

Be Wary of Arizona's New Sales Tax Exemption Certificates

by James G. Busby Jr.



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In this article, Busby explains the onerous new restriction the Arizona Department of Revenue recently imposed requiring taxpayers to obtain exemption certificates from their customers, and he introduces a few new and revised Arizona exemption certificates.

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The Arizona Department of Revenue recently introduced three new transaction privilege (sales) tax exemption certificates and revised three others.

A New, Burdensome Restriction

As usual, most of the certificates allow customers to specify whether the certificate is valid for a single transaction or for a period of time. But now, for the first time and apparently without statutory or other legal support for its position, the DOR specified that four of the six certificates cannot cover a period exceeding 12 months.

If this requirement is upheld,¹ taxpayers will have to request new exemption certificates from their customers at least once a year. Many taxpayers are unhappy about the burden imposed by this new requirement, are disappointed that the department made this change without first consulting with taxpayer advocacy groups, and hope that the department will reconsider this onerous requirement.

The new, 12-month limitation was included in the October 2015 versions of Arizona forms 5000, 5000A,

¹In February 2016 the Arizona Tax Research Association asked the DOR to reconsider this requirement, but the association had not heard back from the department by the time this article went to press.

5000HC, and 5000M. Like the rest of the certificates identified below, these new and revised certificates are available on the department's website.²

Revisions to Arizona Form 5000

Arizona Form 5000 allows Arizona taxpayers to document a wide variety of exemptions. The DOR made several changes to this form besides suggesting that it may be issued only for periods of up to 12 months.

For instance, the DOR specified that taxpayers should begin documenting sale for resale exemptions on Arizona Form 5000A instead of on Form 5000. Likewise, it indicated that contractors who do not have Arizona sales tax licenses should use Arizona Form 5000M (addressed in more detail below) instead of Form 5000.

The department also removed some of the boxes on Form 5000 that had been used to claim uncommon exemptions and some exemptions for transactions with nonprofit healthcare institutions (which, as discussed below, were moved to Arizona Form 5000HC). The department also added space for taxpayers to claim municipal exemptions now that it will soon begin collecting municipal sales tax for all Arizona municipalities.³

Revisions to Arizona Form 5000A

Arizona Form 5000A is used to document sales for resale and, the department claims, may not be issued for a period to exceed 12 months.

The department added some language on this form to explain that some customers, such as U.S. government agencies and unlicensed Arizona school districts, may purchase items for resale without providing a sales tax license number. The department indicated that those nonprofit organizations that qualify to purchase items for resale in Arizona⁴ should attach a copy of their IRS determination letter to this exemption certificate.

²The department's website is available at <https://www.azdor.gov/Forms/TransactionPrivilegeTax.aspx>.

³James G. Busby Jr., "Arizona Postpones Key Sales Tax Reforms — Again!" *State Tax Notes*, Jan. 18, 2016, p. 207.

⁴Unlike many states, Arizona does not have a broad exemption for purchases by nonprofit entities. Rather, Arizona's exemptions for nonprofit entities are limited to nonprofit entities engaged in particular activities. See A.R.S. section 42-5061.

New Certificate for Healthcare Organizations

New Arizona Form 5000HC is used to document exemptions for transactions with nonprofit healthcare institutions, including qualifying hospitals, qualifying healthcare organizations, qualifying rehabilitation centers for mentally or physically disabled persons, and qualifying community health centers. These organizations must obtain an annual exemption letter from the department, and Arizona Form 5000HC is valid only for the period covered by their exemption letter.

New and Revised Certificates for Contractors and MRRRA Projects

As I explained in this column last year,⁵ Arizona implemented extensive changes to its sales tax laws regarding the taxation of contractors that went into effect on January 1, 2015. Subcontractors working for a prime contractor on a job that is subject to Arizona's prime contracting tax may purchase building materials tax-free by using Arizona Form 5009L, even if they do not have a sales tax license.

⁵Busby, "Taxing Contractors Under Arizona's Sales Tax Reform Laws," *State Tax Notes*, June 1, 2015, p. 673-77.

More recently, the department introduced new Arizona Form 5000M, which allows contractors lacking a sales tax license to purchase tangible personal property tax-free if it will be used on a qualifying, nontaxable, maintenance, repair, replacement, or alteration (MRRRA) project.⁶

Finally, the department revised Arizona Form 5005 to accommodate both MRRRA projects and projects subject to the prime contracting tax. Form 5005 may be provided to subcontractors by prime contractors or those taking responsibility for the taxes due on materials for MRRRA projects as proof that the subcontractors are not responsible for such taxes on the project covered by the certificate.

Practice Tip

Taxpayers subject to Arizona sales tax generally should collect tax from their customers unless the customer provides a valid, complete exemption certificate. If the department's allegation that some exemption certificates may not cover periods exceeding 12 months is upheld, many Arizona taxpayers might have to collect exemption certificates more often than they had to previously. ☆

⁶*Supra* note 5 (building materials used in most MRRRA projects are subject to sales tax).