

# AZ TPT & MULTISTATE SALES TAX ECONOMIC NEXUS 101



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# AGENDA

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1. Arizona's Transaction Privilege Tax regime
  - a. Broad overview of how the TPT rules operate
  - b. More detailed overview of common business activities
  
2. Multistate Sales Tax Economic Nexus
  - a. Introduction
  - b. Resources

# Transaction Privilege

## Tax

- aka “TPT”
- Excise Tax on the **privilege of doing business** in Arizona.
  - Liability on the seller.



# TPT Administration

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- **Arizona Department of Revenue**
  - State agency collects and administers TPT for the state, and all cities and counties.
    - Centralized “simplified” reporting.

# TPT Incidence

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- TPT is levied on **income derived by the seller.**
  - Seller legally allowed to pass on the economic expense of the tax on to the purchaser.
- Differs from “sales tax” where normally the liability of the tax lies on the consumer (purchaser) rather than the seller.

# TPT Classifications

Imposed under 16 **different business classifications**, each with its own set of separate and unique rules, based on “line of business.”

1. Retail
2. Transporting
3. Utilities
4. Telecommunications
5. Publishing
6. Job printing
7. Pipeline classification
8. Private car line
9. Commercial leasing\*
10. Transient lodging
11. Personal property rental
12. Mining
13. Amusement
14. Restaurant
15. Prime contracting\*
16. Online lodging marketplace

# TPT Classifications

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- If your business falls outside one of the enumerated taxable TPT business classifications, then your business would not be subject to the TPT.
- If your business activity falls under one of the enumerated TPT business classifications, then you have a registration and filing requirement.

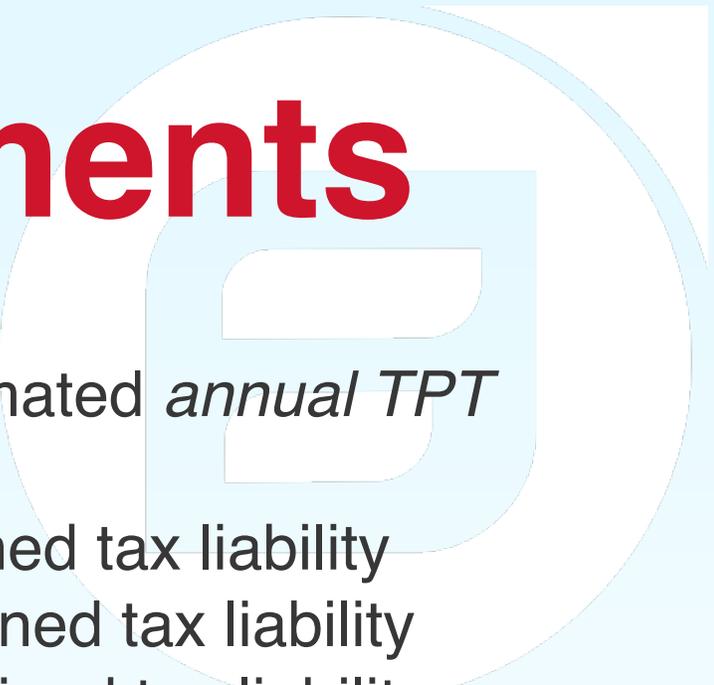
# TPT Registration

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- **Registration:**
  - **Online** registration process: <https://azdor.gov/transaction-privilege-tax/tpt-license/applying-tpt-license>
  - **Paper** registration: AZ Form JT-1 (Joint Tax Application)
- **TPT license fees**
  - State, currently = \$12; city = varies
  - Annual renewal required

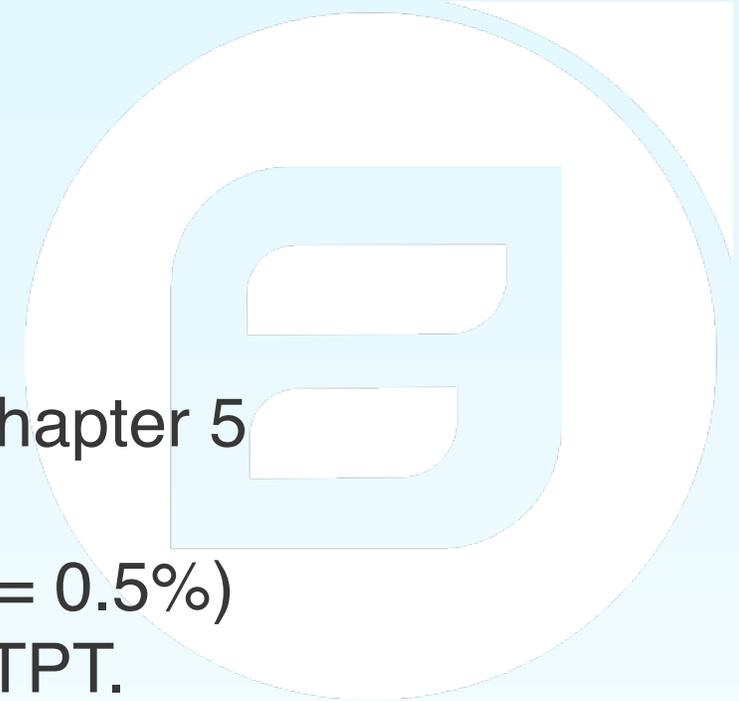
# TPT Filing Requirements



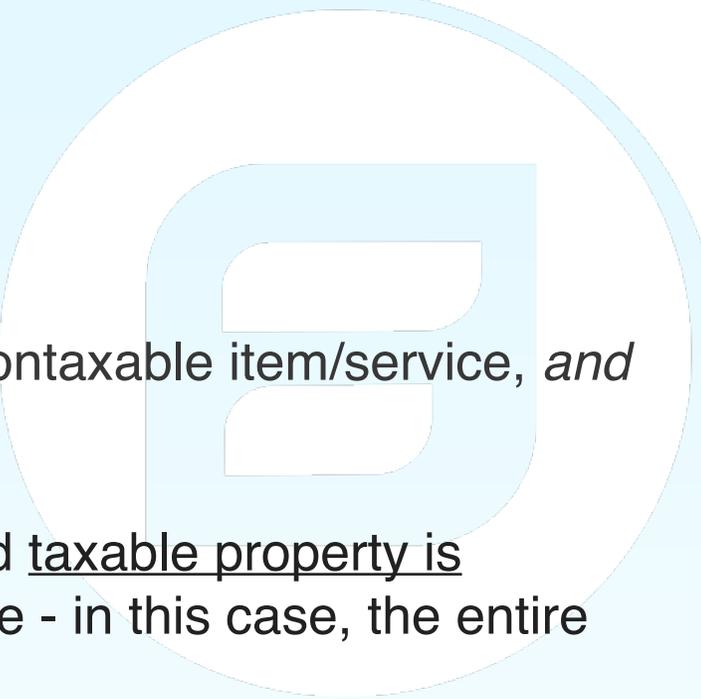
- **Filing Frequency:** determined by business's total estimated *annual TPT* liability:
  - **Annual:** Less than \$2,000 estimated annual combined tax liability
  - **Quarterly:** \$2,000 - \$8,000 estimated annual combined tax liability
  - **Monthly:** More than \$8,000 estimated annual combined tax liability
  - **Seasonal:** 8 months or less
- **Mandatory Online Filing:**
  - Effective 1/1/2021, businesses with an *annual TPT liability* of **\$500 or more** are required to file and pay their TPT electronically (note – this is reduction from previous threshold amount of \$5,000).

# TPT Components

- **State** (currently = 5.6%)
  - Authority: Arizona Revised Statutes, Title 42, Chapter 5
- **County** (currently, Retail: Maricopa = 0.7%; Pima = 0.5%)
  - Authority: Piggybacks the imposition of state's TPT.
    - All sales subject to state TPT, also subject to County TPT.
- **City** (currently, Phoenix = 2.3%; Tucson = 2.6%)
  - Authority: Model City Tax Code, Article IV
    - Most sales subject to state TPT, also subject to City TPT.
      - Rules & application depends on City where transaction takes place.

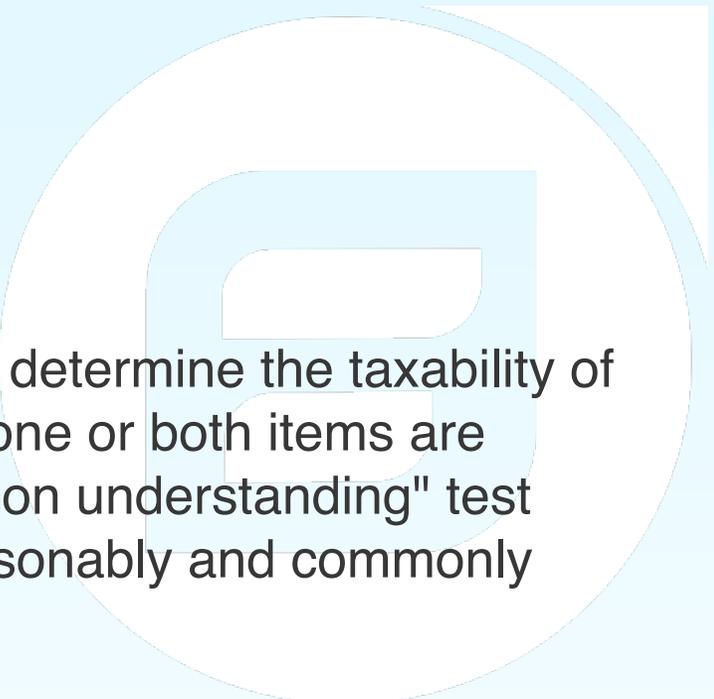


# Bundled Transactions



- **Bundled Transactions:** when a taxable item/service is sold with a nontaxable item/service, *and* charges for each are not separately stated.
  - (1) A non-taxable service is the **primary object** of the transaction and taxable property is incidental to the service or an **inconsequential** element of the service - in this case, the entire transaction is not taxable;
  - (2) Taxable tangible personal property is the **primary object** of the transaction and a non-taxable service is incidental to the property or an **inconsequential** element of the property - in this case, the entire transaction is taxable; or
  - (3) the property and the service are **distinct and consequential elements** of the transaction and can be separated - in this case, tax is due on the amount attributable to taxable items and is not due on amounts attributable to non-taxable services.

# Bundled Transactions



- **Dominant Purpose Test:** Arizona uses the dominant purpose test to determine the taxability of a bundled transaction where the items are not separable and where one or both items are incidental or inconsequential elements of the transaction. The "common understanding" test determines whether the transaction is more analogous to what is reasonably and commonly understood to be a sale of taxable goods or of services.
- Arizona uses the **de minimis percentage** to determine whether a service or property is an inconsequential element of a bundled transaction. An item is an inconsequential element if the *purchase price* of the property is less than fifteen percent of the charge of the entire transaction, the transfer of the property is not considered a retail sale, and the property is not separately stated on the invoice.

# Retail TPT Classification

**(016)**

- Comprised of the business of *selling tangible personal property (TPP) at retail.*
- “**TPP**” includes all *personal property* which can be *seen, weighed, measured, felt, touched, or in any other way perceived by the senses.*
- “**Sale**” is any transfer of title or possession.
- **Tax base** is the gross revenue from the business.

# Retail TPT Classification

**(016)**

## Common Deductions:

- **Sales for Resale** (Deduction Code 503)
  - Seller must keep record of Resale Exemption certificate (**Form 5000A**)
  - Download online: <https://azdor.gov/forms/tpt-forms/arizona-resale-certificate>
- **Out-of-State Sales** (Deduction Code 504)
  - Order came from outside AZ (e.g. online), delivered to address outside AZ (*document transaction details!*)

# Retail TPT Classification

(016)

## Common Misconceptions:

- **Wholesaler** is not required to be licensed or file TPT.
  - Business that sells TPP for resale still has to be licensed and report all revenues (taking a deduction for resale sales), and must collect exemption certificates from its customers.
- Blanket exemption for sales involving **nonprofits**.
  - *Limited* nonprofit retail exemptions:
    - Sales *by* 501c3 nonprofits (e.g. exclusively charitable, serves meals at no cost)
    - Sales *by* 501c6 nonprofits (organized/promotes cultural/civic festivals/events)
    - Sales *by* 501c3 nonprofits
  - Note – sales *to* a nonprofit/church/school are taxable unless otherwise exempt.

# Commercial Leasing TPT

(013)

- **City-level** tax only (no state/county rate applies).
- Applies to the business of *leasing real property* used by lessee for *commercial* purposes (e.g. office or shop space).
- **Tax base** includes *gross* revenue received by the lessor (e.g. rent, property tax reimbursements, insurance reimbursements, maintenance fees, improvements) but does *exclude* utility service reimbursement (e.g. water, gas, electric bill reimbursement).
- **Related-party exemption:** If lessor and lessee meet statutory criteria then rent not taxable.
  - 80% common ownership
  - Family relation

# Residential Leasing TPT

- **(045)** City-level tax only (no state/county rate applies).
- The following city do **not** tax residential rentals (*so all other cities do impose the tax*)
  - Bullhead City
  - Flagstaff
  - Globe
  - Lake Havasu City
  - Marana
  - Oro Valley
  - Payson
  - Quartzsite
  - Sedona
  - Safford
  - Show Low
  - Snowflake
  - Tucson
  - Tusayan
  - Willcox
  - Winslow

# Prime Contracting TPT

- **(015)** Consists of the business of *prime contracting* (and manufactured building dealers), and basically covers any contracting changes to real property.
  - As of January 1, 2019, does not include work by someone **not** required to be *licensed* by the *registrar of contractors*.
- Two construction categories:
  - “**Modification**”
  - “**MRRA**”
- **Tax Base** = gross revenue from contracting job, reduced by applicable deductions.

# Prime Contracting TPT

- **(015)** **Modification** construction projects - Taxable
  - “Ground up” construction, grading and leveling, wreckage or demolition activities or other new-build activities
    - Basically any construction activity that is not “MRRA”
- **General contractor’s** gross revenue is subject to Prime Contracting TPT
  - Subcontractor hired by the GC can be exempt if GC issues a **Form 5005** to the Sub
- Contractor on taxable project can purchase **materials** incorporated into the property exempt from the Retail TPT (Form

# Prime Contracting TPT

(015)

- Maintenance, Repair, Replacement, Alteration (**MRRA**) – *Not Taxable*
  - **Maintenance**: upkeep of existing real property
  - **Repair**: returning existing property to usable state
  - **Replacement**: removal of existing property and replacement with same/upgraded version of the removed property
  - **Alteration**: making direct physical change (e.g. adding or expanding square footage) to existing property, as long as contract amount is below:
    - 25% of property's full cash value (for residential property), or
    - \$750,000 (for commercial property)
- **Materials** purchases: Taxable

# Speculative Builder TPT

(016)

- **City-level** only tax (no state/county rate applies)
- Applies to the sale of *improved real property* by a speculative builder.
  - **Family residence exception:** generally, when seller used house as their primary family residence, then sale is not taxable.
- **Tax base** = *gross income* derived by seller (e.g. property's sale price on closing statement), with applicable *deductions*.
- **Timing:**
  - **Commercial buildings:** sold within 24 months of “substantial completion”
  - **Improved lots, residential property:** sold any time

# TPT Resources

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- **Arizona Department of Revenue**
  - **Rates Tables:** <https://azdor.gov/transaction-privilege-tax/tax-rate-table>
  - **Online Rate Look Up:** <https://www.aztaxes.gov/Home/Address/>
  - **Deduction Codes:** <https://azdor.gov/transaction-privilege-tax/deduction-codes>
- **Model City Tax Code:** [https://modelcitytaxcode.az.gov/Index/Article\\_IV.htm](https://modelcitytaxcode.az.gov/Index/Article_IV.htm)
  - **Local Options:** [https://modelcitytaxcode.az.gov/Option\\_Charts/option\\_charts.htm](https://modelcitytaxcode.az.gov/Option_Charts/option_charts.htm)

# Sales Tax Nexus

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- **Nexus** – Having sufficient contact with the state to be subject to the state’s taxing jurisdiction.
  - Varies by state, with limitations based on applicable federal law.
- Prior to *Wayfair* (i.e. prior to 2018), **physical presence** was required in order for sales tax nexus to be triggered.

# *Wayfair*

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- *South Dakota v. Wayfair Inc.*, 585 U.S. (2018).
  - Online **retailer** of tangible personal property
  - **No physical presence** in the taxing state
  - Substantial sales into the taxing state
  - SC is an **SST** member state



# Sales Tax Economic

## Nexus

- NEW (since 2018) sales tax nexus trigger based on “**economic presence**” when certain factors are met:
  - Annual **revenue** threshold (minimum \$100,000 sales), OR
  - Annual **transaction** threshold (minimum 200 transactions)
  - Note - Threshold amounts *vary* from state to state, but the minimum threshold that a state can have is based on the *Wayfair* facts.

Factor or Not:

- **Streamlined Sales Tax Agreement** signatory state

# Sales Tax Economic

## Nexus

- Applicable in nearly **every state**, *except*:
  - DE: no state sales tax anyway
  - **MO**: not adopted, so physical presence still required
  - **MT**: not adopted, so physical presence still required
  - NH: no state sales tax anyway
  - OR: no state sales tax anyway



# Multistate Sales Tax

## Resources

- **Streamline Sales Tax Governing Board:** <https://www.streamlinedsalestax.org/>
- **Contact SALT specialist:** [mhaddad@beachfleischman.com](mailto:mhaddad@beachfleischman.com)
- **Contact sales tax compliance providers:** Avalara is most popular (no affiliation/benefit) <https://www.avalara.com/us/en/index.html>
- **Voluntary Disclosure Agreement** to bring back periods into compliance (varies by state)



# **Thank** you!

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