

## **Arizona Wayfair Law Perpetuates Some State/City Differences**

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In this installment of SALT From My Saddle, Busby highlights the differences that will remain between Arizona's state and city sales tax bases even after the provisions of H.B. 2757 that relate to economic nexus standards for remote sellers and marketplace facilitators go into effect.

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As noted in my last column,<sup>1</sup> Arizona recently amended its tax code to require remote sellers to remit sales tax on sales to in-state customers based on economic nexus, adopted marketplace facilitator provisions, and preempted localities from imposing retail sales taxes.<sup>2</sup>

The municipal preemption will dramatically simplify the tax structure for 91 cities and towns that currently impose retail sales taxes under their own tax codes. But even after these changes take

effect,<sup>3</sup> many differences between the state and local tax bases will remain.

### Exemptions and Optional Items

The only optional municipal-only sales tax exemption that the Legislature added to the sales and use tax statutes was for paintings, sculptures, or similar works of fine art sold by their original artist.

Lawmakers also permitted municipalities to impose sales and use taxes on up to 10 categories of items that the state exempts, including:<sup>4</sup>

1. food for home consumption sold by grocers, through vending machines, or by other types of retailers;
2. textbooks required by any state university or community college sold by bookstores;
3. propagative materials sold to those who use them to commercially produce agricultural, horticultural, viticultural, or floricultural crops in the state;<sup>5</sup>
4. livestock and poultry feed, salts, vitamins, and other additives for livestock or poultry consumption that are sold to persons for use or consumption by their own livestock or poultry; for use or consumption in the business of farming, ranching, and producing or feeding livestock, poultry, or livestock or poultry products; or for use or consumption in noncommercial boarding of livestock;

<sup>3</sup> Except as noted later, these changes will go into effect on October 1, 2019.

<sup>4</sup> Laws 2019, Ch. 273, section 11.

<sup>5</sup> This exemption will expire: (a) for cities and towns with a population of 50,000 or less beginning July 1, 2021; and (b) for cities and towns with a population of more than 50,000 beginning January 1, 2020.

<sup>1</sup> See James G. Busby Jr., "Arizona's Response to Wayfair Eliminates Municipal Retail Tax Codes," *Tax Notes State*, June 24, 2019, p. 1151.

<sup>2</sup> H.B. 2757 (now Laws 2019, Ch. 273).

5. implants used as growth promotants and injectable medicines — not already exempt under current law — for livestock or poultry owned by or in possession of persons engaged in producing livestock, poultry, or livestock or poultry products or engaged in feeding livestock or poultry commercially;<sup>6</sup>
6. neat animals, horses, asses, sheep, ratites, swine, or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in those animals used for breeding or production;<sup>7</sup>
7. nonmetalliferous mined minerals sold at retail;
8. works of fine art sold at an art auction or gallery in the state to nonresidents for use outside the state if the vendor ships or delivers the item to an out-of-state destination;
9. motor vehicles sold to nonresidents if the purchaser's state of residence does not allow a use tax exemption corresponding to Arizona's sales tax, and if the nonresident has secured a special 90-day nonresident registration permit for the vehicle — except tax does not apply if the purchaser takes possession of the vehicle outside the state;
10. motor vehicles sold to enrolled members of Indian tribes who reside on the Indian reservation established for their tribe, unless possession of the vehicle is received on the enrolled members' Indian reservation.

### Tax Trap Could Be Resolved

The optional municipal-only sales and use tax exemption for proceeds from sales of various artworks is in the retail tax statute, Ariz. Rev. Stat. section 42-5061. However, the

Legislature included all the options for municipalities to tax items not taxed by the state in a separate statute and did not reference them in Ariz. Rev. Stat. section 42-5061.

Lawmakers easily could resolve this trap for the unwary during the next legislative session by either adding a provision to Ariz. Rev. Stat. section 42-5061 that cross-references the other statute, or by moving those provisions into section 42-5061. ■

<sup>6</sup>This exemption will expire: (a) for cities and towns with a population of 50,000 or less, beginning July 1, 2021; and (b) for cities and towns with a population of more than 50,000 beginning January 1, 2020.

<sup>7</sup>This exemption will expire: (a) for cities and towns with a population of 50,000 or less beginning July 1, 2021; and (b) for cities and towns with a population of more than 50,000 beginning January 1, 2020.