



# Status Update on Arizona Tax Legislation

*In this month's state and local tax (SALT) column, Busby addresses the status of two high-profile tax bills still pending at the Arizona Legislature (as of the time this article was submitted).*

As predicted, this session Arizona lawmakers debated how to respond to the federal tax reform measures that took effect for tax year 2018, whether to amend the state tax code to allow remote sales tax collections in the wake of Wayfair, and the transaction privilege (sales) taxation of digital goods and services. This article focusses on the current status of the latter two issues because the Society updated its members concerning the state's conformity efforts throughout the legislative session.

### Arizona's Response to Wayfair

A 2017 study estimated that Arizona's share of sales taxes from remote vendors may be between \$190 and \$293 million annually. Following the U.S. Supreme Court's decision in the Wayfair case, Arizona lawmakers considered two bills.

S.B. 1155 would have created a study committee to examine underlying legal hurdles, as well as best practices around the country, and issue a report by the end of the year detailing what the state should do to begin lawfully and efficiently collecting taxes from remote vendors. However, S.B. 1155 failed in the Senate.

H.B. 2702 would impose economic nexus thresholds and require both individual remote sellers and marketplace facilitators who cross such thresholds to begin paying sales tax on their proceeds from transactions with Arizona customers. However, Arizona has not adopted the Streamlined Sales and Use Tax Agreement or any of its features that were designed to reduce administrative and compliance costs for taxpayers. It permits its 91 municipalities that impose sales taxes to select from more than 50 tax base differences in addition to differences between each municipality and the state; and it imposes burdensome sourcing rules on out-of-state sellers. Thus, H.B. 2702 was held in House Rules Committee due to concerns that remote sellers may challenge remote sales tax collection in Arizona as unduly burdening interstate commerce.

Interested parties are working on a strike-everything amendment that would address some of these concerns and impose economic nexus thresholds and require both individual remote sellers and marketplace facilitators who cross those thresholds to begin paying sales tax on their proceeds from transactions with Arizona customers.

### The Taxation of Digital Goods and Services

Unlike most states, Arizona has not enacted legislation to specify which digital goods and services, if any, are subject to sales tax. Yet, without statutory direction, state and local taxing authorities have taken the position in confidential



**by James G. Busby, Jr., CPA**

**James G. Busby, Jr., CPA**, is a state and local tax attorney at The Cavanagh Law Firm. Busby previously worked in the SALT departments at Arthur Andersen and Deloitte & Touche. Before entering private practice, Busby was in charge of all transaction privilege (sales) tax audits at the Arizona Department of Revenue. If you have any questions, please contact the author. He can be reached at (602) 322-4146 or [JBusby@CavanaghLaw.com](mailto:JBusby@CavanaghLaw.com).

audit assessments and obscure private taxpayer rulings that digital goods and a variety of digital services are subject to tax under the state's outdated tax code.

Last year, a bill was introduced that would have clarified which digital goods and services are taxable, but it failed. This year, lawmakers are weighing S.B. 1460, which provides that prewritten software and specified digital goods would be subject to Arizona's state and local sales and use taxes going forward, but clarifies that — consistent with a recent amendment to Arizona's constitution — digital services are not taxable.

Supporters are having a tough time securing enough votes to pass S.B. 1460 because opponents argue it would reduce state and local tax revenues because taxing authorities already are attempting to collect taxes on virtually all digital goods and services under existing law. ■