



2021 ARIZONA TAX UPDATES

TRANSACTION PRIVILEGE TAX UPDATES LEGISLATION

Senate Bill 1110, Chapter 443. Tribal Exemptions. This bill codified the following exemptions applicable to Indian tribes and tribal members at A.R.S. § 42-5121 et seq.: (1) business activities performed by an Indian tribe, a tribally owned business, a tribal entity or an affiliated Indian if the business activity takes place on an Indian reservation; (2) business activities performed by a nonaffiliated Indian or non-Indian vendor on an Indian reservation for an Indian tribe, a tribal entity or an affiliated Indian; (3) contracting activities performed on an Indian reservation by an Indian tribe, a tribally owned business, a tribal entity or an affiliated Indian; (4) contracting activities performed for an Indian tribe, a tribally owned business, a tribal entity or an affiliated Indian on an Indian reservation by a nonaffiliated Indian or non-Indian contractor; (5) retail sales of tangible personal property to an Indian tribe, a tribally owned business, a tribal entity or an affiliated Indian if the sale of tangible personal property takes place on an Indian reservation; and (6) the sale of a motor vehicle to an enrolled member of an Indian tribe who resides on the Indian reservation established for that Indian tribe. These exemptions were previously recognized by the Arizona Department of Revenue in Arizona Transaction Privilege Tax Ruling 95-11.

Senate Bill 1720, Chapter 220. Peer-to-Peer Car Sharing. Under this bill, vehicles rented in a peer-to-peer sharing transaction are subject to tax under the personal property rental classification; however, the individual owners of such vehicles are exempt if the transaction was facilitated by a peer-to-peer car sharing platform that collected and remitted the tax. The bill also exempts such transactions from rental vehicle surcharges, including those levied by the Arizona Sports and Tourism Authority and stadium districts.

Senate Bill 1828, Chapter 412. Machinery and Equipment for Pollution Control. This bill expands the exemption for machinery and equipment used to meet or exceed pollution control rules and regulations to include containment structures.

House Bill 2153, Chapter 417. Renewable Energy Storage Equipment. This bill added a new exemption applicable to machinery and equipment used for utility-scale storage of energy for future use.

House Bill 2649, Chapter 266. Computer Data Centers. This bill moved the exemption for computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona Commerce Authority from subsection (A) of A.R.S. § 42-5061 to subsection (B) of the same statute. Moving the exemption means the installation of such equipment may be exempt from tax under the prime contracting classification.

TRANSACTION PRIVILEGE TAX UPDATES

LEGISLATION CONT.

House Bill 2879, Chapter 342. Administrative Ruling Procedures. This bill requires the Department of Revenue to accept public comments on draft rulings, procedures, notices, and administrative announcements. Rulings will become effective thirty days following the announcement for public comment is issued, unless the Department withdraws the ruling. The Department is allowed to amend the draft ruling during the 30-day comment period. If the Department choose not to incorporate a comment in the final ruling, the Department must respond to the comment explaining its reasons. The bill also establishes the information the Department must include in a ruling before it becomes final. Finally, the bill requires that courts must decide all questions of law without deference to any determination made by the Department.

2021 COURT DECISIONS

***VHS Acquisition Subsidiary Number 1 Inc. v. Ariz. Dep't of Revenue, No. 1 CA-TX 20-0007 (May 4, 2021).* Scope of retail and use tax exemption for prosthetic devices.** Affirming the Arizona Tax Court, the Court of Appeals held that adhesive skin closures, liquid skin adhesives, "AbsorbaTacks," bone wax, surgical clips, ligature loops, staples, and sutures are exempt prosthetic appliances within the plain meaning of A.R.S. §§ 42-5159(A)(17) and 23-501(7) because they support a part of the body. The Court of Appeals also held that preloaded mesh fixation, clip applicators, staplers, suture devices, pens, and ampules are prosthetic appliances because they are parts of the same integrated processes as other prosthetic appliances under the rule established in *RenalWest L.C. v. Ariz. Dep't of Revenue*, 189 Ariz. 409 (Ct. App. 1997). The court noted that while the items were not by themselves prosthetic appliances, they were necessary to the safe application of the appliances.

***SWAT Training Facilities LLC v. Ariz. Dep't of Revenue, No. 1 CA-TX 20-0002 (Apr. 27, 2021).* Indoor shooting range taxable under the amusements classification.** The Court of Appeals held that an indoor shooting range was taxable under the amusements classification because it was a "business charging admission or user fees for exhibition, amusement or entertainment" under A.R.S. § 42-5073(A), rejecting the taxpayer's argument that the business was sufficiently different from other types of taxable amusements because use of the shooting range required constant supervision and instruction. The court also found that the taxpayer's receipts from sales of memberships were taxable under the retail classification because the taxpayer did not separately account for its revenues that otherwise would have been taxable as amusements.

***Rebel Empire, LLC v. Ariz. Dep't of Revenue, No. 1 CA-TX 20-0010 (Aug. 19, 2021).* Taxpayer failed to meet burden of proof when disputing luxury tax assessment.** The taxpayer had reported luxury tax classifying certain tobacco products as cavendish. Following an audit, the Department of Revenue reclassified the tobacco as smoking tobacco, which bears a higher tax rate. The Court of Appeals upheld the assessment of additional luxury tax because the taxpayer failed to meet its burden of proof when asserting a lower tax rate applied. Specifically, the taxpayer failed to show based on a preponderance of evidence that there was a reasonable dispute of fact over the classification of the tobacco, which would have shifted the burden of proof to the Department.

2021 DEPARTMENT OF REVENUE GUIDANCE

THE FOLLOWING DEPARTMENT OF REVENUE STATEMENT ACCOMPANIES ALL PRIVATE TAXPAYER RULINGS: “This response is a private taxpayer ruling and the determination herein is based solely on the facts provided in your request. The determination in this taxpayer ruling is the present position of the department. This determination is subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department’s making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.”

Transaction Privilege Tax Ruling TPR 21-1 (Aug. 13, 2021). Scope of utility deduction for qualified smelting or manufacturing businesses. The subject of this ruling was the scope of the deduction for qualified smelting or manufacturing businesses found at A.R.S. § 42-5063(C)(6) for taxes levied under the utilities classification. The Department held that for purposes of determining a business’s qualification for the A.R.S. § 42-5063(C)(6) deduction, metallurgical activities that encompass the physical (e.g., crushing, concentrating, smelting, refining) or electrochemical (e.g., leaching, extracting, electrowinning) processing of metal ores fall within the scope of the A.R.S. § 42-5063(C)(6)(b) deduction as either smelting or manufacturing. Additionally, the definition of manufacturing used for purposes of the utilities TPT deduction in A.R.S. § 42-5063(C)(6)(b) is broader than and distinguishable from the definitions of manufacturing used in the retail classification. Thus, although mining activities are excluded from the scope of qualified manufacturing activity for the purposes of the deduction, a mining operation that also engages in metallurgical activities may qualify for the deduction. Finally, once a smelting or manufacturing business establishes that it satisfies the A.R.S. § 42-5063(C)(6) criteria, the deduction applies to all of the locations used in calculating the business’s eligibility.

Private Taxpayer Ruling LR 21–001 (Mar. 22, 2012). Delivery of baked goods to a business location. In this ruling, the Department concluded that a bakery that was an otherwise-exempt retailer selling nontaxable food was subject to tax on its sales of baked goods delivered to a business location. The Department held that the sales were taxable under the retail classification because delivery to a business address indicated that the baked goods were not intended for home consumption. The Department also found that the sales of baked goods were subject to City of Gilbert tax because the City did not exempt food sales.

Private Taxpayer Ruling LR 21–002 (Apr. 19, 2012). Sourcing of city taxes on long-term motor vehicle rentals by an out-of-state lessor. In this ruling, the Department confirmed that the state sourcing rules in A.R.S. § 42-5040(C) superseded conflicting Model City Tax Code sourcing rules for long-term motor vehicle leases where the lessor had no Arizona locations. The Department stated that such lease receipts should be sourced to the lessee’s Arizona delivery address, and not to the location where the lease was signed.

2021 DEPARTMENT OF REVENUE GUIDANCE CONT.

Private Taxpayer Ruling LR 21–003 (May 27, 2012). Rental of digital information and data. The issue in this ruling was whether the gross income derived from providing a temporary or non-perpetual right to use digital information and data that was compiled and sent automatically and where the customer had full use and control of the information and data received during the agreed upon term was subject to TPT. The Department concluded the transaction was taxable under the personal property rental classification because under the “common understanding” test, the taxpayer would be commonly understood to be in the business of renting tangible personal property for a consideration and not merely providing a service.

INCOME TAX UPDATES

LEGISLATION

Senate Bill 1113, Chapter 174. Unused Tax Credits. This bill reduces the period that must pass before the Department of Revenue stops allowing and the Legislature can repeal any unused individual or corporate income tax credits from four years to three years. The bill also clarifies that while unused credits carried forward from prior years may be used by the taxpayer, they will not be considered claimed or used in that year for purposes of the expiration period provision.

Senate Bill 1124, Chapter 430. Contributions in Aid of Construction and Miscellaneous Income Tax Credits. This bill allows corporations a deduction from Arizona gross income for money or property received as a contribution in aid of construction of a public service corporation that provides water or sewage disposal, provided the contribution is for expanding, improving, or replacing the water system or sewage disposal facilities. The deduction is retroactive to January 1, 2021. The bill also authorizes the continuation of tax credits for investments in qualifying small businesses through June 30, 2031, and allows taxpayers to claim such credits through 2034. It also establishes a new individual and corporate income tax credit equal to at least 50% of the federal low income housing credit for qualifying projects.

Senate Bill 1297, Chapter 177. 2020 Income Tax Filing Deadline. An emergency measure that took effect when Gov. Doug Ducey signed it on April 5, 2021, this bill extended the deadlines for 2020 Arizona income tax returns, payments, and credits to May 17, 2021.

Senate Bill 1350, Chapter 178. Income Tax Filing Extensions. Under this bill, the Department of Revenue can grant an automatic seven-month extension for the filing of income tax returns to corporations, partnerships, and exempt organizations that have paid at least 90% of their tax liability. This makes the Arizona's extended deadline one month after the federal deadline so that the taxpayer has the federal information available to be able to complete its Arizona return. The bill also clarifies that taxpayers who have been granted a federal income tax extension/exemption are deemed to be granted the same extension for their Arizona tax return. The bill does not apply to small business corporations that file under A.R.S. § 43-1126. The bill is retroactive to January 1, 2021.

Senate Bill 1752, Chapter 232. Internal Revenue Code Conformity. In addition to providing for retroactive conformity to the Internal Revenue Code in effect on March 11, 2021 for tax years beginning January 1, 2021, this bill provides that Arizona retroactively conforms to the following federal legislation: (1) the Families First Coronavirus Response Act (P.L. 116-127), for the 2020 tax year; (2) the Coronavirus Aid, Relief, and Economic Security ("CARES") Act (P.L. 116-136), for the 2015 to 2020 tax years; (3) the Paycheck Protection Program Flexibility Act of 2020 (P.L. 116-142) for the 2020 tax year; (4) the Consolidated Appropriations Act of 2021 (P.L. 116-260) for the 2018 to 2020 tax years; and (5) the American Rescue Plan Act of 2021 (P.L. 117-2) for the 2020 tax year.

INCOME TAX UPDATES

LEGISLATION CONT.

Senate Bill 1783, Chapter 436. Arizona Small Business Taxpayers and Tax Rates for Estates and Trusts. Under this bill, “small business taxpayers” have the option of annually filing a return to report their share of “Arizona small business income” as defined by statute. The tax rate for small business taxpayers is 3.50% for the 2021 tax year, 3.00% for the 2022 tax year, 2.80% for the 2023 and 2024 tax years, and 2.50% for the 2025 tax year and thereafter. Small business taxpayers are required to make estimated tax payments if their annual liability is at least \$1,000. The bill also established a graduated tax rate for estates and trusts, indexed for inflation, of 2.59% to 4.50% for the 2021 tax year, 2.55% to 2.98% for the 2022 tax year until the state general fund revenue target is achieved, and fixed at 2.50% thereafter.

Senate Bill 1827, Chapter 411. Cap on Individual Income Tax Rate as a Result of Proposition 208. This bill provides that Arizona’s individual income tax rate, when combined with the 3.50% income tax surcharge for education (Proposition 208), shall not exceed 4.50%, effective January 1, 2021.

Senate Bill 1828, Chapter 412. Flat Tax for Individuals. This bill makes numerous changes to Arizona’s income tax laws. It collapses Arizona’s four individual income tax brackets into two, beginning with the 2022 tax year. The lowest tax rate will decrease from 2.59% to 2.55%, and the highest rate will decrease from 4.50% to 2.98%. The bill also provides for a graduated decrease to a flat 2.50% rate once certain state general fund revenue targets are achieved. Arizona income tax on amounts received by retired U.S. military members as retainer pay is eliminate beginning with the 2021 tax year. The bill increases the percentage the percentage of charitable deductions that taxpayers claiming Arizona’s standard deduction can claim for inflation and for the 2021 tax year, adds corporate and individual income tax credits for processing certain forest products. It extends the deadline for individuals to claim credits for certain contributions to schools until June 30, 2024. Finally, it expands the categories of students that benefit from scholarships from school tuition organizations and increases the maximum scholarship amount, effective for the 2021 tax year.

Senate Bill 1830, Chapter 383. Corporate Tax Credit for Donations. This bill adds a corporate income tax credit equal to 30% of the value of real property and improvements, donated to a school district or charter school, to be used as a the site for a new school. The bill is retroactive to January 1, 2020.

Senate Bill 1844, Chapter 395. Section 529 College Savings Plan and ABLE Contributions. This bill increases the Arizona deduction for contributions to section 529 college savings plans to \$2,000 per beneficiary (\$4,000 per beneficiary for married taxpayers filing jointly), if the contribution was not deducted when computing federal adjusted gross income. The previous cap as \$2,000 total (\$4,000 for married filing joint). The bill also adds a deduction for contributions to a section 529A Achieving a Better Life (“ABLE”) account of up to \$2,000 (\$4,000 for married filing joint) if the contribution was not deducted when calculating federal adjusted gross income.

INCOME TAX UPDATES

LEGISLATION CONT.

House Bill 2321, Chapter 80. Credit for Investment in Qualified Facilities. This bill modifies the calculation of the corporate and individual income tax credits for investments in qualifying manufacturing, headquarters, or research facilities. The credit is now equal to 10% of the lesser of the total qualifying investment in the facility, \$200,000 for each new full-time employee at the facility if the total qualifying investment is less than \$2 billion, or if the total qualifying investment is greater than \$2 billion, \$300,000 per new full-time employee. The bill also increases the amount of available credits that can be pre-approved by the Arizona Commerce Authority from \$70 million to \$125 million. Finally, the bill amends the definitions of “qualified headquarters” and “qualified manufacturing.”

House Bill 2429, Chapter 196. Tax Corrections. In addition to numerous technical changes, this bill makes several substantive changes to Arizona’s income tax laws. The bill modifies the qualifications and documentations required for owners and operators of international operations centers to make tax-free purchases of electricity and natural gas. It also provides that partnership and s-corporation returns filed because of a change in accounting period are due by the 15th day of the third month following the close of the new period. The bill extends the individual income tax credit for increases in research activities until December 31, 2020, but reduces the number of years that the tax credits claimed for years beginning in 2021 may be carried from 15 years to 10 years. Finally, the bill eliminated the individual income tax credit for increases in qualifying employment by the taxpayer of recipients for temporary aid for needy families (“TANF”).

House Bill 2649, Chapter 266. Computer Data Centers. This bill amends the corporate income tax credit for investments in a new renewable energy facility to include when a third party makes the investment on behalf of or for the direct benefit of the taxpayer. The bill is retroactive to August 24, 2020.

House Bill 2838, Chapter 425. Elective Entity Level Income Tax for Partnerships and S-Corporations. Effective for tax years beginning on or after January 1, 2022, this bill provides for an optional 4.50% entity-level income tax for partnerships, limited liability companies, and s-corporations, to allow individual owners to claim a federal income tax deduction for all state income taxes paid at the entity level, rather than the first \$10,000. The bill also provides for statutory adjustments intended to make sure that each individual shareholder or partner making the election pays the same amount of state income tax that they otherwise would have paid. The entities making the election are also required to make estimated tax payments if their taxable income exceed \$150,000 in the previous tax year.

RULINGS

There were no income tax rulings in 2021.

CASES

***Fann et al. v. State of Ariz. et al.*, No. CV-21-0058-T/AP (Ariz. Aug. 19, 2021). Prop. 208 income tax surcharge for education held unconstitutional.** In 2020, Arizona voters passed Prop. 208, a citizens' initiative imposing an income tax surcharge on high-income Arizona taxpayers to provide direct funding to schools. A group of Arizona legislators and two anti-Prop. 208 groups then sued, challenging the constitutionality of the tax and the initiative's characterization of the direct funding as "grants," exempt from the expenditure limitations of article 9, section 21 of the Arizona Constitution (the education expenditure clause). The education expenditures clause sets a budget cap for expenditures of revenue received by school districts from tax disbursements by the state from local or county taxes. There was no dispute that the definition of local revenues includes Prop. 208's direct funding to school districts. However, Invest in Education, the proponents of Prop. 208, argued that Prop 208 money is a "grant", which the education expenditure clause exempts from the definition of local revenues. The Arizona Supreme Court held though that A.R.S. § 15-1285 (that part of Prop. 208 exempting the Prop. 208 revenue from the expenditure control limits) was unconstitutional because it incorrectly characterized Prop. 208 revenues as "grants" for purposes of the education expenditure clause. The Court also held that A.R.S. § 15-1281(D) was unconstitutional to the extent it mandated the expenditure of Prop. 208 revenues in excess of the expenditure limitations of the education expenditure clause. Finally, the Court held that Prop. 208 does not violate the Tax Enactment Clause of the Arizona Constitution because that clause does not apply to voter initiatives and as such, the bicameralism, presentment, and super majority requirements found in that clause do not apply to Prop. 208.

The Court held that to the extent Prop. 208's direct payments to school districts exceed the constitutional expenditure limitations, those direct payments are unconstitutional, and that part of Prop. 208 is not severable from the remainder of Prop. 208. However, the record before the Court was insufficient to establish whether such payments would in fact exceed the constitutional expenditure limitation and the case was remanded to the Tax Court to make such a determination.

MISCELLANEOUS TAX UPDATES

LEGISLATION

Senate Bill 1124, Chapter 430. Insurance Premium Tax Credit for Qualifying Projects. This bill creates a credit against Arizona's insurance premium tax equal to at least 50% of the federal low income housing credit for qualifying projects. Partners, members, and shareholders are allowed to self-allocate the total credit, regardless of the size of each taxpayer's ownership interest. The bill also limits the total amount of available credits (including the corresponding income tax credit) to \$4,000,000 per calendar year.

Senate Bill 1828, Chapter 412. Increases Unemployment Benefit Amount. Effective July 1, 2022, this bill increases the maximum weekly unemployment benefit amount from \$240 to \$320. Additionally, effective January 1, 2023, the bill increases maximum taxable wages for unemployment purposes from \$7,000 to \$8,000.

House Bill 2109, Chapter 97. Bingo Games. This bill increases the threshold for the requirement that prize winnings be paid by check from \$150 to \$1,100. It also removes a prohibition for conducting lotteries or raffles within 1,000 feet of a location used for a bingo game within 12 hours before or after the game. Finally, it increases the gross receipts thresholds for bingo licensees as follows: Class A maximum receipts increases from \$15,000 to \$75,000; Class B maximum receipts increases from \$300,000 to \$500,000; and the Class C threshold increases from above \$300,000 to above \$500,000.

House Bill 2429, Chapter 196. Marijuana Excise Tax Confidentiality Provisions. In addition to multiple technical corrections, this bill adds tax returns, reports, and applications relating to marijuana excise taxes filed with the Department of Revenue to the list of confidential information requiring taxpayer authorization before it can be released in certain circumstances.

House Bill 2835, Chapter 298. Theme Park Districts. This bill amends the provisions relating to theme park districts, which are permitted to levy transaction privilege taxes of up to 9.00% in order to service the bonds used to finance development of the parks. Specifically, the definition of "theme park" is amended to include buildings and improvements used to accommodate overnight guests, the total value of bonds that can be issued by all districts is increased from \$1 billion to \$2 billion, and the deadline for issuing bonds is extended from 2021 to 2031. The bill is retroactive to January 1, 2021.

RULINGS

Arizona Luxury Tax Ruling LTR 21-1 (Sept. 8, 2021). Obligation of retailers to purchase only from Arizona licensed tobacco distributors. A retailer is only permitted to purchase tobacco products for resale from a distributor holding a current Arizona tobacco distributor license. The retailer is required to maintain invoices or other documentation substantiating all such purchases for four years after the date of purchase. Documentation is subject to inspection by the Department of Revenue, which will verify whether it contains the information required by Arizona law to document the retailer's tobacco product inventory.

CASES

Pima County v. State of Ariz., No. 1 CA-TX 20-0001 (Aug. 10, 2021). Excess county desegregation expenses not subject to State reimbursement. Reversing the Tax Court, the Arizona Court of Appeals held that recent amendments to A.R.S. § 15-910 eliminated the State's obligation under A.R.S. § 15-972(E) to reimburse the Tucson Unified School District for desegregation expenses as additional state aid for education. The Court of Appeals found that the new meaning of "secondary property taxes" allows a county to budget and collect taxes to pay for desegregation expenses without voter approval if the county's total ad valorem taxes do not exceed the constitutional 1% cap on ad valorem taxes. The effect of this decision is that the excess desegregation expense, rather than being borne by the State will be borne by the local property taxpayers.

BSI Holdings LLC v. Ariz. Dep't of Transportation, No. 1 CA-TX 20-0005 (Aug. 12, 2021). Meaning of "based in" Arizona ambiguous for purposes of aircraft licensing tax. In the latest holding in taxpayer BSI Holding's appeal of an ADOT assessment of additional aircraft licensing tax, the Arizona Court of Appeals agreed with the Tax Court that the term "based in" as used in A.R.S. § 28-8336, the statute determining the aircraft licensing tax applicable to nonresident aircraft, was ambiguous. The Court of Appeals rejected ADOT's arguments that it should apply a domiciliary analysis and totality of the circumstances test for determining when an aircraft is "based in" Arizona, because ADOT's proposed test was "a purely subjective decision made by very experienced auditors who apply standards which have not ever been reduced to writing or published." Thus, the Court of Appeals held that Arizona's rules of statutory construction required the statute be interpreted in favor of the taxpayer, and affirmed the Tax Court's entry of summary judgment for the taxpayer. Previously, the Arizona Supreme Court had held that the use of the term "day" in the same statute was also ambiguous, reversing the Court of Appeals, and remanded to the Tax Court for further proceedings to determine what "based in" Arizona for a "day" meant.

PROPERTY TAX UPDATES

LEGISLATION

Senate Bill 1076, Chapter 352. Low-income Multifamily Housing Valuation. This bill clarifies that multifamily residential rental properties for low-income families qualify as Class Four properties with a 10% assessment ratio. The bill also allows property owners to elect to use the income method for purpose of valuation.

Senate Bill 1734, Chapter 151. Agricultural Property Reclassification Notices. This bill requires county assessors to use certified mail to notify property owners when a property no longer qualifies as agricultural property. Property owners must also be notified of their appeal rights. The bill also clarifies that owners whose agricultural use applications were denied may appeal to the county assessor or to the tax court, or they may file a notice of claim.

Senate Bill 1828, Chapter 412. Class One Assessment Ratio Decreased. Among other amendments unrelated to property tax, this 2021 omnibus bill decreases the assessment ratio for Class One commercial properties by 0.5% a year beginning in 2022 and ending in 2025, from the current 18.0% and ending at 16.0%.

House Bill 2025, Chapter 127. Waiver of Interest on Delinquent Property Tax. Subject to the approval of a county's board of supervisors, this bill allows county treasurers to waive interest and penalties that would otherwise be imposed for failure to timely pay property taxes when the delinquency occurs in the one-year period following the satisfaction or other release of a mortgage or deed of trust.

House Bill 2112, Chapter 98. Truth in Taxation. This bill requires community college districts, counties, cities, towns, and other special taxing districts to publish "truth in taxation" notices on their official websites. They are also required to issue press releases identifying the date and newspaper of publication of such notices.

House Bill 2153. Valuation of Renewable Energy Storage Equipment. This bill requires the Department of Revenue to centrally value energy storage systems for property tax purposes. The bill also provides that utility-scale energy storage equipment will be valued at 20% of the depreciated cost, whether the equipment is stand-alone or collocated with renewable energy generation equipment.

House Bill 2316, Chapter 26. Valuation of Pipelines. This bill requires the Department of Revenue to adjust the base value of pipeline property operating in Arizona in three situations: (1) there is a final ruling by a court that the statutory valuation of the pipeline exceeds the market value; (2) there is agreement between the Department and the owner that is approved by a court while an appeal is pending; or (3) there is an agreement between the Department and the owner to correct and error in the value calculation. The bill is retroactive to January 1, 2016.

PROPERTY TAX UPDATES

LEGISLATION CONT.

House Bill 2331, Chapter 28. Seizure & Sale of Mobile Homes. Under this bill, the sheriff of a county is prohibited from seizing and selling mobile homes that are not on the real property roll and that are used as the owner's primary residence unless the tax has been delinquent for one year and the person liable has not redeemed the property within six months of the one-year period. This legislation is the result of a sheriff's seizure of an owner's mobile home when the owner had underpaid the tax by only several dollars.

House Bill 2376, Chapter 185. Classification of Guest Ranches. This bill designates guest ranches as Class Two properties with a 15% assessment ratio. It also defines a "guest ranch" and requires owners to record a deed restriction that limits the property's use to that as a guest ranch for at least 10 years. If the use restriction is violated, county assessors are required to recapture the amount of tax that would have been collected without the Class Two designation.

House Bill 2391, Chapter 109. Property Tax Information Must Be Published on County's Website. This bill requires the board of supervisors of a county to compile and publish property tax rates, levies, and valuations for all taxing jurisdictions on the official county website within seven dates of adopting such rates and levies.

House Bill 2429, Chapter 196. Tax Corrections Act of 2021. Among numerous technical changes, this bill clarifies that real property and real property improvements used as a charter school, residential treatment and education facility, or a nonprofit church that qualify as Class Nine property includes land, buildings, furniture, and equipment.

House Bill 2879, Chapter 342. Determinations Made by the Department of Revenue. This bill provides that courts must decide all questions of law without any deference to determinations made by the Department of Revenue.

CASES

Qasimyar v. Maricopa County, No. 1 CA-TX 19-0008 (Ct. App. Feb. 11, 2021, Amended per Order Filed Aug. 12, 2021). Reclassification of residential property requires Rule B valuation for limited property value. During the 2016 property tax year, Maricopa County classified several properties as Class Four (other residential). In the 2017 property tax year, Maricopa County did not change the classification of the properties and set the limited property value using “Rule A,” a 5% annual year-over-year increase, pursuant to A.R.S. § 42-13301. The owners appealed to the State Board of Equalization and the properties were reclassified as Class Three (owner-occupied residential) for 2017, but no change to the limited property value was made. The owners appealed, asserting that the reclassification from Class Four to Class Three was a “change in use” requiring Rule B valuation pursuant to A.R.S. § 42-13302(A)(2) (the limited property value is established at a level or percentage of full cash value that is comparable to that of other properties of the same or similar use). Maricopa County argued that there was no “change in use” requiring Rule B valuation because the change was in who was occupying the property and not how it objectively was used. The Court of Appeals held that Class Three and Class Four designations were mutually exclusive, and thus a change from one to the other constituted a “change in use” that triggers the use of Rule B. The taxpayers pushed for a Rule B calculation because it would result in a lower limited value and thus lower tax.

South Point Energy Center LLC v. Ariz. Dep’t of Revenue, No. 1 CA-TX 20-0004 (Apr. 27, 2021). Real property tax on non-Indian owned improvements located on reservation preempted by federal law. Overturning the Tax Court, the Court of Appeals held that a federal statute preempted Arizona and its political subdivisions from imposing a real property tax on an electric generation facility located on an Indian reservation, regardless of ownership. Pursuant to a lease with the Fort Mojave Indian Tribe and the Bureau of Indian Affairs, the facility was owned by the non-Indian taxpayer. The Arizona Supreme Court accepted review of the case in December 2021.

CASES CONT.

State of Ariz. v. Ariz. Board of Regents, No. 1 CA-TX 20-0003 (Apr. 20, 2021). Attorney General's gift clause suit barred by statute of limitations. In this case, the Arizona Attorney General sued to enjoin an agreement between the Arizona Board of Regents and a private entity for the construction and operation of a hotel and conference center on state property. Under the lease agreement, the Board of Regents would own the hotel and conference center for 60 years during which the private entity would pay rent in lieu of property tax, and included an option to purchase for the private entity at the expiration of the lease term. The Attorney General alleged that the agreement was void because it improperly exempted the hotel and conference center from property tax, the Board of Regent lacked the authority to enter the lease, and the lease did not serve a public purpose. During litigation, the Attorney General amended its complaint to add a fourth claim, that the agreement violated the Gift Clause of the Arizona constitution because it constituted an illegal payment of public money. The Tax Court found that the Attorney General's claim that the agreement violated the Gift Clause in the Arizona constitution was untimely. It also held that the Attorney General lacked the statutory or independent quo warranto authority to bring its remaining claims. The Court of Appeals upheld the Tax Court, finding that the Attorney General had failed to bring the Gift Clause claim within the one-year limitations period for claims against a public entity, and held that a longer five-year limitations period for illegal payments did not apply. The Court of Appeals also upheld the Tax Court's findings about the Attorney General's lack of authority. The Arizona Supreme Court took review of the case and oral argument was held on December 16, 2021.

Mesquite Power, LLC v. Ariz. Dep't of Revenue, No. 1 CA-TX 20-0009 (Aug. 24, 2021). Taxpayer forfeited valuation appeal rights by failing to timely submit annual report of value. Affirming the Tax Court, the Court of Appeals held that the taxpayer's failure to timely submit a report of valuation pursuant to A.R.S. § 42-14152 precluded it from appealing the Department's valuation of its property. The taxpayer had argued that its obligation to file the report was predicated on the Department sending it the appropriate reporting form. However, the Court of Appeals found that sending the form to taxpayers was not a condition precedent of a taxpayer's compliance with statutory requirements, and in any event there was no dispute that the Department had in fact emailed the reporting form to the taxpayer (but it was routed to the taxpayer's junk mail folder).

Maricopa County v. Viola, No. 1 CA-SA 21-0023, 251 Ariz. 276 (May 20, 2021). Low-income housing tax credit apartments must be valued using restricted rents not market rents. This case considered the issue of whether low-income housing tax credit ("LIHTC") apartments are to be valued using restricted rental rates (as restricted by the LIHTC program) or market rents as if there were no rent restrictions. Affirming the Tax Court, the Court of Appeals held that assessors must use actual rents charged when they determine the full cash value of LIHTC properties because the long-term rent restrictions imposed under the LIHTC program have a direct and immediate effect upon marketability of the apartments.

FIRM OVERVIEW

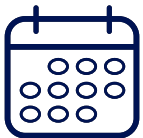


They have a broad reach with a national and international network yet still provide personalized and quick service that belies the firm's size and scope. – Chambers USA

Lewis Roca is a premier U.S.- based law firm, serving clients from around the world in complex litigation, intellectual property, business transactions, labor and employment, regulatory counseling, and government relations. When you partner with Lewis Roca, you're with lawyers who value interactions over transactions. Relationships over revenue. And you above all else.

Inspired by the work you do, we bring inspired thinking and out-of-the-box solutions to uncover opportunities others overlook, and overcome challenges others deem insurmountable. Everything we do is tailored to your needs. You define what success looks like, and we'll design an approach that meets – and exceeds – your expectations. By focusing on delivering superb client experiences, we're redefining what it means to be a law firm... and what it means to be a client.

At A Glance



100+ YEARS



230+ LAWYERS



9 OFFICES



65+ PRACTICES

Who We Are

- Relentless advocates across all legal settings
- Legal pioneers on the regulatory path to new industry
- Counselors for complex economic development ecosystems
- Highly technical practitioners to power through new frontiers

A COLLABORATIVE APPROACH

Because every client engagement is unique, we match our legal approach to the specific challenge at hand. Through our extensive experience across a range of industries, delivered by teams who work collaboratively across practices areas, we develop effective solutions to even the most nuanced and complex legal matters.

Industries

Banking and Financial Services
Gaming
Educational and Research Institutions
Energy and Utilities
Healthcare and Life Sciences
Mining and Manufacturing
Real Estate and Construction
Religious Institutions
Restaurants, Retail and Hospitality
Sports, Entertainment and Recreation
Tax Exempt Organizations
Science and Technology
Transportation and Infrastructure
Tribal Affairs

Practices

Bankruptcy and Creditor's Rights
Corporate
Finance
Gaming
Government Relations
Regulatory Compliance
Intellectual Property
Litigation and Dispute Resolution
Labor and Employment
Real Estate
Tax

**EXPERIENCE
REDEFINED.**

We believe that every client deserves an exceptional experience and we've made it our mission to redefine what it means to be a law firm . . . and what it means to be a client.

TAX PRACTICE

As tax laws continue to evolve, individuals and companies face greater obligations for enforcement and transparency – with higher stakes than ever before. Our deep bench of tax lawyers provide practical, comprehensive counsel across the full spectrum of tax-related matters, helping to minimize risk and ensure optimal accounting, forecasting, and profitability.

The firm's tax lawyers provide counseling across the full range of state and local tax implications for business transactions, including multistate income tax responsibilities as well as sales and use tax collection obligations. Our experienced litigators represent clients in all aspects of tax controversy and disputes before state and local administrative agencies, the IRS, state tax or superior courts, the courts of appeals, and the United States Supreme Court. We also structure, negotiate, and provide tax analysis and guidance in connection with a wide variety of corporate and individual transactions.

STATE AND LOCAL TAXATION

The firm's tax lawyers provide counseling across the full range of state and local tax implications for business transactions, including multistate income tax responsibilities as well as sales and use tax collection obligations. Our experienced litigators represent clients in all aspects of tax controversy and disputes before state and local administrative agencies, the IRS, state tax or superior courts, the courts of appeals, and the United States Supreme Court. We also structure, negotiate, and provide tax analysis and guidance in connection with a wide variety of corporate and individual transactions.

STATE AND LOCAL TAX LITIGATION

Our experienced tax litigators represent clients in all aspects of tax controversy and litigation before state and local administrative agencies, the Internal Revenue Service, state tax or superior court, the courts of appeals and the Supreme Court. Our tax litigators have broad commercial litigation and tax litigation experience. Pat Derdenger, served in the tax division of the US Department of Justice and has more than 35 years of tax litigation experience, including property tax, sales and use tax and income tax litigation. The combination of our trial litigation skills and up-to-date tax experience allows us to take on the most challenging cases and achieve results for our clients.

We have experience in all aspects of tax controversy and litigation, including:

- Managing audits
- Prosecuting property tax valuation and classification appeals through the administrative hearing and review process
- Filing appeals of administrative actions in tax or superior court and bringing originals actions in court
- Negotiating litigation settlements
- Trying cases in court
- Arguing appeals in state appellate courts

In addition to our litigation experience - our lawyers litigate tax matters on a daily basis from the administrative level, through state tax or superior court, the courts of appeals and the Supreme Court - our tax department has diverse and extensive experience, including:

- Constitutional tax matters
- Corporate tax, partnership tax
- Combined and consolidated state returns
- Multistate income tax issues
- Nexus issues
- Property tax matters
- Sales and use tax
- Tax-exempt organizations

CONSTRUCTION AND HOMEBUILDER TAX ISSUES

Our lawyers represent construction contractors, both general and subcontractors, and homebuilders on a wide array of federal, state and local tax issues, including construction manager tax issues, hospital construction projects and issues dealing with the installation of exempt machinery and equipment. We also advise and work with homebuilders on the marketing arm-contracting arm structure used in Arizona for state transaction privilege tax purposes, as well as assist real estate developers with the Arizona “speculative builder” tax.



**PAT
DERDENGER**

Partner

pderdenger@lewisroca.com

D: 602.262.5315

Phoenix

Pat is the go-to lawyer for state and local tax issues. With his unmatched knowledge and strong communication skills, he ensures his clients get the best outcome for their bottom line.

Clients rely on Pat Derdenger for his deep knowledge of state and local tax issues that vitally impact business operations. Serving businesses across industry sectors, Pat understands how to evaluate complex transactions, applying the latest laws and regulations toward obtaining tax benefits and incentives, while reducing tax exposure.

In his extensive state and local tax practice, Pat advises businesses on corporate and individual income, multistate sales and use, and property tax matters, and counsels them on the state and local tax implications of their business transactions. He also represents clients in related litigation matters, from audits and appeals through various administrative states, as well as in federal and state courts and courts of appeals, and the U.S. Tax Court. He has obtained private tax rulings for clients on state and local tax issues and helped draft state tax legislation for clients and industry groups. Pat also advises businesses on the tax implications of various economic incentives and benefits of relocating to and operating in Arizona. In addition, he frequently represents construction industry and homebuilder clients on tax issues related to maintenance, repair, replacement, alteration (MRRA), and modification projects in Arizona.

Practices

- Corporate
- Tax
- Health Care Regulation and Services

Industries

- Construction
- Real Estate and Construction

Pat also counsels clients on federal income and employment tax matters, independent contractor/employee tax issues, responsible officer penalties, information return filing penalties, and federal and state excise taxes, and represents them in related litigation matters. Clients also turn to him for advice on constitutional issues, including the federal commerce clause, due process clause, and equal protection clause.

Personal Approach

Frequently described as “the problem solver,” Pat goes far beyond the typical options to find the solution that helps his clients achieve the best possible results. With his open and friendly communication style, Pat views his relationships with his clients as a true partnership.

Pat enjoys road and mountain biking, golfing, USC football, and traveling. He has traveled to each of the seven continents but still has a long list of places he wants to visit.

Education

- LL.M., Taxation, George Washington University Law School, 1977
- J.D., University of Southern California, Gould School of Law, 1974
- M.B.A., University of Southern California, 1971

Bar Admissions

- Arizona, 1979
- California, 1974

Community

- National Tax Association
- Arizona Tax Research Association, Board of Directors and Tax Practitioners’ Committee Member
- Arizona Chamber of Commerce and Industry, Tax Committee
- National Association of Property Tax Attorneys, Board of Directors
- Institute for Professionals in Taxation (IPT)
- American Bar Association, State and Local Tax Committee, Section of Taxation
- Arizona State Bar, Tax Section, Prior Chair
- Council on State Taxation
- Strafford Legal Publications, Tax Law Advisory Board Member

Honors & Recognitions

- Best Lawyers in America, Tax Law; Litigation and Controversy: Tax, 1995-2022
- Southwest Super Lawyers, Tax, 2007-2021
- AZ Business Leaders, Law: Tax, 2015-2019
- Legal 500, U.S., Tax: U.S. Taxes, Contentious, 2018
- Arizona State Bar, Henry Tom Outstanding Tax Attorney, 2017
- Best Lawyers in America, Lawyer of the Year, Tax Law: Phoenix, 2016
- Best Lawyers in America, Lawyer of the Year, Tax Litigation and Controversy Law: Phoenix, 2015
- Legal 500, U.S., Tax: Domestic Tax, 2012-2015
- *AZ Business Magazine*, Arizona's Top Lawyers: Tax, 2010, 2013-2014
- Ranking Arizona, Top Lawyers: Tax, 2013
- Southwest Super Lawyers, Top 50 Attorneys - Arizona, 2013
- Legal 500, U.S., Tax: Controversy, 2011-2012
- Arizona's Finest Lawyers, 2011
- Southwest Super Lawyers, Top 100 Attorneys - Arizona, 2009
- Martindale-Hubbell, "AV/Preeminent Attorney" rating
- Four Lewis Roca Lawyers Named AZBusiness Leaders 2020
AZBusiness, 11/22/2019



**KAREN JURICHKO
LOWELL**

Associate

klowell@lewisroca.com

D: 602.239.7423

Phoenix

With a proven background in resolving business tax disputes, Karen Jurichko Lowell focuses her legal practice on sales, use, and property tax matters, including tax audits and appeals through various administrative stages, the tax court, and the court of appeals. She advises manufacturers, high-tech companies, construction contractors and developers, electric utilities, solar energy companies, and other clients on various multistate sales and use tax issues, including advising e-commerce businesses on their multistate sales and use tax nexus and collection obligations. She also has experience with property tax valuation appeals for various types of industrial and commercial properties, corporate transactions, and health care taxes.

Karen previously worked for a tax consultancy focused on California state business incentives, rising to the position of senior manager for audit and controversy. In that role, she managed more than 100 audits annually, provided conflict resolution for all company clients with the California Franchise Tax Board, and crafted a structured methodology to resolve tax disputes.

Education

- J.D., magna cum laude, University of Arizona, James E. Rogers College of Law, Certificate of Tax Law and Policy, Order of the Coif, 2014
- B.S., University of Southern California, 2002

Practices

- Tax

Industries

- Construction
- Energy and Utilities

Bar Admissions

- Arizona, 2014

Community

- University of Southern California Alumni Club of Phoenix, President
- Ballet Arizona Contemporary Council, Board Member
- Arizona State Bar Tax Council, State and Local Tax Liaison
- *Arizona Law Review*, Senior Articles Editor, University of Arizona, James E. Rogers College of Law

Honors & Recognitions

- Best Lawyers in America, "Ones to Watch," Tax Law, 2021-2022
- Southwest Super Lawyers, Rising Star, Tax, 2021