered. In particular, it specifies that a marketplace facilitator is deemed to be regularly in the business of selling any tangible personal property sold on its marketplace.
- c. *R15-5-107 (Sales for Resale or Lease)*. This rule is renumbered from R15-5-101 without further amendment.
- d. *R15-5-111 (Consignment Sales)*. This rule is amended to specify that marketplace facilitators with no physical presence in Arizona and that are consignors are required to obtain a TPT license if they meet the applicable threshold requirements.
- e. *R15-5-112 (Sales by Auctioneers)*. This rule is amended to specify that marketplace facilitators with no physical presence in Arizona and that are auctioneers are required to obtain a TPT license if they meet the applicable threshold requirements.
- f. *R15-5-151 (Artists and Sales of Artwork)*. This rule is amended to be consistent with statute by specifying that sales of fine art is exempt in accordance with the retail TPT statutes if the sale is to a nonresident of Arizona and is delivered and used outside Arizona.
- g. *R15-5-155 (Delivery Sales of Tobacco Products)*. This new rule explicitly states that a retailer—including a remote seller, marketplace seller, or marketplace facilitator—cannot make or facilitate a delivery sale of tobacco products in violation of A.R.S. § 36-798.06. Although clearly laid out in statute, the rule clarifies that HB 2757 did not expand the scope of lawful retail sales to include these sales.

- h. *R15-5-2001*. This rule is renumbered to R15-5-101.
- i. *R15-5-2002 (Liability for Transaction Privilege Tax)*. This rule is amended to provide the Department's positions regarding a person's nexus for TPT purposes based on economic nexus or physical presence within Arizona. Regarding physical presence nexus, the rule also provides examples of when a person has or has not established physical presence in Arizona. It furthermore explicitly states when physical presence will end following a retailer's termination of its physical presence in this state (*i.e.*, the last day of the month in which the retailer terminates its physical presence), which is sometimes referred to as "trailing nexus."
- j. *R15-5-2003 (Applicability of Provisions to Marketplace Facilitators and Remote Sellers)*. This new rule simply specifies that the administrative rules found in A.A.C. Title 15, Chapter 5, Articles 1, 20, and 22 are generally applicable to remote sellers and marketplace facilitators who meet the threshold requirements in A.R.S. § 42-5044.
- k. *R15-5-2004 (Multi-Location and Multi-Business Taxpayers)*. This rule is amended to specify the records required to be maintained by remote sellers and marketplace facilitators and to provide a limited safe harbor for marketplace facilitators who reported and remitted tax on sales made on their own behalf and on behalf of their marketplace sellers for periods on or before August 27, 2019.
- i. *R15-5-2009 (Transactions between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers)*. This rule is being added to specify that in determining whether a marketplace facilitator or remote seller's sales meet the threshold, the retail sales of the marketplace facilitator or remote seller's affiliates must be aggregated. In addition, if all sales when aggregated meet the threshold, all affiliates are required to obtain an Arizona TPT license. However, the affiliates need to file consolidated returns.
- j. *R15-5-2201 (Display and Issuance of License)*. This rule is amended to provide that remote sellers and marketplace facilitators lacking a physical presence in Arizona

are not considered to maintain a public place of business in Arizona and, thus, are not required to display their TPT licenses for public view. However, as licensees, they will still be required to maintain copies or equivalent documentation of such licenses.

- k. *R15-5-2202 (Change in Ownership)*. This rule is amended to comply with the statutory provisions of A.R.S. 42-5005(G), which provides that a TPT license is not transferable upon a *complete* change of ownership or change of location. A former provision that required a new license for *any* change in ownership has been stricken.
- l. *R15-5-2204 (Change of Business Location or Mailing Address)*. This rule is amended to clarify that a business may change its location on record with the Department by a completing and submitting a form.
- m. *R15-5-2205 (Surrender of License upon Sale or Termination of Business)*. This rule is amended to clarify that a business may notify the Department of a sale or termination of a business or may surrender its TPT license by either submitting a completed paper form to the Department or through AZTaxes.gov.
- n. *R15-5-2206 (Cancellation of License)*. This rule is amended to specify that remote sellers and marketplace facilitators are permitted to cancel their TPT license if they did not meet the applicable threshold under A.R.S. § 42-5044 in the prior year.
- o. *R15-5-2207 (Taxpayer Bonds)*. This rule is amended to clarify that remote sellers and marketplace facilitators are not required to obtain a bond when initially registering for a TPT license, pursuant to the exemption under A.R.S. § 42-5006(E). However, subsequent to registration, the bonding provisions of A.R.S. § 42-1102 will apply.
- p. *R15-5-2212 (Reporting by Marketplace Facilitators and Remote Sellers)*. This rule is being added to specify that remote sellers and marketplace facilitators are required to report and remit taxes in aggregate by jurisdiction, not by location.
- q. *R15-5-2213*. This rule, which contained alternate reporting provisions, is repealed as superseded by statute.

- r. *R15-5-2215 (Return and Payment of Estimated Tax)*. This rule is amended to provide current estimated tax thresholds and replace obsolete statutory references.
- s. *R15-5-2216 (Liability Relief for Marketplace Facilitators and Remote Sellers)*. This rule interprets terms that HB 2757 did not define and explains the general circumstances under which the Department will grant liability relief to remote sellers and marketplace facilitators as statutorily authorized under A.R.S. § 42-5043.
- t. *R15-5-2217 (Reasonable Cause for Waiver of Civil Penalties)*. This rule provides general principles under which the Department will not apply penalties on the basis of reasonable cause, and specific instances in which the Department will waive civil penalties with or without receiving a request from a taxpayer.
- t. *R15-5-2220*. The rule is being repealed. HB 2757 supersedes subsection (A)'s guidance that out-of-state vendors selling to Arizona purchasers must obtain a use tax license, as out-of-state remote sellers and marketplace facilitators who meet the applicable statutory thresholds must be registered and licensed for transaction privilege tax, not use tax. Subsection (B), allowing a taxpayer collecting use tax on an isolated sale to file and remit via cover letter rather than the Department's return, has been preserved in amended form in R15-5-2310(B).
- u. *R15-5-2301 (Definitions)*. This rule is amended to remove obsolete definitions and to update the definition of the term "retailer" to exclude remote sellers and marketplace facilitators that do not meet the applicable threshold. A definition for the term "utility business" is added.
- v. *R15-5-2302 (General)*. This rule is amended to remove definitions now included in R15-5-2301, which defines terms for all of A.A.C. Tit. 15, Ch. 5, Article 23.
- w. *R15-5-2310 (Payment of Use Tax by Purchaser)*. The rule is amended to clarify that marketplace facilitators and remote sellers liable for retail TPT are not also required to collect use tax on such sales. HB 2757 supersedes subsection (A)'s guidance that out-of-state vendors selling to Arizona purchasers must obtain a use

tax license, as out-of-state remote sellers and marketplace facilitators who meet the applicable statutory thresholds must be registered and licensed for transaction privilege tax, not use tax. Subsection (B), allowing a taxpayer collecting use tax on an isolated sale to file and remit via cover letter rather than the Department's return, preserves a provision from former R15-5-2220(B).

x. *R15-5-2350*. An obsolete rule on mail-order retailers is repealed.

7. Reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. Showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. Summary of the economic, small business, and consumer impact, if applicable:

Laws 2019, 1st Reg. Sess., Ch. 273, § 32 authorizes an exemption from the rulemaking requirements of A.R.S. Tit. 41, Ch. 6 for one year after the August 27, 2019 effective date. Consequently, this rulemaking is exempt from the requirements of the Arizona Administrative Procedure Act and no economic, small business, and consumer impact statement is required.

10. Description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking, if applicable:

Not applicable.

11. Agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

Despite the exemption granted to HB 2757's rulemaking, on August 13, 2019, the Department posted a draft version of proposed rules for public review and feedback. Based on comments received during this period, and in addition to stylistic or

typographical corrections made subsequent to the public comment draft, the Department has responded as follows:

a. *R15-5-101.*

- (i) Formatting corrections have been made to the final version to reflect the fact that the renumbering of existing rule language from R15-5-2001 to R15-5-101. Additional nonsubstantive stylistic and paragraph numbering changes have also been made subsequent to the public comment draft.
- (ii) The Department received questions regarding the change from the term “casual sale” under current administrative rules to “casual activity or sale” in this rulemaking. In fact, by referring to casual activities *or* sales, the language in the administrative rules simply parallels terminology actually used in statute. *See* A.R.S. § 42-5001(1) (defining “business” for purposes of the privilege and use tax levy and administration statutes to exclude “[c]asual activities or sales”). Moreover, city privilege tax codes also refer to casual activities *or* sales. *See* Model City Tax Code (“MCTC”) § -100 (definitions of “business” and “casual activity or sale”).

The Department also received questions on the casual activity or sale definition’s reference to “used capital assets,” which paraphrases similar language found in city privilege tax codes. *See* Model City Tax Code (“MCTC”), *id.* (“casual activity or sale” definition adopted by all Arizona cities and towns). By including this language, the Department wishes to make explicit the state’s position that bulk transfers of assets resulting from such transactions as the sale of a business will generally not trigger TPT liability because such transfers would be considered casual activities or sales.

- (iii) The Department received comments expressing confusion over the use of the term “retailer” throughout A.A.C. Tit. 15, Ch. 5, specifically with regards to its intended scope. Retailer is statutorily defined in A.R.S. § 42-5001 to include “every person engaged in the business” and can include,

“when in the opinion of the department it is necessary for the efficient administration of this article, includes dealers distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them.” It is notable that this longstanding statutory definition may differ from colloquial or industry usage of the term.

Consequently, the Department has added a “retailer” definition in R15-5-101(8) that cross-references the statutory definition *and* specifically clarifies that the term includes wholesalers, manufacturers, and any other seller of tangible personal property to Arizona purchasers. To wit, such persons are subject to the reporting provisions for retail privilege taxes on sales to Arizona purchasers, even if all of their gross receipts derived from such transactions are rendered nontaxable by application of deductions, exclusions, or exemptions.

- b. *R15-5-133*. In the public comment draft of the rules, the Department proposed changes to R15-5-133 to amend its treatment of a retailer’s additional charges for shipping, handling, and similar services to conform it to A.R.S. § 42-5061(A)(2)’s exemption for “[s]ervices rendered in addition to selling tangible personal property at retail,” which is distinguishable from A.R.S. § 42-5002(A)(2)’s exclusion for freight costs. However, due to questions and concerns over the Department’s proposed approach that were raised by commenters, the Department removed the rule from this rulemaking to allow for further review and discussion.
- b. *R15-5-151*.
 - (i) The Section title has been changed from “Artists” to “Artists and Sales of Artwork” to more accurately describe the subject matter covered by the rule.

- (ii) Based on recommendations received, the Department removed direct references to municipal tax codes within language in subsection (C)(2) addressing the fine art exemption.
- c. *R15-5-2002.*
 - (i) The Department received comments questioning aspects of its pre-HB 2757 position (as articulated in *Arizona Transaction Privilege Tax Ruling* TPR 16-1 (Sept. 20, 2016), which will be separately rescinded and superseded by this rulemaking) that the presence of employees, independent contractors, or non-employee representatives or agents of a retailer within Arizona for more than two days per calendar year may be sufficient to establish a substantial physical presence nexus with Arizona. The Department acknowledges that it is reasonable to infer that, with the promulgation of HB 2757's economic nexus principles, the parameters for establishing a retail business's physical presence in Arizona necessarily contract. For this reason, the Department will only consider activities significantly associated with a retailer's ability to establish and maintain a market in this state for its sales *if they are not of a transitory nature*. On this basis, the two-day factors were rejected as activities of a potentially transitory nature and the references removed from subsection (B). This is distinguishable from a situation in which an ostensibly out-of-state retailer comes into Arizona and makes sales from within the state at a trade show or exhibition, as discussed in the following paragraphs.
 - (ii) Even if a retailer's non-transitory physical presence in Arizona is established, the question remains as to when the retailer is relieved of its duties to report and remit retail TPT following its departure from the state. In response, the Department has added new language in subsection (E) providing that the retailer's trailing nexus ends on the last day of the month in which the business terminates its physical presence in Arizona.

A notable exception exists, however, for a seasonal or special event licensee, as explained below.

The Department will *not* deem a retailer's in-state business activities to be of a transitory nature if the activities generate gross receipts and either of the following applies: (a) the activities are ongoing and regularly conducted from inside Arizona or (b) the retailer regularly conducts the same business activities outside the state and engages in that activity from within Arizona, from which it generates taxable gross receipts. A common example of this principle involves businesses from outside the state traveling to Arizona to participate in a trade show or exhibition. In such instances, the businesses may make a discrete number of sales at the show or exhibition but will, at the event's conclusion, return to its business location outside of Arizona. Although the businesses' sales made from within Arizona will clearly be subject to retail privilege taxes, the question remains as to whether they will bear an ongoing liability to report and remit Arizona retail TPT on sales made to Arizona following their departure from the state.

In such cases, if the retailer obtains a *seasonal* or *special event* license from the Department to report and remit any applicable retail tax on sales made at the event, it will be able to terminate its obligation to report and remit TPT for sales to Arizona customers if it cancels the license after reporting and remitting the tax. This special event scenario is a limited exception to the general application of trailing nexus.

To further illustrate the application of this principle, the Department has added examples in subsections (D)(6) and (7) of an out-of-state retailer making sales at a hypothetical special event in Arizona and an Arizona-based retailer selling at the same event.

- (iii) Based on questions received regarding the nature of a retailer's real or personal property used or stored in Arizona and its resulting effect on the business's physical presence nexus, the Department has made two clarifications. For

purposes of a retailer's office or other place of business maintained in this state, language has been added to explain that the location need not perform a function related to sales, but must otherwise be maintained for a business function, thereby excluding in-state properties used for purposes wholly unrelated to the business (*e.g.*, vacation property). Regarding a retailer's inventory of goods stored in Arizona, such activity would only be relevant to physical presence nexus if stored under the retailer's direction and control. In many cases, a third party logistics provider may direct and control where and how a retailer's inventory is stored. In such cases, the fact that an out-of-state retailer's inventory of goods are stored in Arizona would not be relevant to determining the business's physical presence in the state.

- (iv) References throughout the rule have been conformed to correctly refer to "retailers" rather than generically to "persons," "companies," or "businesses." This change is expected to reduce the likelihood of confusion by properly limiting the scope of the rule to those transactions that may be subject to retail TPT.
- (v) Based on questions received, the Department added an additional example in subsection (D)(5) to address a remote worker of an out-of-state retailer who is temporarily within the state and performing activities that, while constituting routine business functions (*i.e.*, bookkeeping), are not significantly associated with the retailer's ability to establish and maintain an Arizona market for its goods. As such, the activity would not be considered a factor in determining whether the retailer has sufficient physical presence in Arizona.

d. *R15-5-2004.*

- (i) Based on questions received, the Department has amended language referring to copies of exemption certificates that taxpayers need to maintain to clarify that they can be digital copies or hard copies.
- (ii) Based on concerns expressed by marketplace facilitators that are current taxpayers filing on behalf of a multitude of marketplace sellers, the Department has amended the rulemaking to provide a safe harbor for those marketplace facilitators that have *already* been filing on their own behalf and on behalf of such sellers for periods before the August 27, 2019 effective date. In such cases, an alternate method for demonstrating what portion of the marketplace facilitators'

TPT liability is attributable to sales on behalf of marketplace sellers will be permitted on audit or for the purpose of claiming liability relief.

e. *R15-5-2201*. Based on a suggested correction, the Department has clarified that a marketplace facilitator lacking a physical presence in Arizona, as well a remote seller, will not be required to post a copy of its Arizona TPT license in a conspicuous public location in its business.

f. *R15-5-2216*.

(i) Based on a suggested correction, the Department amended the definition of “incorrect information” that may prompt liability relief for a marketplace facilitator to specify that such erroneous information must be furnished to the marketplace facilitator by a marketplace seller. While a commenter ask whether the exclusion of “[f]ailure to remit all amounts collected and represented as tax” from the definition was limited to amounts separately stated on invoices, the clarification of the source of the information (*i.e.*, a marketplace facilitator’s marketplace sellers) addresses the fact that the language refers to amounts represented as tax in the underlying marketplace sellers’ sales to purchasers.

(ii) A commenter found issue with the examples of reasonable cause for liability relief purposes found in subsection (D). In response, the Department has amended the language to clarify that such examples are not exhaustive.

(iii) The Department received concerns over the conclusions drawn in the example provided in subsection (E)(1). Specifically, the Department concluded that a marketplace facilitator’s liability relief is based on the applicable percentage as applied to the total tax due for all Arizona sales made by marketplace sellers through the marketplace facilitator. The commenters argued that this interpretation seemed overly broad and beyond the legislative intent of the statute as they understood it to be, based on personal involvement in the legislative process.

However, absent any ambiguity, the Department relies upon the plain language of the statute to effectuate legislative intent, giving words contained within their ordinary meanings unless a different meaning appears to be intended. *SolarCity Corp. v. Ariz. Dep’t of Revenue*, 243 Ariz. 477, 480 (2018); *Ariz. Elec. Power Coop., Inc. v. State ex rel. Dep’t of Revenue*, 243 Ariz. 264, 266 (App. 2017). The liability

relief granted to a marketplace facilitator under A.R.S. § 42-5043(B) is applied as against the “total tax due under this chapter on taxable sales facilitated by the marketplace facilitator on behalf of a marketplace seller and sourced to this state under section 42-5040 during the same calendar year.” The language is unambiguous, unless one argued that “taxable sales . . . of a marketplace seller” literally were to a single marketplace seller. This reading would seem unnatural and unsupported by the related provisions of the statute. Consequently, the Department declined to make any change to the example.

(iii) A minor change was made to the amounts used in the example in subsection (E)(2) to reduce confusion, as it was an amount coincidentally similar to a figure used in a separate example.

g. *R15-5-2301*. As noted by several commenters, the definition for “mail order retailer” is outdated and, in any event, no longer required because of the repeal of R15-5-2350. As such, R15-5-2301(1) has been struck from this rule.

Based on issues raised in stakeholder discussions, the Department anticipates amending its existing rules in subsequent rulemaking actions on retail sales topics including: shipping and handling charges; photography; and prescription drugs, durable medical equipment, and prosthetic appliances.

12. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules:

None

a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

No

b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No

c. Whether a person submitted an analysis to the agency that compares the rules' impact of the competitiveness of business in this state to the impact on business in other states:

No

13. List of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rules were previously made, amended, or repealed as emergency rules (if so, state where the text changed between the emergency and final rulemaking packages):

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE - TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section

- ~~R15-5-2001.~~ R15-5-101. Definitions
- R15-5-102. Casual Activities or Sales
- ~~R15-5-107.~~ Reserved
- ~~R15-5-101.~~ R15-5-107. Sales for Resale or Lease
- R15-5-111. Consignment Sales
- R15-5-112. Sales by Auctioneers
- R15-5-151. Artists and Sales of Artwork
- R15-5-155. ~~Reserved~~ Delivery Sales of Tobacco Products

ARTICLE 18. SALES TAX – RETAIL CLASSIFICATION REPEALED

ARTICLE 20. GENERAL ADMINISTRATION (SEE ALSO ARTICLE 22)

Section

- R15-5-2001. Renumbered
- R15-5-2002. Liability for Transaction Privilege Tax
- R15-5-2003. ~~Repealed~~ Applicability of Provisions to Marketplace Facilitators and Remote Sellers
- R15-5-2004. ~~Multi-location~~ Multi-Location and ~~Multi-business~~ Multi-Business Taxpayers
- R15-5-2009. ~~Reserved~~ Transactions between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers

ARTICLE 22. TRANSACTION PRIVILEGE TAX - ADMINISTRATION

Section

- R15-5-2201. Display and Issuance of License
- R15-5-2202. Change in Ownership
- R15-5-2204. Change of Business Location or Mailing Address
- R15-5-2205. Surrender of License upon Sale or Termination of Business

R15-5-2206.	Cancellation of License
R15-5-2207.	Taxpayer Bonds
R15-5-2212.	Expired <u>Reporting by Marketplace Facilitators and Remote Sellers</u>
R15-5-2213.	Alternative Reporting <u>Repealed</u>
R15-5-2215.	Return and Payment of Tax-estimated <u>Estimated Tax</u>
R15-5-2216.	Repealed <u>Liability Relief for Marketplace Facilitators and Remote Sellers</u>
R15-5-2217.	Repealed <u>Reasonable Cause for Waiver of Civil Penalties</u>
R15-5-2220.	Registration and Licensing <u>Repealed</u>

ARTICLE 23. USE TAX

Section

R15-5-2301.	Definitions
R15-5-2302.	General
R15-5-2310.	Payment of Use Tax by Purchaser
R15-5-2350.	Mail Order Retailers <u>Repealed</u>

ARTICLE 1. RETAIL CLASSIFICATION

~~R15-5-2001.~~ R15-5-101. Definitions

~~The following definitions apply for the purposes of the rules in~~ In this Chapter, unless the context requires otherwise or unless otherwise defined. ~~An individual rule may contain definitions which are specific to the context of that rule.;~~

1. "AZTaxes.gov" has the same meaning as prescribed in R15-10-301.
- ~~± 2.~~ "Casual activity or sale" means an occasional transaction of an isolated nature made by a person persons who is not engaged in the business of selling, within or without the state, the same type or character of property as that which was sold neither represent themselves to be nor are engaged in a business that is subject to transaction privilege tax. Casual activity or sale includes, but is not limited to, sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.

- ~~2.~~ 3. “Department” ~~means the Arizona Department of Revenue~~ has the same meaning as prescribed in A.R.S. § 42-1001.
- ~~3.~~ 4. “Gross income,” ~~means all receipts of a trade or business from sales or services. It includes the total consideration received or constructively received. The value of all services which are part of the sale is considered part of the gross income, unless excluded~~ “gross receipts,” “marketplace facilitator,” and “marketplace seller” have the same meanings as prescribed in A.R.S. § 42-5001.
- ~~4.~~ “Gross receipts” means gross receipts as defined in A.R.S. § 42-5001.
- ~~5.~~ 6. “Real property” means land and anything permanently affixed to land.
- ~~6.~~ “Taxpayer” means any person required by law to file returns or to pay transaction privilege tax, use tax, rental occupancy tax, or excise taxes to the Department.
- ~~7.~~ “Remote seller” has the same meaning as prescribed in A.R.S. § 42-5001.
- ~~8.~~ “Retailer” has the same meaning as prescribed in A.R.S. § 42-5001, and includes a wholesaler, manufacturer, or other seller of tangible personal property.
- ~~9.~~ “Taxpayer” has the same meaning as prescribed in A.R.S. § 42-5001.
- ~~7.~~ 10. “Vendor” means any person engaged in a business ~~which~~ activity that is subject to Arizona any tax levied under A.R.S. Title 42, Chapter 5 and 6, including a retailer.

R15-5-102. Casual Activities or Sales

- A.** Gross receipts from a casual activity or sale, as defined in R15-5-2001, are not taxable under the retail classification.
- B.** Except as otherwise provided in R15-5-2002, a retailer, including as a marketplace facilitator or remote seller, cannot engage in a casual sale of tangible personal property of the same type or character as that which the person regularly sells at retail. A marketplace facilitator is deemed to regularly sell any tangible personal property sold on its marketplace.

~~R15-5-107. Reserved~~

~~R15-5-101. R15-5-107. Sales for Resale or Lease~~

- A.** Gross receipts from the sale of tangible personal property to be resold by the purchaser in the ordinary course of business are not subject to tax under the retail classification.

- B. Gross receipts from the sale of tangible personal property to be leased by a person in the business of leasing such personal property are not subject to tax under the retail classification.
- C. Gross receipts from the sale of tangible personal property to a lessor of real property are subject to tax if:
 1. The tangible personal property is incorporated into, or leased in conjunction with, the real property; and
 2. The rental of the tangible personal property is not separately stated as part of the real property lease transaction.
- D. Gross receipts from the sale of repair or replacement parts for tangible personal property that is to be leased by a person engaged in the business of leasing such tangible personal property are not subject to tax under the retail classification.

R15-5-111. Consignment Sales

- A. ~~The following definitions apply for purposes of this rule~~ In this Section:
 1. “Consignee” means the party that is in the business of selling tangible personal property belonging to a consignor.
 2. “Consignor” means the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.
- B. Gross receipts from consignment sales are subject to tax under the retail classification.
- C. ~~A~~ Except as provided in subsection (D), a consignee shall obtain a transaction privilege tax license before making consignment sales.
- D. A consignee who is a marketplace facilitator without a physical presence in Arizona, as provided in R15-5-2002(B), is required to obtain a transaction privilege tax license upon meeting the threshold requirements in A.R.S. § 42-5044.

R15-5-112. Sales by Auctioneers

- A. Gross receipts from the sales of tangible personal property by an auctioneer are subject to tax under the retail classification.
- B. ~~An~~ Except as provided in subsection (C), an auctioneer shall obtain a transaction privilege tax license ~~prior to~~ before conducting an auction.

- C.** An auctioneer who is a marketplace facilitator without a physical presence in Arizona, as provided in R15-5-2002(B), is required to obtain a transaction privilege tax license upon meeting the threshold requirements in A.R.S. § 42-5044.

R15-5-151. Artists and Sales of Artwork

- A.** Gross receipts from the sale of paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers shall be taxable under the retail classification if the person is making regular sales of these items.
- B.** Gross receipts from the sale of paints, canvasses, frames, sculpture ingredients, and other items which will become an integral part of the finished product shall not be taxable if sold to a creating artist who is regularly engaged in the business of creating and selling paintings, drawings, etchings, sculptures, craftwork, other artwork, or reproductions of such items. Sales of brushes, easels, tools, and similar items to be consumed by the creating artist shall be taxable.
- C.** ~~Gross~~ Except as otherwise provided in A.R.S. § 42-6017, gross receipts from the sale by the creating artist of a painting, drawing, etching, sculpture, or a piece of craftwork that is not a reproduction of an original work shall not be taxable if:
1. The sale is a casual activity or sale pursuant to the definition in R15-5-1812; or
 2. The sale is a work of fine art at an art auction or gallery in this state to a nonresident of this state for use outside the state, if the retailer ships or delivers the work to a destination outside this state and if exempt under A.R.S. § 42-5061(A). In this subsection, "work of fine art" has the same meaning as prescribed in A.R.S. § 44-1771.
 3. The sale is of commissioned artwork by an individual artist. ~~For purposes of In~~ In this rule subsection, "commissioned artwork" is a custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser.

R15-5-155. ~~Reserved~~ Delivery Sales of Tobacco Products

- A.** In this Section:
1. "Delivery sale" means a sale made by using any of the following:

- a. The mail or a delivery service.
 - b. The Internet or a computer network.
 - c. Any other electronic method.
2. "Tobacco product" has the same meaning as prescribed in A.R.S. § 36-798.06.
- B.** A retailer, including a remote seller or marketplace seller, or marketplace facilitator shall not make or facilitate a delivery sale of any tobacco product that violates A.R.S. § 36-798.06.

ARTICLE 18. SALES TAX – RETAIL CLASSIFICATION REPEALED

ARTICLE 20. GENERAL ADMINISTRATION (SEE ALSO ARTICLE 22)

R15-5-2001. Renumbered

R15-5-2002. Liability for Transaction Privilege Tax

- A.** The transaction privilege tax is imposed directly on the person engaged in a taxable business in or within Arizona, including a retailer located outside the state who is engaging or continuing in business in this state as a remote seller or marketplace facilitator and who meets the threshold requirements in A.R.S. § 42-5044. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.
- B.** A retailer establishes its physical presence within Arizona by activities performed in this state on its behalf that are significantly associated with the retailer's ability to establish and maintain a market in this state for its sales. Activities and factors that, by themselves or in conjunction with others, establish a retailer's physical presence within Arizona include the following:
- 1. The retailer maintains an office or other place of business in Arizona, regardless of whether such location performs a sales-related or other business function.
 - 2. The retailer owns or leases real or personal property in Arizona.
 - 3. The retailer maintains an inventory of products in Arizona at its own direction and control.

4. The retailer's merchandise or goods are delivered into Arizona on vehicles owned or leased by the retailer and the retailer makes such deliveries into Arizona on an ongoing basis.
6. Other local activities performed by the retailer's employees, agents, representatives, contractors, or affiliated persons in Arizona that enable the retailer to maintain and improve its name recognition, market share or sales volume, goodwill, and individual customer relations may establish physical presence if the activities are not of a transitory nature, as described in subsections (D) and (E). Such activities may include: soliciting sales through an ongoing local marketing contract; delivering, installing or repairing property sold to customers through an ongoing contract with either the customer or a local partner; or conducting training or similar support services for customers or for employees or representatives of the retailer on an ongoing basis.
- C.** A retailer having a physical presence within Arizona as described in subsection (B) of this Section shall be considered liable for transaction privilege tax as a taxpayer located within Arizona.
- D.** A retailer's activities in Arizona are not of a transitory nature if such activities generate gross receipts, are ongoing, and are regularly conducted from within the state. Alternately, a retailer's activities in Arizona are not of a transitory nature if such activities generate gross receipts and the retailer regularly conducts the same business activities outside of Arizona.
- 1.** Example: Employees who travel to Arizona for a business meeting, conference, or similar event and who do not otherwise engage in a taxable business activity during their time within the state would not establish physical presence in Arizona, regardless of the duration of their stay. Such stays would not be considered ongoing, even though the events take place in Arizona.
- 2.** Example: A retailer that provides remote one-time assistance to a customer who has a specific problem installing or using a product purchased remotely would not

establish physical presence. The retailer's assistance does not appear ongoing and the activity is conducted from outside the state.

- 3.** Example: A retailer that sells WiFi-enabled (IoT) appliances also offers a service contract that allows its technicians to remotely access its customers' appliances to regularly update, maintain, or troubleshoot firmware. The provision of services through such contracts with Arizona customers would not establish physical presence for the retailer. The retailer's services, while ongoing, are conducted from outside the state.
- 4.** Example: A retailer that has a salesperson who regularly travels to Arizona for the purposes of selling goods and services and supporting previously sold goods and services may have physical presence, even if the salesperson is a resident of California and only present in Arizona temporarily throughout the calendar year. The retailer's sales activities, as conducted through its salesperson, are ongoing and conducted from within the state.
- 5.** Example: A retailer's employee who is a Nevada resident but is working remotely from Arizona while on vacation, performing bookkeeping and other routine business functions, does not establish physical presence in Arizona for the business. The employee's in-state activities are not significantly associated with a retailer's ability to establish and maintain a market in Arizona for its sales.
- 6.** Example: A new Utah-based retailer that has never made any sales to Arizona purchasers brings an inventory of crystals to sell at a two-day mineral and fossil show in Arizona. Over the two-day period, the retailer makes \$3,000 in sales. As an out-of-state retailer making sales from within Arizona who has not met the threshold requirements in A.R.S. § 42-5044, the retailer will incur an Arizona transaction privilege tax liability on the sales it makes at the show. Such Arizona-based sales are not considered for purposes of meeting the threshold requirements for a remote seller, pursuant to A.R.S. § 42-5044. If the retailer does not anticipate conducting additional sales from within Arizona on an ongoing basis, it should apply for a seasonal license to participate in the show.

7. Example: At the same mineral and fossil show described in subsection (D)(6), a new Arizona-based retailer of semi-precious gems also brings an inventory to sell at the show for the first time. As a retail business located in Arizona, the retailer must be licensed and must report and remit Arizona transaction privilege tax on its sales made at the show.

E. Effective October 1, 2019, a retailer that establishes physical presence in Arizona pursuant to this rule shall continue to be responsible for reporting and remitting transaction privilege tax for the duration of such physical presence. If the retailer terminates its physical presence in the state, it shall report and remit transaction privilege tax for all transactions occurring on or before the last day of the month in which the vendor terminates its physical presence.

R15-5-2003. ~~Repealed~~ Applicability of Provisions to Marketplace Facilitators and Remote Sellers

Articles 1, 20, and 22 of this Chapter apply to any marketplace facilitator or remote seller who meets the threshold requirements in A.R.S. § 42-5044.

R15-5-2004. ~~Multi-location~~ Multi-Location and Multi-business ~~Multi-Business~~ Multi-Business Taxpayers

A. A taxpayer with multiple licenses for separate businesses shall maintain separate records for each licensed business, including details relating to the computation of taxes and exempt sales and digital or hard copies of applicable exemption certificates, as provided in subsection (B).

B. The Department may request that records required to be maintained under this Section be made accessible for inspection or copying. To the extent reasonable or possible, the taxpayer shall make these records available to the Department in an electronic format, if requested.

~~B.~~ C. A tax is levied upon the privilege of engaging in specified businesses within Arizona. Class codes for reporting gross receipts subject to tax have been determined by the Department based on statutory provisions. Each business classification is independent of the others even when transacted under one license. A person who engages in more than one type of business under each license shall maintain books and records so that the gross

proceeds of sales or gross income of each taxable business classification is shown separately.

- D.** Except as provided in subsection (E), a marketplace facilitator shall maintain records that separately show sales made on its own behalf and sales made on behalf of marketplace sellers. Such records shall include details relating to the computation of taxes and exempt sales and also include digital or hard copies of applicable exemption certificates, as provided in subsection (B).
- E.** If a marketplace facilitator reported through non-amended returns and remitted transaction privilege tax on sales made on its own behalf and sales made on behalf of marketplace sellers for tax periods on or before August 27, 2019, the marketplace facilitator shall maintain records that show details relating to the computation of taxes and exempt sales, and also include copies of applicable exemption certificates for both sales made on their own behalf and on behalf of a marketplace seller. A marketplace facilitator shall have an alternate method to demonstrate the portion of sales made on behalf of marketplace sellers if under audit or for the purposes of claiming liability relief under A.R.S. § 42-5043 and R15-5-2216.
- F.** A remote seller shall maintain records that separately show sales made directly to its own customers and sales made on its behalf through a marketplace facilitator. Such records shall include details relating to the computation of taxes and exempt sales and also include digital or hard copies of applicable exemption certificates, as provided in subsection (B).
- G.** Failure to maintain appropriate books and records shall result in the imposition of the tax at the highest tax rate on gross proceeds of sales or gross income applicable to a classification under which the taxpayer is doing business.

R15-5-2009. ~~Reserved~~ Transactions between Affiliated Persons Who Are Marketplace Facilitators, Marketplace Sellers, or Remote Sellers

- A.** In this Section, “affiliated person” has the same meaning as prescribed in A.R.S. § 42-5043.
- B.** For the purposes of determining whether a remote seller or marketplace facilitator meets the threshold requirements in A.R.S. § 42-5044, the sales of marketplace facilitators and

remote sellers who are affiliated persons shall be aggregated. If the threshold is met after aggregation of such sales, then all affiliated marketplace facilitators and remote sellers shall register with the Department for the filing and remission of retail transaction privilege tax. Marketplace facilitators and remote sellers who are affiliated persons are required to register with the Department and obtain a transaction privilege tax license under this Section for each affiliated person even if some or none of the affiliated persons would meet the threshold on an individual basis.

- C.** A marketplace facilitator or remote seller with affiliated persons who meets the threshold requirements in A.R.S. § 42-5044 are not required to file consolidated returns.
- D.** For the purposes of determining whether a remote seller meets the threshold requirements in A.R.S. § 42-5044, only the remote seller's sales that are not facilitated on a marketplace shall be counted towards its threshold.

ARTICLE 22. TRANSACTION PRIVILEGE TAX - ADMINISTRATION

R15-5-2201. Display and Issuance of License

- A.** A person maintaining a public place of business in Arizona shall display the transaction privilege tax license in a location conspicuous to the public. For the purposes of this subsection, a remote seller or marketplace facilitator who lacks an in-state physical presence as provided in R15-5-2002 is not considered to maintain a public place of business in Arizona.
- B.** If a person maintains more than one place of business in Arizona, a transaction privilege tax license shall be displayed at each location.
- C.** For lessors engaged in the business of commercial leasing, a transaction privilege tax license shall be displayed in each location from which the lessor engages in business transactions.
- D.** The Department may issue a transaction privilege tax license to a licensee in either a hard copy format or digitally, including through AZTaxes.gov. Licensees shall maintain copies or equivalent documentation of their transaction privilege tax licenses for the record retention period prescribed in A.R.S. Title 42, Chapter 1.

E. A transaction privilege tax license issued by the Department is for administering and collecting transaction privilege tax and is not issued for the purpose of authorizing a business to operate in this state, pursuant to A.R.S. § 41-1080 and except as otherwise required by law.

R15-5-2202. Change in Ownership

- A. A transaction privilege tax or use tax license is issued to a specific person. The license shall not be transferred to the new owner when selling a business. The new owner shall apply to the state for a new license before engaging in business transactions.
- B. Court-appointed trustees, receivers, and others in cases of liquidation or operational bankruptcies shall obtain a transaction privilege tax or use tax license.
- ~~C. If a licensee has any change in ownership, the licensee shall apply for a new license.~~

R15-5-2204. Change of Business Location or Mailing Address

- A. The taxpayer shall apply for a new transaction privilege tax or use tax license if the physical location of the business changes.
- B. The taxpayer shall notify the Department ~~in writing~~ of a change in mailing address by submitting a form prescribed by the Department or through AZTaxes.gov.

R15-5-2205. Surrender of License upon Sale or Termination of Business

- A. If a business is sold or terminated, the taxpayer shall notify the Department ~~in writing~~ of the date of sale or termination by submitting a form prescribed by the Department or through AZTaxes.gov and shall surrender the transaction privilege tax or use tax license to the Department.
- B. For the purposes of A.R.S. § 42-5005 and this Section, the Department shall consider a license surrendered if the licensee submits a request to cancel its license by submitting a form prescribed by the Department or through AZTaxes.gov.

R15-5-2206. Cancellation of License

- A. In this Section, “affiliated person” has the same meaning as prescribed in A.R.S. § 42-5043.
- ~~A.~~ B. The Department may cancel a license if:
 - 1. During any consecutive 12-month period, the licensee reports no taxable transaction; and

2. The licensee is not a subcontractor or wholesaler.
- B. C.** The Department shall notify a licensee in writing of its intention to cancel the license. The notice shall explain the action the licensee may take to contest cancellation of the license and when cancellation is final.
- C. D.** The Department shall cancel a license 30 days after the notice of intention to cancel is mailed unless, within 30 days, the licensee objects to the cancellation in writing and produces documentation that the licensee is actively engaged in a taxable business. Suitable documentation includes, but is not limited to, the following:
1. Evidence that the licensee holds an inventory of raw or finished tangible personal property for sale or resale;
 2. Evidence that the licensee maintains segregated bank accounts for the purpose of transacting business;
 3. Bona fide contracts for future sale or resale of tangible personal property;
 4. Profit and loss statements for federal or state income tax purposes; or
 5. Evidence that the licensee otherwise actually engages in bona fide business activities.
- D. E.** Within 30 days of receipt of the licensee's objections and documentation, the Department shall notify the licensee in writing of its decision to cancel or retain the license. If the decision is to cancel the license, the licensee may request an administrative hearing.
- F.** Except as provided in subsection (G), a marketplace facilitator or remote seller may choose not to renew a license or cancel a license for the following calendar year if the sales of the marketplace facilitator or remote seller to Arizona purchasers fall below the current year threshold in A.R.S. § 42-5044 in the prior year.
- G.** A marketplace facilitator or remote seller may choose not to renew a license or cancel a license for the following calendar year if the current year sales of the marketplace facilitator or remote seller, together with the aggregated sales of all affiliated persons of the marketplace facilitator or remote seller to Arizona purchasers, fall below the current year threshold in A.R.S. § 42-5044 in the prior year.

R15-5-2207. Taxpayer Bonds

- A. The amount of the bond required under A.R.S. § ~~42-112~~ 42-1102 shall be the greater of five hundred dollars, or:
1. For licensees reporting monthly, four times the average monthly liability;
 2. For licensees reporting quarterly, six times the average monthly tax liability; or
 3. For licensees reporting annually, fourteen times the average monthly tax liability.
- B. For purposes of determining the bond amount, the average monthly tax liability is equal to the average monthly tax due from the licensee for the preceding six consecutive months. If an applicant does not have a six-month payment history, the bond amount shall be a minimum of five hundred dollars.
- C. If a licensee provides a surety bond and the bond lapses, the licensee must deposit with the Department cash or other security in an amount equal to the lapsed surety bond within five business days of the licensee's receipt of written notification by the Department.
- D. The bond amount may be increased or decreased as necessary based upon a change in the licensee's previous filing period, filing compliance record, or payment history. If the bond amount has been increased above the amount computed under subsection (B) of this rule, the licensee may request a hearing pursuant to ~~A.R.S. § 42-112~~ A.R.S. § 42-1102 to show why the order increasing the bond amount is in error.
- E. Except as required under A.R.S. § 42-1102, this Section shall not be construed to require a bond under A.R.S. § 42-5006 for any license issued pursuant to the criteria established in A.R.S. § 42-5044.

R15-5-2212. ~~Expired~~ Reporting by Marketplace Facilitators and Remote Sellers

Marketplace facilitators and remote sellers registered with the Department shall report and remit the applicable taxes payable pursuant to A.R.S. § 42-5044 in aggregate total amounts for each applicable jurisdiction designated by AZTaxes.gov. A marketplace facilitator shall not be required to list or otherwise identify any individual marketplace seller on any return or attachment to a return.

R15-5-2213. ~~Alternative Reporting~~ Repealed

- A. ~~The Department shall authorize taxpayers to report on an annual or quarterly basis, if the taxpayer has established a filing history that shows that the taxpayer is not currently delinquent and that the taxpayer's annual tax liability is between \$500 and \$1250 for quarterly reporting or \$500 or less for annual reporting.~~
- B. ~~The Department shall authorize new businesses that reasonably estimate their annual tax liability for the succeeding 12 months will be between \$500 and \$1,250 to report and remit tax on a quarterly basis.~~
- C. ~~A taxpayer shall increase the reporting frequency to monthly and notify the Department of the change in reporting if the taxpayer's annual tax liability equals or exceeds or can reasonably be expected to equal or exceed \$1,250. The taxpayer shall increase the reporting frequency to quarterly and notify the Department of the change in reporting if the taxpayer's annual tax liability exceeds or can reasonably be expected to exceed \$500, but is or will be less than \$1,250. Failure to increase reporting frequency will subject the taxpayer to interest. Failure to increase reporting frequency will also subject the taxpayer to penalties unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect.~~
- D. ~~A taxpayer shall begin to report on a monthly basis at any time during a 12-month period if the annualized tax liability for the taxpayer reporting on an annual or quarterly basis equals or exceeds \$1,250. A taxpayer shall begin to report on a quarterly basis at any time during a 12-month period if the annualized tax liability for the taxpayer reporting on an annual basis is expected to exceed \$500, but be less than \$1,250.~~

R15-5-2215. Return and Payment of ~~Tax-estimated~~ Estimated Tax

- A. For purposes of this rule, the following definitions apply:
 1. "Annual estimated tax payment" means ½ of the total tax liability for the entire month of May or the total tax liability for the first 15 days of the month of June.
 2. "Annual tax liability" means a total tax liability of ~~\$100,000.00 or more~~ in the preceding calendar ~~year~~ or a reasonable anticipation of a total tax liability of ~~\$100,000.00 or more~~ in the current year as follows:
\$1,000,000 in 2019

\$1,600,000 in 2020

\$2,300,000 in 2021

\$3,100,000 in 2022

\$4,100,000 in 2023 and thereafter.

3. "Taxpayer" has the meaning set forth in ~~A.R.S. § 42-1322(J)~~ A.R.S. § 42-5014(S).

The following are considered a single taxpayer:

- a. Members of an Arizona-affiliated group filing a consolidated corporate income tax return under A.R.S. § 43-947;
- b. Corporations in a unitary business filing a combined corporate income tax return under ~~A.A.C. R15-2-1131(E)~~ R15-2D-401;
- c. Married taxpayers operating separate sole proprietorships and filing a joint income tax return; or
- d. Partnerships, Limited Liability Companies, S Corporations, trusts, or estates conducting multiple businesses, filing a single income tax return.

4. "Total tax liability" means the combined total of the transaction privilege tax, telecommunications services excise tax, and county excise tax liabilities.

B. The requirement to make an annual estimated tax payment is based on the annual tax liability. Use tax and severance tax are not subject to the estimated tax provisions.

1. A taxpayer shall make an annual estimated tax payment if during the current calendar year the taxpayer, through use of ordinary business care and prudence, can anticipate incurring the annual tax liability. For example:

ABC Company has been selling home electronics for several years. Its tax liability for previous calendar years has averaged between ~~\$60,000~~ \$600,000 and ~~\$70,000~~ \$700,000. In February of the current year, ABC Company begins selling computers and accessories as well. Early sales reports show an increase in total sales of approximately 50%. Based on these facts, ABC Company can reasonably anticipate incurring the annual tax liability.

2. Taxpayers with multiple locations shall make the annual estimated tax payment based on the combined actual or anticipated annual tax liability from all locations.

Taxpayers with multiple locations, shall make a single estimated payment each June.

- C. A taxpayer shall not amend an annual estimated tax payment except to increase the amount of the payment.
- D. The annual estimated tax payment shall not be applied, credited, or refunded until a Transaction Privilege, Use, and Severance Tax Return (~~TPT-1~~) for the month of June is filed.
- E. Late payment, underpayment, or non-payment of the annual estimated tax payment shall result in the following:
 - 1. Application of the penalty provisions under ~~A.R.S. § 42-136~~ A.R.S. § 42-1125;
 - 2. Accrual of interest beginning from the due date of the annual estimated tax payment as prescribed in ~~A.R.S. § 42-1322(D)~~ A.R.S. § 42-5014(D); and
 - 3. Loss of the accounting credit, as defined in ~~A.R.S. § 42-1322.04~~ A.R.S. § 42-5017 for the June reporting period.
- F. Taxpayers who are not required to make the annual estimated tax payment but make a voluntary annual estimated payment are not subject to subsection (E).

R15-5-2216. ~~Repealed~~ Liability Relief for Marketplace Facilitators and Remote Sellers

A. In this Section:

- 1. “Affiliated person” has the same meaning as prescribed in A.R.S. § 42-5043.
- 2. “Incorrect information” means any information that was given to the marketplace facilitator by the marketplace seller and that is not accurate. Incorrect information does not include any of the following:
 - a. Mistakes related to the process of filing a return, such as the frequency, non-filing, or manner of filing;
 - b. Mistakes related to the manner of remitting tax liability to the Department;
 - c. Failure to remit all amounts collected and represented as tax.

3. "Errors other than sourcing" means errors related to the details of a sale and errors related to tax rates. "Errors other than sourcing" does not include any of the following:
- a. Mistakes related to the process of filing a return, such as the frequency, non-filing, or manner of filing.
 - b. Mistakes related to the manner of remitting tax liability to the Department.
 - c. Failure to remit all amounts collected and represented as tax.
4. "Taxable sales" means gross sales sourced to this state less any allowable deductions or exemptions.
- B.** A marketplace facilitator or remote seller may apply for liability relief pursuant to A.R.S. § 42-5043 as outlined by Department-issued procedure.
- C.** A marketplace facilitator or remote seller may not obtain liability relief under A.R.S. § 42-5043 if the marketplace facilitator or remote seller does not act in good faith. "Good faith" means acting with honesty and with no knowledge of circumstances that would render the marketplace facilitator or remote seller ineligible for liability relief.
- D.** In processing an application for liability relief pursuant to A.R.S. § 42-5043, the Department will waive penalties and interest when reasonable cause exists. Whether reasonable cause exists is based on the facts and circumstances of the specific request for relief, which may include whether the marketplace facilitator should have known that the information provided by the marketplace seller was incorrect; whether the marketplace facilitator or remote seller applied for liability relief for the same errors other than the sourcing in the prior 12 months; and other relevant factors.
- E.** The liability relief limitations provided in A.R.S. § 42-5043 for a marketplace facilitator shall be applied in relation to the total tax liability of all the marketplace sellers selling on the marketplace facilitator's marketplace. Nothing in this rule shall be construed as allowing any liability relief for a marketplace facilitator in relation to its own sales or sales on behalf of any of its affiliates.

1. Example: ABC, a marketplace facilitator, applies for liability relief based on a filing error in 2019 because it applied a lower tax rate to all of one of its marketplace seller's sales. The total tax due for all taxable Arizona sales for all marketplace sellers' sales in 2019 is \$63,000. Liability relief may be granted to ABC for up to \$3,150 (5% × 63,000).
2. Example: Assume the same facts as in the example found in subsection (E)(1). Besides sales that ABC facilitated on behalf of third-party marketplace sellers, ABC also made its own sales through its marketplace. These direct sales by ABC resulted in an actual combined tax liability of \$10,000 that ABC erroneously reported to the Department as \$5,000. ABC will not be granted liability relief for errors resulting from these direct sales.
3. Example: In 2020, ABC, a marketplace facilitator, files an amended return based on incorrect information provided to it by one of its marketplace sellers. ABC applies for liability relief as soon as possible after discovering the error. The evidence shows that ABC acted in good faith and could not have known that the information was incorrect. This constitutes an error under A.R.S. § 42-5043(A)(1). This statutory provision authorizes the Department to grant relief, and there is no limitation on the amount of relief that can be granted. The Department may grant relief that is reasonable under the circumstances.
4. Example: In 2020, XYZ, a remote seller, deducted amounts for sales that it thought were exempt, but after further research, realized were in fact taxable. XYZ's total tax due from its gross sales for the period under consideration is \$31,500. Pursuant to A.R.S. § 42-5043(B)(2), liability relief for XYZ's non-sourcing related error may be granted in any amount up to \$945 (3% × \$31,500).
5. Example: In 2022, ABC, a marketplace facilitator, files an amended return based on incorrect information provided to it by one of its marketplace sellers. In the same year, ABC also makes a filing error by using the incorrect tax rate on a sale. ABC applies for liability relief in both instances. The Department may grant liability relief under A.R.S. § 42-5043(A)(1) for errors resulting from the incorrect

information provided to ABC by its seller. However, no liability relief is available for ABC's filing error, pursuant to A.R.S. § 42-5043(B).

6. Example: XYZ, a remote seller, files a paper tax return late and also pays late. Consequently, XYZ accrues penalties for late filing, late payment, and filing in an inappropriate manner (i.e., not electronically through AZTaxes.gov). The Department may grant penalty relief in all instances if XYZ shows reasonable cause.

R15-5-2217. ~~Repealed~~ Reasonable Cause for Waiver of Civil Penalties

- A.** Pursuant to A.R.S. 42-1125, the Department shall not apply specified civil penalties for failure to pay a required amount of transaction privilege tax or file a required transaction privilege return if reasonable cause exists and the failure to pay was not due to willful neglect or fraud. Generally, reasonable cause exists whenever a taxpayer uses prudent and timely business practices but nonetheless fails to fully comply with its tax remittance and reporting requirements due to circumstances beyond the taxpayer's control.
- B.** The Department must consider a taxpayer requesting waiver of civil penalties to have reasonable cause if a failure to pay transaction privilege tax due or file a required transaction privilege tax return was due to a system outage or other system unavailability—whether scheduled or unscheduled—of AZTaxes.gov that prevents or substantially interferes with a taxpayer's ability to access, submit, or otherwise complete a required return or payment and submit the return or payment in the time required by law.
- C.** The Department must consider a taxpayer requesting waiver of civil penalties to have reasonable cause if a failure to pay the full and correct amount of transaction privilege tax due or file a complete and correct transaction privilege tax return was due to a software- or application-based error by either AZTaxes.gov or a Department-approved vendor's software to calculate and file a transaction privilege tax return, if the error demonstrably results in the incorrect calculation or payment of any taxes due.

- D.** Except as provided in subsection (E), a taxpayer requesting waiver of civil penalties for reasonable cause shall notify the Department of the issue or error in writing within a reasonable time after becoming aware of the issue or error.
- E.** The Department may waive civil penalties without requiring a written taxpayer request for any system outage, system unavailability, or other event or anomaly as described in subsections (B) and (C) if it becomes aware of the event or anomaly before issuing a penalty assessment.

15-5-2220. Registration and Licensing Repealed

- A.** ~~Out-of-state vendors making sales to Arizona purchasers shall obtain a use tax license from the Department.~~
- B.** ~~Use tax collected on an isolated sale to an Arizona customer may be remitted under a cover letter rather than on a standard report form.~~

ARTICLE 23. USE TAX

R15-5-2301. Definitions

The following definitions apply for the Department's administration of use tax In this Article:

- ~~1.~~ "Mail order retailer" means a retailer who solicits orders by mail, notwithstanding the fact that orders may be received by telephone or by mail or that goods may be delivered by mail or by private delivery system.
- ~~2.~~ 1. "Purchases" means purchase for storage, use, or consumption in Arizona.
- ~~3.~~ 2. "Retailer" includes any retailer located outside this state who solicits orders for tangible personal property by mail from points in this state if the solicitations are substantial and recurring has the same meaning as prescribed in A.R.S. § 42-5151, but does not include a marketplace facilitator or remote seller who meets the threshold requirements in A.R.S. § 42-5044.
3. "Utility business" has the same meaning as prescribed in A.R.S. § 42-5151.

R15-5-2302. General

- A.** ~~In this Section, "retailer" and "utility business" have the same meanings as prescribed in A.R.S. § 42-5151.~~

- B. A.** A.R.S. § 42-5155 imposes Arizona use tax upon a purchaser that purchases tangible personal property from an out-of-state retailer or utility business if the retailer or utility business's gross receipts from the sale have not already been included in the measure of Arizona transaction privilege tax. Because Arizona transaction privilege tax and Arizona use tax are complementary taxes, only one of the taxes is imposed on a given transaction.
- C. B.** Arizona use tax generally applies to the use, storage, or consumption in this state of tangible personal property purchased from an out-of-state retailer or utility business.
- D. C.** If a purchaser pays to an out-of-state retailer or utility business a tax of another state levied on the sale or use of tangible personal property that is subject to Arizona use tax, the purchaser may apply the amount of tax paid to the other state against the purchaser's use tax liability.
- E. D.** A purchaser that purchases tangible personal property exempt from tax because the property is purchased for resale in the ordinary course of business but subsequently uses or consumes the tangible personal property shall pay Arizona use tax.

R15-5-2310. Payment of Use Tax by Purchaser

- A.** ~~The Use Tax~~ tax must be paid to:
 1. An out-of-state vendor holding a certificate of authority for the collection of ~~Use Tax~~ use tax, or
 2. The ~~Arizona Department of Revenue,~~ in cases where the vendor is not a marketplace facilitator or remote seller liable for transaction privilege tax under A.R.S. § 42-5044 or is not registered for the collection of ~~the~~ use tax.
- B.** A one-time, nonrecurring payment of use tax may be remitted to the Department under a cover letter rather than on a standard report form.
- B. C.** Arizona purchasers making recurring purchases from out of state may apply to the Department for a registration certificate and remit payment directly to the state on a monthly report form in lieu of making payment to the vendor.
- C. D.** The purchaser will be relieved of his liability for the tax when payment is made directly to the out-of-state vendor registered and a receipt of the tax paid is obtained by him.

R15-5-2350. ~~Mail-Order Retailers~~ Repealed

~~This rule is not a limitation on other provisions of Arizona Revised Statutes, Title 42, Chapter 8. Article 2. A mail order retailer's transactions are substantial and recurring if the following conditions are satisfied:~~

- ~~1. The sale of tangible personal property would be subject to transaction privilege taxation if the transaction would have occurred in this state, and~~
- ~~2. During any 12 month period:
 - ~~a. The retailer's total sales in this state exceed \$100,000.00; or~~
 - ~~b. Two or more mailings, aggregating 5,000 or more solicitations, are made to points in this state.~~~~