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ARIZONA TRANSACTION PRIVILEGE TAX PROCEDURE TPP 16-1

(This procedure supersedes and updates TPP 00-3)

Procedure for Use of Exemption Certificates

This procedure provides general guidance to taxpayers and consumers in the use of Departmental certificates to establish entitlement to an Arizona transaction privilege tax exclusion, deduction, or exemption.

Introduction:

Arizona's transaction privilege tax ("TPT") is a tax on the privilege of conducting business in the State of Arizona. The tax is levied on the vendor, rather than the purchaser. The vendor may pass the burden of the tax on to its purchasers, but the vendor is ultimately liable to Arizona for the tax.

TPT is imposed under various business classifications under Arizona Revised Statutes (A.R.S.) Title 42, Chapter 5, Article 2. Each business classification has its own exclusions, deductions, or exemptions ("exemptions") authorized by statute.

A.R.S. § 42-5009(A) states that any vendor who falls within a business classification may *establish entitlement* to an allowable statutory exemption by both:

1. Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted (or excluded or exempt) from the tax base¹; and
2. *Obtaining a certificate executed by the purchaser.*

This procedure focuses on the second of the two criteria listed above regarding certificates.

Requirements for Documenting Exemption under A.R.S. § 42-5009(A):

TPT is imposed on the person doing business in Arizona, however, only the purchaser may execute an exemption certificate. Only one type of statutory exemption may be claimed per exemption certificate.

¹ To "mark an invoice," a vendor may either record the customer's TPT license number on the invoice or cross reference the specific transaction to the specific exemption certificate of the specific customer. A.A.C. R15-5-2214(B)

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Under A.R.S. § 42-5009(A) and A.A.C. R15-5-2214, any exemption certificate must provide the following information:

1. The purchaser's name and address;
2. The precise nature of the purchaser's business;
3. The purpose for which the purchase was made (or the purpose for which the business activity was conducted);
4. The necessary facts to establish the appropriate exemption (e.g., a description of the property purchased and its use);
5. If applicable, the purchaser's TPT license number²; and
6. A certification that the person executing the certificate is authorized to do so on behalf of the purchaser, including that person's signature.

The Arizona Department of Revenue ("Department") created certificate forms that incorporate the above criteria for purposes of complying with A.R.S. § 42-5009. In addition, the Department has pre-approved the use of certain jurisdictional form for specific purposes. These forms are listed in Table I and Table II and are available on the Department's website.

A purchaser may use a certificate form created or approved by the Department, or may instead choose to use an alternative form or document. The use of an alternative form ("Non-Departmental certificate form"), however, is acceptable only if it contains all the information required by applicable statute and rule. Furthermore, a vendor's acceptance of an alternative form may subject the vendor to a greater burden of proof than if the vendor had accepted a Department or Department pre-approved certificate form, as explained below.

Requirements for Documenting Exemption under A.R.S. § 42-5022:

A.R.S. § 42-5022 provides the criteria for proving that a sale is excluded from the tax base as a sale for resale. Under A.R.S. § 42-5022, the burden of proving a sale of tangible personal property was not a sale at retail remains with the vendor unless the vendor accepts an exemption certificate which must contain the following information from the purchaser:

- 1) Name and address of the purchaser;

² A TPT license (or tax license number) is required for any person conducting a business that falls under one of the business classifications listed in Article 2, Chapter 5, of Title 42. If a customer's business does not require a TPT license, the customer must instead include a statement on the exemption certificate that no TPT license is required and a statement as to why a TPT license is not required.

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- 2) Statement that the property was purchased for resale in the ordinary course of business;
- 3) Indication that the purchaser has a valid transaction privilege tax license (with the number³) to sell the kind of property purchased;
- 4) Signature of a person authorized to sign on behalf of or as representative for the purchaser.

In addition to the departmental exemption certificate, a vendor may accept the Multistate Tax Commission's *Uniform Sales and Use Tax Certificate - Multijurisdiction* for resale purposes only. This certificate is *not* acceptable for purposes of establishing the right to other statutory deductions and exemptions pursuant to A.R.S. § 42-5009. To be acceptable this certificate must be complete and signed by a person authorized to sign on behalf of or as a representative for the purchaser.

The four border states of Arizona, California, New Mexico and Texas, together with the United Mexican States have formed the Border States Caucus to work out programs to promote trade in the southwest region of the United States of America in accordance with the objectives set out under NAFTA. The Caucus developed the "*Border States Uniform Sale for Resale Certificate*" (Form 60-0081) to simplify the transactions in accordance with the objective set out under the NAFTA Agreement in the border area. Businesses buying goods for resale in these states or the northern border strip and border region of Mexico which will be transported across state and/or national borders may use this certificate in lieu of a state resale certificate. To be acceptable this certificate must be complete and signed by a person authorized to sign on behalf of or as a representative for the purchaser.

In addition to the exemption certificate, a vendor, within its discretion, may also request additional documentation from a purchaser to support an exemption certificate or substantiate information contained on the certificate, regardless of the type of exemption certificate being used by the purchaser. Additional requirements, if any, are listed in A.R.S. §§ 42-5009 and 42-5022, and Title 15 of the Arizona Administrative Code.

Liability:

A vendor may accept the purchaser's exemption certificate if the exemption certificate is:

³ The Department accepts valid out-of-state sales tax license numbers for resale purposes only.

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1. Complete;
2. Contains all required information; and
3. All its information appears to be accurate.

An exemption certificate must be accepted in good faith. “Good faith” means with honesty and with no knowledge of circumstances that should cause the vendor to deny the exemption claimed on the exemption certificate.

If the Department has reason to believe the vendor did not accept the exemption certificate in good faith, the Department may require the vendor to establish the accuracy of the certificate’s information. A vendor that is unable to do so shall remain liable for all applicable taxes, plus any penalty and interest.

If a vendor accepts an exemption certificate in good faith (and the Department has no reason to believe otherwise), the vendor will generally be relieved of tax liability for the purchase(s) or business activity covered by the exemption certificate. In these cases, the Department may require a purchaser who executed an exemption certificate to establish the accuracy or completeness of the information contained in the certificate. A purchaser who cannot establish such information becomes liable for an amount equal to the tax that would have been paid by the vendor, plus any penalty and interest.

An exemption certificate accepted in good faith is valid for only one type or category of exemption. This means each sale or business activity that is of the type described on a valid exemption certificate *and* that is made within the time period specified on the certificate, may be claimed as exempt. A separate exemption certificate is not required for every item purchased if the items fall within the limits of the certificate.

Exemption certificates may be valid for a one-time transaction or for a specified period of time not to exceed a 12-month calendar year. The completion of a certificate with an indefinite or open-ended period status is not commensurate with the acceptance of a certificate in good faith. A.R.S. § 42-5005 requires an *annual license renewal* by persons who receive gross proceeds of sales or gross income subject to TPT. Consequently, an exemption certificate is considered accepted in good faith for any blanket period not to exceed a 12-month calendar year. An exemption certificate covering a specified period of time is effective only for the part-year-calendar year or calendar year it was issued. The vendor must retain a copy of the exemption certificate on file at all times during the time period specified on the certificate.

A vendor may refuse to honor an exemption certificate, even after accepting it in good faith, if the vendor later learns the information contained in the certificate is no longer true or the vendor otherwise believes the certificate is no longer valid.

Use of a Non-Departmental Certificate Form:

In the event a vendor accepts an alternative form of an exemption certificate (not one created or approved by the Department), and relies on it to claim an exemption, the vendor may be required to prove that it reasonably relied on the purchaser's factual representations made in the certificate or other form of documentation. If the vendor successfully shows a reasonable reliance, then the burden shifts to the purchaser who executed the certificate or other form of documentation. The purchaser must then prove that the factual representations made in the certificate or other documentation are accurate and complete.

EXAMPLES:

1. An individual goes to buy a car. The salesperson observes that the individual has driven up in a vehicle that advertises a carpet laying business. The individual's credit application confirms that the individual is in fact in the business of laying carpet. When the salesperson gets to the line indicating tax to be paid on the transaction the individual tells the salesperson: "This is exempt because I will be reselling the car as part of my business. Let me fill out an exemption certificate."

In this case, the individual is claiming the car purchase is a "sale for resale," which is exempt under Arizona law and which requires an executed exemption certificate from the individual. The car dealership as the vendor would not be acting in good faith by accepting the individual's exemption certificate, however, because the vendor (through its salesperson) has knowledge that the individual is in fact a carpet layer and does not resell cars in the ordinary course of business. If the vendor accepts the exemption certificate in this situation, the vendor will not be relieved of tax liability and may be subject to penalty and interest assessments in addition to the taxes due.

2. ABC Company manufactures widgets. It wants to purchase raw materials from Vendor and presents an exemption certificate to Vendor. The exemption certificate covers the current calendar year, as agreed to by the parties, and lists several items that will become component parts of the widgets. The certificate also states the widgets will be resold in ABC Company's ordinary course of business. In this case, the certificate is a valid blanket exemption certificate effective for component parts that constitute "sales for resale," which are not subject to TPT. Therefore, Vendor may rely on the one certificate to establish its entitlement to an exemption for the gross proceeds derived from sales made to ABC Company of component parts to be incorporated into the widgets, *so long as* the sales are made within the calendar year; a separate certificate is not necessary for the sale of each component part.

Later but within the same calendar year, ABC Company decides to expand and purchases a piece of machinery from Vendor. The machinery is to be used directly in ABC Company’s manufacturing process. Generally, this type of machinery falls under the statutory exemption for “exempt machinery and equipment” and is exempt from retail TPT. Although the machinery may be exempt, neither Vendor nor ABC Company may rely on the exemption certificate for “sales for resale” because “exempt machinery and equipment” is a different type of exemption and falls under a different statutory exemption than “sales for resale.” ABC Company will be required to submit a separate certificate for the machinery. If a separate certificate is not submitted, Vendor cannot claim an entitlement to an exemption for the sale of the machinery and the gross proceeds from that sale will be subject to TPT (unless other documentation is provided, as explained in A.R.S. § 42 5009(B)).

The following calendar year, ABC Company purchases component parts for its widgets from Vendor. Neither ABC Company nor Vendor may rely on the original “sales for resale” exemption certificate even though the component parts constitute exempt sales for resale. This is because the original exemption certificate expired at the conclusion of the previous year. ABC Company would need to issue another exemption certificate to Vendor, and Vendor would need to accept the certificate in good faith, in order for ABC Company to purchase its component parts tax-free from Vendor for that calendar year.

**Table I
Department Exemption Certificate Forms**

Certificate Form	Purpose/Use of Certificate
AZ Form 5000	<i>“TPT Exemption Certificate”</i> – This certificate form may be used to document entitlement to various types of TPT exemptions through transactions with a business, transactions with Native Americans or a Native American business, transactions with the federal government, or transactions with a foreign diplomat. <u>Only one type or category of exemption may be claimed per form.</u>
AZ Form 5000A	<i>“Arizona Resale Certificate”</i> – This certificate form may be used to document a vendor’s “sale for resale” to a purchaser who will resell the purchased property in the ordinary course of the purchaser’s business.

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<p>AZ Form 5000HC</p>	<p><i>“TPT Healthcare Exemption Certificate”</i> – This certificate form may be used to document specific types of business transactions that are conducted with certain qualifying hospitals, health care organizations, charitable organizations and community health centers. In order to rely on this form, the purchaser must have a valid annual “exemption letter” issued by the Department, a copy of which must be attached to the exemption certificate at the time the certificate is submitted to a vendor.</p>
<p>AZ Form 5000M</p>	<p><i>“Non-TPT Licensed Contractor Certificate (MRRA Project)”</i> – This certificate form may be used to document the sale of certain tangible personal property that is exempt from TPT. Only an <u>unlicensed contractor</u> may use this form, and only if the contractor will use the property to perform a <u>MRRA project</u> (i.e., the maintenance, repair, replacement or alteration of existing property). See, e.g., A.R.S. §§ 42-5061(A)(25)(h); 42-5159(A)(13)(o). <i>Note:</i> A licensed contractor purchasing property for a <i>modification</i> project should use Form 5000.</p>
<p>AZ Form 5004</p>	<p><i>“TPT Used Oil Burner Exemption Certificate”</i> – This certificate form may be used to document the sale of alternative fuel (e.g., electricity, solar energy, liquefied petroleum gas, natural gas, hydrogen or a blend) to a used oil fuel burner that is authorized to burn used oil or used oil fuel. See A.R.S. §§ 42-5061(A)(46), 42-5063(B)(3). The purchaser must have a used oil permit issued under A.R.S. § 49-426 or 49-480.</p>

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<p>AZ Form 5005⁴</p>	<p><i>“Contractor’s Certificate”</i> – This form is not an exemption certificate form and does not grant an entitlement to an exemption. Instead, it may be used to establish a <u>prime contractor’s assumption of liability</u> for either prime contracting TPT on the gross income received on a modification project, or the amount imposed under A.R.S. § 42-5008.01 on materials incorporated into a “MRRA” project where tax was not paid at the time of purchase (whichever is applicable). Only the prime contractor may complete this form and give approved copies to <u>licensed subcontractors</u> hired by the prime contractor. Unlike other forms the 5005 may be used for a single project (modification or MRRA) or for a period of time designated by the prime contractor (not to exceed the calendar year). See A.R.S. §§ 42-5008.1(A)(5), 42-5008.1(B)(7), 42-5061(A)(27)(a), 42-5075(E).</p>
<p>AZ Form 5006</p>	<p><i>“TPT Overhead Exemption Certificate”</i> – This certificate form may be used to document the sale of overhead materials to be used by a government contractor, manufacturer, modifier, assembler or repairer (or their direct subcontractor) when performing a contract for the U.S. Government. See A.R.S. § 42-5061(J).</p>
<p>AZ Form 5008</p>	<p><i>“Jet Fuel Tax Rate Adjustment Certificate”</i> –This certificate is to be used by a purchaser to claim the jet fuel tax rate adjustment for purchases of jet fuel proscribed by A.R.S. § 42-5352(A). The jet fuel excise tax is levied only on the purchase of the first ten million gallons of jet fuel by each purchaser of jet fuel in each calendar year at a rate of 3.05 cents per gallon. The purchaser, by completing and providing the certificate to the vendor, is certifying that it has purchased in excess of 10 million gallons of jet fuel in the calendar year. Purchases of jet fuel in excess of 10 million gallons in the calendar year are not subject to jet fuel tax or county transportation excise tax.</p>

⁴ This form is not an exemption certificate, as described in A.R.S. § 42-5009. It is included here because it provides tax relief to the licensed subcontractor in its dealings with the prime contractor.

<p>AZ Form 5009L</p>	<p><i>“Contractor’s Project Certificate”</i> – This certificate form may be used to document the sale of materials to an <u>unlicensed subcontractor</u> who will use the materials to perform work on a <i>modification</i> project. With this form, the unlicensed subcontractor is able to purchase materials for its subcontract work without paying retail TPT. This form must be completed by the prime contractor who hired the subcontractor and submitted to the Department for approval. Unlike other certificates after the Department approves and registers the certificate, the prime contractor may distribute approved copies to its unlicensed subcontractors for their use for the duration of the project covered by the certificate . See A.R.S. §§ 42-5009(L), 42-5061(A)(27)(b), 42-5075(D); 42-5159(A)(13)(h).</p>
<p>AZ Form 5010</p>	<p><i>“Certificate for Sale & Delivery of Motor Vehicle to Nonresident”</i> – This certificate form may be used to document the sale of a motor vehicle to a nonresident under either of the following scenarios: (1) the vehicle is sold by a vendor at retail or at auction, and will be shipped or delivered to a location outside Arizona for use outside of Arizona; or (2) the nonresident’s home state does not exempt vehicles purchased in another state (or the other state taxes such purchases at a rate lower than Arizona’s TPT rate) and the nonresident has secured a special 90-day nonresident registration permit for the vehicle. See A.R.S. §§ 42-5009(H)–(K), 42-5061(A)(14), 42-5061(A)(28)(a), 42-5061(A)(44). Unlike other certificates the form applies only to a one-time sale.</p>
<p>AZ Form 5013</p>	<p><i>“Certificate to Establish Native American Status & Residence on Arizona Reservation”</i> – This certificate form may be used to document the sale of a motor vehicle to an enrolled member of a Native American tribe who resides on that tribe’s reservation. See A.R.S. § 42-5061(A)(28)(b). Unlike other certificates the form applies only to a one-time sale.</p>
<p>AZ Form 6015</p>	<p><i>“Solar Energy Devices Application for Registration”</i> – This form is not an exemption certificate form. This form, however, may be used by a vendor to register as a registered seller or lessor of solar energy devices, or by a contractor to register as a registered solar energy contractor, so that an exemption may be claimed under A.R.S. §§ 42-5061(N), 42-5071(B)(2) or 42-5075(B)(13).</p>

Table II
Department pre-approved Exemption Certificate Forms

Certificate Form	Purpose/Use of Certificate
Form 60-0081	<p><i>“Border States Uniform Sale for Resale Certificate”</i> – This certificate form documents a vendor’s “sale for resale” to a purchaser who will resell the purchased property in the ordinary course of the purchaser’s business. This form may be used to document sales for resale that were made in Arizona, California, New Mexico or Texas or the northern border strip and border region of Mexico which will be transported across state and/or national borders. This form cannot be used to establish an entitlement to any other type of exemption.</p>
Form ****	<p><i>“Uniform Sales and Use Tax Certificate – Multijurisdiction”</i> - This certificate issued by the Multistate Tax Commission may only be used for resale purposes. This certificate is not acceptable for purposes of establishing entitlement to deductions under A.R.S. § 42-5009.</p>

Grant Nülle, Deputy Director

Signed: September 20, 2016

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and 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 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.