

# STATE OF ARIZONA

Department of Revenue



August 17, 2018

Mr. Damian Green

Email: [damiankaelgreen@gmail.com](mailto:damiankaelgreen@gmail.com)

Douglas A. Ducey  
Governor

David Briant  
Director

Dear Mr. Green

The following information is provided in response to your August 16, 2018 email, concerning the following:

OK, so I have what seems to be a simple question: Does Arizona have an "origin" or "destination" based system for deriving taxes (assuming a nexus exists here)?

This question seems simple enough, but because I don't always believe the first thing I read on the internet, I've gone on to find some rather conflicting information about this. Some tax advising companies say it is an "origin" based system, and although I would like that to be true, I have yet to see any evidence for that. Is there a law or a judicial decree somewhere that would lead us to believe that it is true?

On the other hand, I have read other articles, that suggest that if you have a nexus in Arizona, then you must register your business in every city in Arizona that you sell to and you should calculate the tax you collect based on the destination city. I know the Arizona tax system is complicated and I am willing to jump through hoops, but that seems excessive. I can't believe that very many online businesses are actually registering in every city. I sure don't want to, In fact I'd consider just not selling to Arizona residents if I would have to register with every city. but I'd like to get to the bottom of what is really true here before I make that decision.

Additionally, I ran an experiment by adding Arizona to my newly created Amazon seller account, letting the Amazon default calculations determine the tax for some local jurisdictions and I noticed that when I would sell from Cottonwood AZ to a ship-to address in Phoenix, a Phoenix rate was calculated. So if Amazon's default calculations are correct for Arizona, then that would imply a "destination" based system. If that is correct, that would not be good for me and a lot of other small online retailers...

So, if anyone can provide a government citation for using an "origin" based rate, that would be great. It would simplify a lot of things.

Actually, this question really applies to all online retailers with a nexus here, and frankly I'm surprised I am having such difficulty getting to the bottom of it. There is not a lot of information on the AZDOR website about this, nor for online businesses in general (except for the big marketplace companies). Someone at AZDOR should really consider writing up some instructions specifically for online businesses and post them to the AZDOR.gov website, because right now we are in the dark...

I know this is a complex question, and finding the true answer is probably not going to be easy (I've been working on it for at least 12 hours now,) but someone from AZDOR should probably be able to get to the bottom of this, and the answer may help a lot of people...

## Background Information:

Arizona imposes a transaction privilege tax ("TPT") on the privilege of conducting business in the State of Arizona. This tax is levied on the vendor, not the purchaser. The vendor

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may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to Arizona for the tax. The Arizona TPT is imposed under separate business classifications, including retail sales of tangible personal property. County excise taxes "piggyback" the imposition of the state's TPT. All sales subject to the TPT are also subject to applicable county excise taxes.

Arizona Revised Statutes (A.R.S.) § 42-5005 requires every person who receives the gross proceeds of sales or gross income upon which a privilege tax is imposed by this article to obtain a transaction privilege license. In order for a person to be subject to TPT the person must be engaged in a taxable business. "Business" is defined to include all activities or acts engaged in with the object of gain, benefit or advantage, either directly or indirectly, but not casual activities or sales.

### Retail Classification

A.R.S. § 42-5061 levies the TPT on the business of selling tangible personal property at retail. "Selling at retail" is defined as a sale for any purpose other than for resale. All sales of tangible personal property, including sales over the Internet, are subject to tax unless specifically deducted or excluded by statute.

A.R.S. § 42-5001(13) defines "sale", in part, as any transfer of title or possession, or both, in any manner or by any means, including consignment transactions and auctions, of tangible personal property for a consideration.

### Sourcing the Tax

A.R.S. § 42-5040 specifically provides for the sourcing of transactions involving retail sales of tangible personal property.

#### 42-5040. Sourcing of certain transactions involving tangible personal property; definitions

A. Except as provided in section 42-5075, retail sales of tangible personal property shall be sourced as follows:

1. To the seller's business location if the seller receives the order at a business location in this state.
2. To the purchaser's location in this state if the seller receives the order at a business location outside this state.

B. For the purposes of this section, an order is received when all of the information necessary to accept the order has been received by or on behalf of the seller, regardless of where the order is accepted or approved. The place of business or residence of the purchaser does not determine where the order is received.

### Online Marketplace and Third-Party Merchants

The Department has issued Arizona TPT Ruling *TPR 16-3* to specify when and in what circumstances an online marketplace is the retailer for the purposes of the retail TPT on sales to Arizona customers. See <https://azdor.gov/Portals/0/Rulings/TPR16-3.pdf> .

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Page 6, Example 2 of that ruling discusses a scenario where an online marketplace does not have control over the delivery/fulfillment process. In the example, the retailer who sells on the marketplace is responsible for collecting and remitting the Arizona TPT provided it has nexus with Arizona. The ruling provides many other relevant examples based on the facts and circumstances of certain scenarios.

### Nexus

Please visit <https://azdor.gov/transaction-privilege-tax/nexus-tpt> for information regarding nexus and nexus determinations.

I hope this information is of assistance to you. If you have any further questions, feel free to contact this office again. You may visit the Department of Revenue's website at [www.azdor.gov](http://www.azdor.gov) for more information. The Department's website provides access links to Arizona Revised Statutes, the Arizona Administrative Code, TPT Rulings and Procedures, Private Taxpayer Rulings and tax rate tables referred to in this response.

**This is an information letter and not a private taxpayer ruling. The advice it contains is solely dependent upon the adequacy and accuracy of the information provided. Therefore, inadequate and/or inaccurate taxpayer information could result in the imposition of additional tax, interest, and penalties. Conversely, if the taxpayer information is correct but the Department later determines that this advice is erroneous, any penalties and interest directly attributable to following this advice will be abated.**

Sincerely,

*LC Hengly*

Tax Analyst  
Tax Policy