

# SELF-STORAGE & SALES TAX AN OVERVIEW\*



**ARIZONA HAS NO SALES TAX!** (Pssst . . . it's TPT).

Most jurisdictions have a tax on purchases or sales in the form we commonly think of as "sales tax." Not Arizona. We have what's known as a "Transaction Privilege Tax," or "TPT" for short.

**What's the difference? In the end it's still a tax on purchases or sales, right?**

Not exactly. It's really a tax on the privilege of doing business in Arizona. As such, the tax is imposed on and must be paid by *the business*.

**Whoa! That doesn't sound right. When we go to a bookstore, for example, and buy a book, we as purchasers have to pay the tax.**

It is right. The law allows businesses to pass the tax through to the consumer. That's why you and I pay tax, but in the end, the Arizona Department of Revenue ("DOR") looks to the business to remit the right amount of tax.

## THE RIGHT AMOUNT OF TAX

**What does it mean: "The DOR looks to the business to remit the right amount of tax"?**

Basically, the DOR doesn't care if a business does pass the tax through to its customers or not, or even if the business charges the correct tax rate. All it cares about is that the business remit the correct amount when it reports and pays the tax to the government. Three examples will make this clear (in each case, assume the tax rate to be applied is 8.1% and that the business does \$1000 in business that month):

**Example 1:** Business ignores tax altogether, and adds no "sales tax" on to its transactions.

As far as DOR is concerned, when the business collected \$1000, some of that was tax. DOR expects that the business will report:

Sales	\$925.07
Tax	74.93

and will mail a check in with its tax return for \$74.93. It's not the DOR's fault that the business failed to charge and collect tax. That's the business's problem.

**Hey, how did you figure out what part of that \$1000 was tax?**

Easy. See the page enclosed entitled, "So How Much of That Payment is Tax?"

**Example 2:** Business tries to do the right thing but applies the wrong rate, one that is too low, let's say 8% instead of 8.1%.

That means that when the business did \$1000 worth of transactions, it also charged and collected tax on those at the rate of 8%. It therefore collected \$1080. Had the business applied the correct tax rate, it would have taken in \$1081. All the DOR cares about is that when the business reports and pays its tax, the correct amount is used. The DOR is looking for \$81. Once again, it's not the DOR's fault that the business failed to collect the correct tax. That's the business's problem.

**Example 3:** Business tries to do the right thing but applies the wrong rate, one that is too high, let's say 8.5% instead of 8.1%.

That means that when the business did \$1000 worth of transactions, it collected \$1085. There is a

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\* Adapted from a presentation by Richard Marmor, Chair, AZSA Legal & Legislative Committee, May 7, 2004

special rule: **Whatever a business collects in the name of tax, it must pay in as tax.** In other words, a business cannot profit by charging too much tax. Thus even though the correct tax should have been \$81, since the business collected \$85 as tax, it must report and pay in the whole \$85. The extra \$4 is called “surplus tax.” Think about it; it has to be done this way. Otherwise businesses everywhere would be intentionally miscalculating tax to increase their profits.

## **YES, ON MINI-STORAGES, TOO.**

**I never heard of mini-storages being liable for sales tax...er, TPT...whatever it's called.**

If you had never heard of the income tax, would that mean you didn't have to pay it?

**Where is it written that mini-storage has to charge/pay the tax?**

It's the other way around. The law says that ALL BUSINESSES have to pay TPT unless the business is listed in the law as being exempt from tax. Attached are copies of some of the TPT laws that apply. Trust me; there's no exclusion for mini-storage.

## **WHAT IS TAXED? (YOU MEAN WHAT ISN'T?)**

In a word, EVERYTHING. Every dollar of revenue a business takes in, regardless of what the business calls it, is taxable.

**What about late fees or cut-lock fees?**

Every dollar of revenue a business takes in, regardless of what the business calls it, is taxable.

**Rents?**

Every dollar of revenue a business takes in, regardless of what the business calls it, is taxable.

**Proceeds from auction sales?**

Every dollar of revenue a business takes in . . . see a pattern here?

There are folks who try to argue from time to time that revenues from special transactions like late fees or from our auctions either should not be taxed, or should somehow be taxed differently. For them, I have included the pages: “Extract From an Opinion Letter...From D.O.R....,” and “A Conversation with Pat Derdenger,” noted tax authority.

There is **ONE EXCEPTION:** Note that the rule applies to “revenues” taken in by a business. **A refundable deposit** like a security deposit is not actually revenue to the business. It is a liability. In theory the money still belongs to the tenant and is to be given back some day. However, if the tenant defaults, and loses his/her deposit, at that moment, the deposit converts to revenue, and becomes taxable.

Bottom line: on every transaction, whether that's charging rent, collecting a fee, reversing a bounced check, giving a refund of prepaid rent, etc., always think about and book the tax portion.

## **SO WHAT RATE AM I TO APPLY?**

That depends... Think about the last time you shopped at a supermarket. We all know that the sales tax you would be charged at a Safeway store in Yuma would be a different amount than you would be charged at a Safeway store in Phoenix. We also know that there is no tax on food, so at the check-out, you would be charged \$0 tax on the food part of your bill, and regular, retail tax on the

magazines, toiletries and other non-food items. It is thus clear that two things effect the rate:

Where the business is situated  
What the nature of the sale is

**Where the business is situated**

Most business locations are subject to three taxing authorities: the state, the county and the city. You can find most of those rates on line or you can call the Arizona Department of Revenue to obtain current tax rates. The DOR collects the tax for the state, of course, and it provides collection services for the counties as well as for the majority of Arizona cities, too. **IMPORTANT:** Jurisdictions change tax rates from time to time. Check!

**What the nature of the business is**

Our principal business is leasing space. That activity is categorized as **“Commercial Leasing”** (Class 13) under the TPT tax code. All rents fall under that category. So do all other charges relating to the business rentals, including ALL fees.

One nice feature: About 10 years ago, the State of Arizona repealed the tax on commercial leasing. Therefore the *state* tax rate on Commercial Leasing is 0.

Our secondary business is selling stuff, like padlocks and boxes. That is considered to be **“Retail,”** (class 17) just like at Walgreens or Home Depot. **CAUTION:** Auction sales of our tenant’s property are retail sales too. (If you doubt that one, see the attached page entitled “A Tax Conversation with Pat Derdinger.”)

**You need to find all 6 tax rates**

	Com'l Leasing Class 13 including all fees	Retail Class 17	Example: Phoenix**	
			Com'l Leasing Class 17 including all fees	Retail Class 13
State of Arizona	0	_____	0.0%	5.6%
Your County	_____	_____	0.5%	0.7%
Your City	_____	_____	<u>1.8%</u>	<u>1.8%</u>
Totals	_____	_____	2.3%	8.1%

**THE LAST WORD**

Fortunately, today the overwhelming majority of businesses are collecting and remitting the TPT tax. Be thankful if you are not one of that small handful of businesses that have failed to play by the rules on the theory that it hasn’t hurt them yet. Eventually they’ll be audited. The DOR will examine their records going back 4-5 years. They will be assessed every dollar of tax that went unpaid, plus interest and penalties, all amounting to thousands of dollars.

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\*\* At Jan.1, 2007. Rates subject to change.