

STATE OF ARIZONA

Department of Revenue



August 20, 2018

Mr. Damian Green

Email: damiankaelgreen@gmail.com

Douglas A. Ducey
Governor

David Briant
Director

Dear Mr. Green

The following information is provided in response to your August 18, 2018 email, concerning the following:

Yesterday, you (or someone from AZDOR) gave a great response to my question about whether Arizona has an "origin" or "destination" based tax system. I appreciate it greatly. I have since been considering the statutes carefully, and from them I have concluded that generally speaking, an online retail business, with a nexus in the state of Arizona, is responsible for paying taxes (based on the tax rate of the jurisdiction the nexus is in), to Arizona and local jurisdictions, on all sales that are shipped from that nexus, regardless of the sale destination, in or out of state. Do I have that right?

To me that absolutely makes sense, but I suspect there may be something I am missing, because as I work to set up the tax system on Amazon, I find that calculating a flat tax on all sales, regardless of destination, is simply not an option available on their platform... To me, it seems odd that I would be the first person on Amazon who would be trying to set up tax collections in this manner. A representative from Amazon insists that because they have had a system in place for years, then my analysis must be wrong and they will not escalate the issue unless I have a letter from an attorney regarding the issue. That may be my next move, but before I take that step, I wanted to run this past you one more time just to see if I am missing something important or have come to the wrong conclusion, as per your understanding of the matter of course.

I seem to recall something I read years ago about a federal court judgement that limited states rights to enforce businesses to collect taxes on sales made out of state. It seems to me that the way the Arizona TPT statutes are written though, an Arizona based business would still be responsible for paying taxes to Arizona on every sale, just not responsible for having to collect taxes on behalf of the destination states. Again that is only my interpretation, which I am still trying to get straight...

Background Information:

Transaction Privilege Tax

Arizona imposes a transaction privilege tax ("TPT") on the privilege of conducting business in the State of Arizona. This tax is levied on the *seller*, not the purchaser. The seller may pass the burden of the tax on to the purchaser; however, the seller is ultimately liable to

Arizona for the tax. The Arizona TPT is imposed under separate business classifications. County excise taxes "piggyback" the imposition of the state's TPT. All sales that are subject to the TPT are also subject to applicable county excise taxes.

Retail Classification

The TPT is imposed on the business of selling tangible personal property at retail in accordance with Arizona Revised Statutes (A.R.S.) § 42-5061. "Selling at retail" is defined by A.R.S. § 42-5061(V)(4) to mean a sale for any purpose other than for resale in the regular course of business. The tax base is the gross proceeds of sales or gross income derived from the business. All retail sales of tangible personal property are subject to tax unless specifically deducted or excluded by statute.

Online Marketplace and Third-Party Merchants

Please review again *TPR 16-3* as discussed in the Department's prior response. 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>.

A business that operates an online marketplace and makes online sales on behalf of third-party merchants as evidenced by the marketplace providing a primary contact point for customer service, processing payments on behalf of the merchant and providing or controlling the fulfillment process, is a retailer conducting taxable sales. The gross receipts of that marketplace business derived from the sales of tangible personal property to Arizona purchasers are subject to retail TPT, provided that the business already has nexus for Arizona TPT purposes.

Interstate and Foreign Transactions

The tax does not apply to the sale of tangible personal property sold in interstate or foreign commerce if prohibited from being taxed by the Constitution of the United States or the constitution of Arizona. [A.R.S. § 42-5061(A)(24)] Arizona Administrative Code (A.A.C.) R15-5-170 establishes the requirements for this deduction. The order must be received from a location outside of Arizona and the retailer must ship or deliver the property to a location outside of Arizona for use outside the state. This rule also outlines the requirements for records that are suitable for substantiating the deduction.

R15-5-170. Interstate and Foreign Transactions

A. Gross receipts from sales of tangible personal property made in interstate or foreign commerce are deductible from the tax base if all of the following apply:

1. The order is received from a location outside of Arizona; and
2. The retailer ships or delivers the tangible personal property to a location outside of Arizona for use outside of Arizona.

Mr. Damian Green

August 20, 2018

Page 3

B. In meeting the above requirements, if delivery is made by the retailer to a common carrier for transportation to a location outside Arizona, the common carrier is deemed to be the agent

of the retailer for purposes of this rule regardless of who is responsible for payment of the freight charges.

C. Suitable records shall be kept to substantiate the deduction for a sale made in interstate commerce. As such, records shall identify the tangible personal property sold and the delivery

destination. The following records may be sufficient to substantiate the exemption:

1. Suitable records for substantiating the receipt of an order from out-of-state may include purchase orders, letters, or written memoranda on the receipt of orders placed by telephone.

2. Suitable records for substantiating out-of-state shipments include:

a. Internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;

b. Common carrier's receipt or bill of lading;

c. Parcel post receipt;

d. Export declaration;

e. Receipt from a licensed broker; or

f. Proof of export or import signed by a customs officer.

City Privilege Tax

The state does not levy city privilege tax. The imposition of city privilege and use taxes is separate from the imposition of the state's TPT and use taxes. The League of Arizona Cities and Towns created the *Model City Tax Code* (MCTC) for the purposes of the imposition and administration of city taxes. The *Model City Tax Code* is available on the internet at www.modelcitytaxcode.az.gov/ . The respective Arizona cities impose TPT based upon their local ordinances. The exemptions from the tax provided in these local ordinances may differ from the state TPT statutory exemptions.

Administration of the City Tax by the State

As amended by Laws 2013, Chapter 255, A.R.S. § 42-6002 *Administration; procedures for levy, collection and enforcement applicable to cities and towns* subsection (A) provides "[u]nless the context otherwise requires, chapter 1 and chapter 5, article 1 of this title govern the administration of the municipal privilege taxes levied by a city or town." Consequently, city privilege tax is sourced in the same manner as the state tax.

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 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.

Mr. Damian Green
August 20, 2018
Page 4

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 or interest directly attributable to following this advice will be abated.

Sincerely,

LC Heugly

Len Heugly
Tax Analyst
Tax Policy

18 ASK TAX POLICY RETAIL THIRD PARTY MARKET PLACE INTERSTATE