

Successor Liability for Taxes in Arizona

by James G. Busby Jr.

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In this edition of SALT From My Saddle, Busby explains Arizona's successor tax liability rules and what successors or assignees should do to protect themselves when they purchase or inherit a business or stock of goods.

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Like many states, Arizona has laws that address responsibility for outstanding taxes, penalties, and interest when one party sells or assigns a business or stock of goods to another.

Those provisions, generally referred to as successor liability rules, make it possible for successors and assignees to be responsible for applicable unpaid taxes, interest, and penalties. They also provide that applicable taxes are a lien on the property of any party that sells its business or stock of goods, or quits business, if that party fails to make a final return and payment of the tax within 15 days of selling or quitting the business.¹

¹ Ariz. Rev. Stat. section 42-1110(A); and Model City Tax Code section __-595(b).

Applicable Taxes

Arizona's successor liability rules apply to withholding tax, state and municipal transaction privilege taxes, telecommunication services excise tax, county excise taxes and any other privilege excise tax administered by the Department of Revenue, severance tax, use tax, luxury tax, tax on water use, and jet fuel excise and use tax.²

The rules do not apply to income tax,³ and, although property taxes are assessed against the property and follow the property,⁴ Arizona's successor liability rules do not apply to property taxes. It is customary, however, for parties to real estate transactions in Arizona to prorate liability for property taxes at close of escrow.

Successor Liability

When a party sells or assigns a business or stock of goods in Arizona, the successor or assignee may be held liable for any applicable outstanding taxes, penalties, or interest unless the successor or assignee can produce a certificate from the department stating that no tax is due.⁵

If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against the buyer or assignee if the buyer or assignee obtained a certificate from the department. However, if the buyer or assignee failed to obtain a certificate from the department stating that no tax is due,

² Ariz. Rev. Stat. sections 42-1110(A) and 42-1101.

³ Ariz. Rev. Stat. section 42-1110(A).

⁴ Ariz. Rev. Stat. section 42-17153.

⁵ Ariz. Rev. Stat. section 42-1110(B); and Model City Tax Code section __-595(d).

the buyer or assignee may be held liable for taxes, penalties, and interest accrued by the former owner or assignor.⁶

How to Obtain a Certificate

To obtain a certificate from the department stating that no tax is due, the taxpayer or an authorized representative must submit a Form 10523, "Tax Clearance Application," to the department. Oddly enough, one must check the box on that form for a letter of good standing to get the certificate required by Arizona law.

The department is required to respond to requests for letters of good standing within 15 days.⁷ Sometimes the department's only response within that time frame is to request additional information, and if the department must confirm payment of municipal sales taxes to a city or town that collected its own sales taxes before January 1, the process may take longer than it is supposed to.

Practice Tip!

Before closing on the acquisition of a business or stock of goods in Arizona, buyers and assignees should obtain a letter of good standing from the department stating that no tax is due. If the transaction must close before the buyer obtains the letter of good standing, the buyer should withhold enough from the purchase price to cover any taxes, penalties, and interest that could be due until the buyer obtains the letter. ■

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Be ready for what happens next.

⁶ *Id.*

⁷ Ariz. Rev. Stat. section 42-1110(B).