

# Sales Tax Tax Exemption Qualifications & Required Documentation

Sales tax is really called a Transaction privilege tax and is a tax imposed on the privilege of conducting business in the State of Arizona; A.A.C. R15-5-2002. This tax is levied on the vendor (selling dealer), not the purchaser. The dealer may pass the burden of the tax on to the purchaser; however, the vendor is ultimately liable to pay the tax; A.A.C. R15-2210.

The tax base is the gross proceeds of sales or gross income derived from the business. The tax is calculated on the base minus any state allowed deductions or exemptions. The Arizona revised statutes provides the rules for the allowed exemptions. In order to establish entitlement to any of the transaction privilege tax exemptions, a purchaser must provide a certificate to the dealer, citing the basis for the exemption. However, the “burden of proof” remains on the seller to determine if the exemption certificate can be “accepted in good faith”.

The Arizona department of revenue has issued general exemption certificates which are required in documenting a transaction that is not subject to the transaction privilege tax. To relieve the dealer from the liability of tax; the rules stipulate that the dealer is required to maintain the original certificates on file as part of the dealer’s records, along with any additional documentation (burden of proof) that supports the exemption from tax. Further, these documents must held on file for 6 years; A.R.S 42-1105.

Website for sales tax information: <http://www.revenue.state.az.us/>

# STATE OF ARIZONA

Department of Revenue



## ARIZONA TRANSACTION PRIVILEGE TAX PROCEDURE TPP 08-1

Janet Napolitano  
Governor

Procedure for Documenting Nontaxable Sales of Motor Vehicles  
To Nonresidents and Native Americans

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Director

### **ISSUE:**

This procedure provides guidance regarding the taxability of Arizona sales of motor vehicles to nonresidents and Native Americans, and explains the documentation necessary for sales that qualify for a statutory deduction.

### **APPLICABLE LAW:**

Arizona Revised Statutes ("A.R.S.") § 42-5061 *Retail classification*, imposes transaction privilege tax on the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. Income derived from sales of tangible personal property is subject to the transaction privilege tax under the retail classification unless a statutory deduction from the tax base applies. Of the following five deductions under the retail classification, four may apply to income derived from sales of motor vehicles to nonresidents of Arizona, and a separate deduction may apply to income derived from the sale of a motor vehicle to a Native American:

A.R.S. § 42-5061(A)(14) provides a deduction from a retailer's tax base for income derived from "[s]ales to nonresidents of this state for use outside this state if the vendor ships or delivers the tangible personal property out of this state."

A.R.S. § 42-5061(A)(28)(a) provides a deduction for income derived from the sale of a motor vehicle to "[a] nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by §§ 28-2154 and 28-2154.01."

A.R.S. § 42-5061(A)(28)(b) provides a deduction for income derived from the sale of a motor vehicle to "[a]n enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe."

A.R.S. § 42-5061(A)(45) provides a deduction for income derived from "[s]ales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicle passes or its free on board point."

A.R.S. § 42-5061(U) provides that for sales of motor vehicles to nonresidents from certain states, a deduction from the tax base is allowed so that the amount of state transaction privilege tax that applies to the sale is the same as the state excise tax that would apply in the purchaser's state, as follows:

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In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser's state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser's state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser's state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall be deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

A.R.S. § 1-215(38) provides that the term "state," as used in the statutes and laws of Arizona, includes the District of Columbia and the territories.

A.R.S. § 42-5009 *Certificates establishing deductions; liability for making false certificate*, addresses certificates used to document a seller's entitlement to a statutory deduction from tax, and penalties that apply to false certificates. A.R.S. § 42-5009(I) authorizes the Arizona Department of Revenue to prescribe certificates that may establish the qualifying criteria for the statutory deductions applicable to sales of motor vehicles to nonresidents provided by A.R.S. § 42-5061, paragraphs (A)(14), (A)(28)(a), (A)(45), and subsection (U). To establish entitlement to these deductions, a motor vehicle seller shall retain all of the following:

- 1) A valid certificate, as prescribed by the Department, that is completed by the purchaser and obtained prior to the issuance of the nonresident registration permit authorized by A.R.S. § 28-2154;
- 2) A copy of the special ninety-day nonresident registration permit issued pursuant to A.R.S. § 28-2154;
- 3) A legible copy of a current valid driver's license issued to the purchaser by another state or foreign country that indicates an address outside of Arizona. (For the sale of a motor vehicle to a nonresident entity, the entity's representative must have a valid driver's license issued by the same jurisdiction as that in which the entity is located.)
- 4) For the purposes of the deduction provided by A.R.S. § 42-5061(A)(14), a Department certificate documenting the delivery of the motor vehicle to an out-of-state location.

A.R.S. § 42-5009, subsection (K) provides that a motor vehicle dealer's compliance with subsection (I) of this statute will also entitle the dealer to the city privilege tax exemption provided by A.R.S. § 42-6004(A)(4).

A.R.S. § 42-6004 *Exemption from municipal tax*, paragraph (A)(4), provides an exemption from city privilege tax and city use tax for income derived from "[s]ales of motor vehicles to

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nonresidents of this state for use outside this state if the vendor ships or delivers the motor vehicle to a destination outside this state.”

A.R.S. § 42-5009(J) authorizes the Department to require the nonresident purchaser of a motor vehicle to establish the accuracy and completeness of the information provided in the certificate prescribed by A.R.S. § 42-5009(I). If the purchaser cannot prove the accuracy and completeness of this information, the purchaser will be liable for an amount equal to the state transaction privilege tax, county excise tax, and city privilege tax that would have applied to the income derived from the original sales transaction, plus penalties and interest.

A.R.S. § 28-2154 *Special registrations*, provides that a nonresident who purchases an unregistered vehicle in this state for removal to the state of residence of the purchaser shall obtain a special ninety day nonresident registration permit for the vehicle. This special registration may be obtained by application to a motor vehicle dealer, the payment of fees, and the completion of a nonresident affidavit. If a nonresident purchaser has completed the Arizona Department of Revenue certificate prescribed by A.R.S. § 42-5009(I) that is required for the tax deduction, this certificate will substitute for the nonresident affidavit required by A.R.S. § 28-2154.

A.R.S. § 28-2154(C) provides that an enrolled member of an Indian tribe, who resides on the Indian reservation established for that tribe and who purchases an unregistered vehicle in Arizona for removal to the Indian reservation, shall obtain a special ninety day nonresident registration permit for the vehicle. The motor vehicle dealer is not required to obtain a nonresident affidavit or a certificate prescribed by A.R.S. § 42-5009(I) before issuing the nonresident registration permit if the enrolled tribal member resides on an Indian reservation located within Arizona.

A.R.S. § 28-2154.01(H) states that if a motor vehicle purchaser registers the vehicle in Arizona within 365 days after the issuance of the special ninety day nonresident registration permit, the purchaser is liable in an amount equal to any tax, penalty and interest that the motor vehicle dealer would have been required to pay under title 42, chapter 5 and under articles IV and VI of the Model City Tax Code. At the time of issuing the special ninety day nonresident registration permit, a motor vehicle dealer or authorized third party shall inform the purchaser in writing of the purchaser's liability.

The *Servicemembers Civil Relief Act of 2003*<sup>1</sup> allows a nonresident member of the Army, Navy, Air Force, Marine Corps, Coast Guard or other commissioned corps who is stationed at a military facility in Arizona to retain his nonresident status for tax purposes in regard to any personal property brought into Arizona. 50 U.S.C. App. § 571 *Residence for tax purposes*, states in pertinent part:

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<sup>1</sup> Public Law 108-189, 50 United States Code App. §§ 501-596; which updated the *Soldiers and Sailors Civil Relief Act of 1940*.

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- (a) RESIDENCE OR DOMICILE. - A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

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- (f)(2) TAXATION. - The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

A.R.S. § 42-1125 provides for civil penalties with regard to the intent to evade tax.

A.R.S. § 42-1127 describes criminal violations with regard to false or fraudulent documents.

### **INTRODUCTION:**

This procedure describes the statutory deductions under the retail classification that may apply to the sale of a motor vehicle to a nonresident of Arizona or a Native American, and provides specific guidance about the proper documentation that will substantiate the seller's entitlement to the deduction. The following categories of motor vehicle sales are addressed in this procedure:

- 1) Sales to nonresidents from other U.S. states that do not provide "reciprocity."
- 2) Sales to nonresidents from other U.S. states that do provide "reciprocity" and either have a lower state tax rate than Arizona's 5.6% transaction privilege tax rate or do not impose a tax on the purchase of a motor vehicle.
- 3) Sales to nonresidents from other U.S. states that do provide "reciprocity," but have a state tax rate that is higher than Arizona's 5.6% transaction privilege tax.
- 4) Sales to nonresidents for use outside of Arizona when the seller delivers the vehicle to an out-of-state location.
- 5) Sales at auction to nonresidents for use outside of Arizona if the vehicle is shipped or delivered outside this state.
- 6) Sales to nonresidents from other countries.
- 7) Sales to nonresident entities.
- 8) Sales to nonresident military personnel stationed in Arizona.
- 9) Sales to enrolled Native Americans residing on a reservation located within Arizona established for the Native American's tribe.
- 10) Taxable sales to nonresidents and Native Americans.

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pertinent to the **state** transaction privilege tax statutory deductions discussed below; this issue has no relevance to the exemption from **city** privilege tax addressed in Category 4.

### **DEPARTMENT CERTIFICATES:**

A.R.S. § 42-5009 authorizes the Arizona Department of Revenue ("Department") to prescribe forms for certificates used to document information to establish entitlement to deductions from the tax base. Pursuant to A.R.S. § 42-5009, subsections (C) and (I), the Department has prescribed the following certificates that may be used to establish the necessary criteria for the deductions provided by A.R.S. § 42-5061, paragraphs (A)(14), (A)(28)(a), (A)(28)(b), (A)(45), and subsection (U). If a motor vehicle seller seeks to establish entitlement to an exemption or deduction through the use of a certificate that is not prescribed by the Department or other documentation that is not addressed by this procedure, the burden of proof will remain with the motor vehicle seller as to the validity of the claimed deduction or exemption.

#### ***Nonresident Certificates:***

**Form 5011 - Certificate to Establish Residency in Another U.S. State**

**Form 5012 - Certificate to Establish Residency in a Foreign Country**

These certificates require the seller to provide pertinent information about the motor vehicle, the amount of the sale, and the purchaser's driver's license. The nonresident purchaser is then required to complete the certificate by providing information about the purchaser's out-of-state residence and auto insurance. The purchaser must answer a series of questions to ensure that the purchaser does not qualify as a resident of Arizona, and must sign the "Affirmations of Purchaser" statement on the second page of the certificate.

For sales to nonresidents of Arizona in which the income is fully deductible from a retailer's tax base (or partially deductible pursuant to A.R.S. § 42-5061(U) discussed in Category 2 below), all persons listed as buyers on the sales documents must separately qualify as nonresidents of Arizona by providing the proper documentation and completing a Form 5011 or Form 5012.

#### ***Certificate for Sale to a Native American:***

**Form 5013 - Certificate to Establish Native American Status and Residence on Arizona Reservation**

This certificate is completed by the Native American purchaser, and co-purchaser if applicable. If the co-purchaser of the vehicle is not an enrolled member of a Native American tribe residing on the Arizona reservation established for that tribe, 50% of the net sales price is subject to the state's transaction privilege tax. The purchaser(s) must sign the certification statement at the bottom of the certificate.

***Out-of-State Delivery Certificate:***

**Form 5010 - Certificate to Establish Out-of-State Delivery of Motor Vehicle to Nonresident**

This certificate is required to document the seller's out-of-state delivery of a motor vehicle to a nonresident purchaser, pursuant to A.R.S. §§ 42-5061(A)(14) and 42-6004(A)(4). If the seller or the seller's agent is personally delivering the vehicle to the nonresident purchaser, the form must be completed and then signed by both parties and notarized in the state of delivery. If the seller instead contracts with a licensed auto transporter or common carrier for the delivery of the vehicle to an out-of-state location, the seller may complete the form and have it witnessed by an Arizona notary public, but must maintain the bill of lading and any other documentation that confirms the out-of-state delivery. For this latter situation, the purchaser is not required to sign Form 5010.

The appropriate use of Form 5010 in conjunction with Form 5011 or Form 5012 will also entitle a motor vehicle dealer to the city privilege tax exemption provided by A.R.S. § 42-6004(A)(4).

To monitor the appropriate use of Form 5010 and the applicability of the state and city tax exemptions, the Department requests that motor vehicle sellers submit copies of Form 5010 certificates<sup>5</sup> utilized in out-of-state deliveries to the *Nonresident Motor Vehicle Program* of the Transaction Privilege Tax Audit Division on a quarterly basis. Arizona **Form 5010Q** should be used to summarize the Arizona Form 5010 certificates submitted to the Department.

These certificates will be treated as confidential information supplied to the Department and will not be disclosed to other motor vehicle sellers. Submitting copies of these certificates to the Department does not relieve the motor vehicle seller of compliance with all other provisions of A.R.S. § 42-5009 and this procedure. The motor vehicle seller is required to maintain the original certificates on file as part of the seller's records plus any additional documentation that supports the deduction from tax.

***Consequences with Regard to False or Inaccurate Certificates***

Substantial penalties and other statutory provisions govern the inappropriate or fraudulent use of Forms 5010, 5011, 5012, or 5013, and may apply to the motor vehicle seller and/or the purchaser. If the motor vehicle seller has complied with all statutory provisions, the requirements of this procedure and Arizona Transaction Privilege Tax Procedure TPP 00-3, A.R.S. § 42-5009 provides that the seller is relieved of liability and the purchaser can be held liable for an amount equal to any tax, penalty and interest that the motor vehicle dealer would have been required to pay. A.R.S. § 42-1125 imposes civil penalties that may apply to the motor vehicle dealer under certain circumstances. A.R.S. § 42-1127 describes criminal violations that may apply with regard to false or fraudulent documents.

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<sup>5</sup> The related Form 5011 (or 5012) certificate should be attached to each submitted Form 5010.

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### ***State transaction privilege tax; county excise tax***

Arizona's transaction privilege tax differs from the sales tax imposed by most states. It is a tax on the privilege of conducting business in the State of Arizona and is imposed on the seller's gross proceeds of sales or gross income derived from the business. The seller may pass the economic burden of the tax on to the purchaser, but the seller is ultimately liable to Arizona for the transaction privilege tax. The transaction privilege tax is imposed under sixteen separate business classifications, including the retail classification which imposes the transaction privilege tax on income derived from sales of tangible personal property at retail. Additionally, county excise taxes "piggyback" the imposition of the state's transaction privilege tax. All sales that are subject to the transaction privilege tax are also subject to applicable county excise taxes.

### ***City privilege tax***

The imposition of city privilege taxes is separate and distinct from the imposition of the state's transaction privilege tax. The League of Arizona Cities and Towns created the *Model City Tax Code* ("MCTC") for the imposition and administration of city privilege taxes and city use taxes. All Arizona cities utilize the MCTC in the imposition of their city privilege taxes and city use taxes. A.R.S. § 42-6004(A)(4) and MCTC § 460(L) jointly provide an exemption from city privilege tax for income derived from "sales of motor vehicles to nonresidents of this state for use outside this state if the vendor ships or delivers the motor vehicle to a destination outside this state." For all other sales of motor vehicles to nonresidents when the nonresident takes possession of the vehicle in Arizona, there is no exemption from city privilege tax.

### ***Reciprocity***<sup>2</sup>

"Reciprocity" refers to the way a state will tax its residents' purchases in another state. Like most other states, Arizona imposes a state use tax<sup>3</sup> on the purchaser of a motor vehicle that is bought in another state and then registered in Arizona. Also, like many other states, Arizona use tax provisions allow a "credit" for the amount of state tax paid to a retailer in the state of purchase. This credit is applied against the purchaser's Arizona use tax liability. By this means, the total amount of state tax that is paid by the Arizona purchaser will at least equal the 5.6%<sup>4</sup> Arizona transaction privilege tax rate, thereby protecting Arizona vendors. Other states that 1) have similar taxes and 2) provide credit for the amount of state tax their residents pay to out-of-state retailers, are considered to provide "reciprocity" with states that have similar credit provisions. Providing reciprocity does not mean that there is a transfer of taxes between states. Additionally, whether a nonresident's state provides reciprocity is only

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<sup>2</sup> This term is relevant for several of the exemptions from tax discussed in this procedure (See Categories 1, 2, and 3).

<sup>3</sup> The Arizona use tax was enacted to protect Arizona vendors that are subject to the state's transaction privilege tax from unfair competition with vendors in states that either have lower tax rates than Arizona or do not impose an excise tax. As of 2008, both the Arizona transaction privilege tax and the Arizona use tax are imposed at the rate of 5.6%.

<sup>4</sup> Or the Arizona transaction privilege tax and use tax rate currently in effect, if that rate has changed.



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### DISCUSSION AND PROCEDURE:

The statutory deductions discussed in this procedure apply only to retail sales of motor vehicles to nonresidents and Native Americans. These deductions do not apply to rentals or leases of motor vehicles. The following category listings contain references to issues discussed in the Introduction section, and may cross reference to other categories:

<b>Category 1) Sales to nonresidents from other U.S. states that do not provide "reciprocity."</b>
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A.R.S. § 42-5061(A)(28)(a) provides a deduction for income derived from "[t]he sale of a motor vehicle to . . . a nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01."

This deduction applies to the sale of a motor vehicle in Arizona to a nonresident who resides in a state that does not provide "reciprocity" (discussed above). The Department's website provides a **listing** of the states that do not provide reciprocity.

Sales to nonresidents from the listed nonreciprocal states are exempt from Arizona state transaction privilege tax and associated county tax(es) that apply to the sale of a motor vehicle in Arizona, but are not exempt from the imposition of city privilege taxes. To qualify for this statutory deduction, the motor vehicle seller must retain:

- 1) A Form 5011 completed by each purchaser. (The seller must provide the Section 1 information.) This form must be obtained prior to the issuance of a nonresident registration permit.
- 2) A copy of the special ninety-day nonresident registration permit issued pursuant to A.R.S. §§ 28-2154 and 28-2154.01. At the time of issuing a nonresident registration permit, the seller shall inform the purchaser in writing of the purchaser's liability if the motor vehicle is registered in Arizona within 365 days.<sup>6</sup>
- 3) A legible copy of a current valid driver's license issued to each purchaser by another U.S. state indicating an address outside of Arizona.

If the nonresident purchaser registers the vehicle in Arizona within 365 days after the issuance of the special ninety-day nonresident registration permit, the purchaser is liable for an amount equal to the state transaction privilege tax and county excise tax that the seller

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<sup>6</sup> If a motor vehicle seller provides a copy of the completed Form 5011 or 5012 to the nonresident purchaser, this will serve as the seller's notification to the purchaser of the purchaser's potential liability.

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would have been required to pay on a taxable sale, plus applicable penalties and interest computed from the date of sale.

**Category 2) Sales to nonresidents from other U.S. states that do provide “reciprocity,” and either have a lower state tax rate than Arizona’s 5.6% transaction privilege tax rate or do not impose a tax on the purchase of a motor vehicle.**

A.R.S. § 42-5061(U) provides a deduction for income derived from the sale of a motor vehicle to a resident of a U.S. state that provides reciprocity (discussed above), if that state either has a lower state tax rate than Arizona’s 5.6% transaction privilege tax rate or does not impose an excise tax on the purchase of a motor vehicle. The Department’s website provides a **listing** of these states and their respective tax rates.

For a nonresident from one of these states, the deduction provided by A.R.S. § 42-5061(U) causes the amount of Arizona state transaction privilege tax that applies to the motor vehicle sale to be equal to the state tax amount that would apply in the nonresident’s state to a nonexempt motor vehicle sale.<sup>7</sup> Because the nonresident’s state provides reciprocity and will therefore allow a credit for the amount of Arizona transaction privilege tax paid, there should not be a state tax liability in the nonresident’s state when the motor vehicle is registered for use in that state. However, the nonresident may be liable for local or jurisdictional taxes or fees that may apply upon the registration of the vehicle in the state of residence.

The deduction provided by A.R.S. § 42-5061(U) reduces the retailer’s tax base. The Arizona county excise tax that “piggybacks” the imposition of the state transaction privilege tax will then apply to the reduced tax base and will be proportionately decreased.

To assist motor vehicle sellers in the tax computation process for sales to nonresidents under A.R.S. § 42-5061(U), the Department’s website provides **worksheets** that will compute the amounts of Arizona transaction privilege tax and county excise tax that apply. The worksheets will also compute the amount of the deduction that is taken on the *Transaction Privilege, Use, and Severance Tax Return* (Form TPT-1) for each sale. A motor vehicle seller should review the computations and disclaimers regarding the use of the worksheets.

The state transaction privilege tax deduction provided by A.R.S. § 42-5061(U) has no effect on the city privilege tax that applies to the gross income derived from the sale. City privilege tax will apply in full to the net sales price of the motor vehicle pursuant to MCTC provisions.

To qualify for this statutory deduction, the motor vehicle seller must retain:

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<sup>7</sup> Exemptions from tax that may be available to a nonresident purchaser in his or her state of residence do not apply in Arizona. For example, while a nonresident’s state may provide a tax exemption for the sale of a motor vehicle to an astronaut, this exemption (deduction) is not found in Arizona transaction privilege tax statutes. For the sale of a motor vehicle under A.R.S. § 42-5061(U), the Arizona motor vehicle seller is not collecting the tax of another state and the Department does not transmit this tax to another state.

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- 1) A **Form 5011** completed by each purchaser. (The seller must provide the Section 1 information.) This form must be obtained prior to the issuance of a nonresident registration permit.
- 2) A copy of the special ninety-day nonresident registration permit issued pursuant to A.R.S. §§ 28-2154 and 28-2154.01. At the time of issuing a nonresident registration permit, the seller shall inform the purchaser in writing of the purchaser's liability if the motor vehicle is registered in Arizona within 365 days.<sup>8</sup>
- 3) A legible copy of a current valid driver's license issued to each purchaser by another U.S. state, indicating an address outside of Arizona.
- 4) A copy of the worksheet used to determine the reduced tax amount.

If the nonresident purchaser registers the vehicle in Arizona within 365 days after the issuance of the special ninety-day nonresident registration permit, the purchaser is liable for an amount equal to the state transaction privilege tax and county excise tax that the seller would have been required to pay on a taxable sale, plus applicable penalties and interest computed from the date of sale. (Credit is allowed for any tax that was paid at the time of sale.)

<b>Category 3) Sales to nonresidents from other U.S. states that do provide "reciprocity," but have a state tax rate that is <u>higher</u> than Arizona's 5.6% transaction privilege tax rate.</b>
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A.R.S. § 42-5061(U) does not apply to the sale of a motor vehicle to a resident from a reciprocal state that has a higher state tax rate than Arizona's 5.6% transaction privilege tax rate. Therefore, when a nonresident from one of these states purchases and takes delivery of a motor vehicle in Arizona, there is no applicable statutory deduction that would provide an exemption from transaction privilege tax. However, because the nonresident's reciprocal state will provide a credit against its excise tax for the amount of state transaction privilege tax that was paid to the Arizona motor vehicle dealer, only the balance of tax will be owed to the nonresident's state. A **listing** of the reciprocal states that have higher tax rates than Arizona's 5.6% transaction privilege tax rate is available on the Department's website.

<b>Category 4) Sales to nonresidents for use outside of Arizona when the seller delivers the vehicle to an out-of-state location.</b>
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<sup>8</sup> See footnote 6 on page 8.

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A.R.S. § 42-5061(A)(14) provides a deduction for income derived from “[s]ales to nonresidents of this state for use outside this state if the vendor ships or delivers the tangible personal property out of this state.” This deduction may apply to the sale of a motor vehicle to a nonresident from another U.S. state or foreign country if the seller obtains proper documentation from the nonresident and the seller maintains documentation of the delivery of the vehicle to an out-of-state location. If the purchaser independently arranges for the delivery of the vehicle to an out-of-state location, this statutory deduction will not apply.

Virtually identical to the state transaction privilege tax statutory deduction, A.R.S. § 42-6004(A)(4) and MCTC § 460(L) jointly provide an exemption from city privilege tax for income derived from “sales of motor vehicles to nonresidents of this state for use outside this state if the vendor ships or delivers the motor vehicle to a destination outside this state.” A.R.S. § 42-5009(K) provides that a motor vehicle dealer’s compliance with state documentation requirements with regard to the transaction privilege tax deduction provided by A.R.S. § 42-5061(A)(14) will entitle the dealer to the city privilege tax exemption provided by A.R.S. § 42-6004(A)(4).

To qualify for the state transaction privilege tax and city privilege tax exemptions, the motor vehicle seller must retain:

- 1) A **Form 5011** or **Form 5012** completed by each purchaser. (The seller must provide the Section 1 information.) This form must be obtained prior to the issuance of a nonresident registration permit.
- 2) A copy of the special ninety-day nonresident registration permit issued pursuant to A.R.S. §§ 28-2154 and 28-2154.01. At the time of issuing a nonresident registration permit, the seller shall inform the purchaser in writing of the purchaser’s liability if the motor vehicle is registered in Arizona within 365 days.<sup>9</sup>
- 3) A legible copy of a current valid driver’s license issued to each purchaser by another U.S. state or foreign country indicating an address outside of Arizona.
- 4) A properly completed Form 5010 notarized in the state of delivery of the motor vehicle. (If the motor vehicle seller contracts with a licensed auto transporting business or common carrier to deliver the vehicle out-of-state, Form 5010 may be completed by the seller at the point of delivery to the licensed auto transporting business or common carrier, and this form can be notarized in Arizona. The bill of lading and any additional documentation confirming the delivery out-of-state must be maintained by the seller.)

If the nonresident purchaser registers the vehicle in Arizona within 365 days after the issuance of the special ninety-day nonresident registration permit, the purchaser is liable for an amount equal to the state transaction privilege tax, county excise tax and city privilege tax that the seller would have been required to pay on a taxable sale, plus applicable penalties and interest computed from the date of sale.

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<sup>9</sup> See footnote 6 on page 8.

**Category 5) Sales at auction to nonresidents for use outside of Arizona if the vehicle is shipped or delivered outside this state.**

A.R.S. § 42-5061(A)(45) provides a deduction for income derived from “[s]ales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.” This deduction may apply to the sale of a motor vehicle to a nonresident from any U.S. state or foreign country if the seller obtains proper documentation from the nonresident and the seller maintains documentation of the delivery or shipment of the vehicle to an out-of-state location.

The state transaction privilege tax deduction provided by A.R.S. § 42-5061(A)(45) has no effect on city privilege tax that may apply to the gross income derived from the sale. City privilege tax will apply in full to the net sales price of the motor vehicle pursuant to MCTC provisions.

To qualify for this state transaction privilege tax statutory deduction, the motor vehicle seller must retain:

- 1) A **Form 5011** or **Form 5012** completed by each purchaser. (The seller must provide the Section 1 information.) This form must be obtained prior to the issuance of a nonresident registration permit.
- 2) A copy of the special ninety-day nonresident registration permit issued pursuant to A.R.S. §§ 28-2154 and 28-2154.01. At the time of issuing a nonresident registration permit, the seller shall inform the purchaser in writing of the purchaser's liability if the motor vehicle is registered in Arizona within 365 days.<sup>10</sup>
- 3) A legible copy of a current valid driver's license issued to each purchaser by another U.S. state or foreign country indicating an address outside of Arizona.
- 4) Documentation attesting to the delivery or shipment of the vehicle to an out-of-state location.

If the nonresident purchaser registers the vehicle in Arizona within 365 days after the issuance of the special ninety-day nonresident registration permit, the purchaser is liable for an amount equal to the state transaction privilege tax and county excise tax that the seller would have been required to pay on a taxable sale, plus applicable penalties and interest computed from the date of sale.

**Category 6) Sales to nonresidents from other countries.**

The provisions of the statutory deductions authorized by A.R.S. §§ 42-5061(A)(28)(a) and 42-5061(U) apply only to nonresidents from other U.S. states, and do not apply to nonresidents

<sup>10</sup> See footnote 6 on page 8.

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from other countries such as Canada or Mexico. However, the deductions discussed in Categories 4 and 5 above may apply to sales to nonresidents from other countries. In addition to the required documentation detailed in these categories, a copy of a valid passport (or Mexican Border Crossing Card or Canadian Nexus Card) issued by the nonresident's country of origin should be retained by the motor vehicle seller.

### **Category 7) Sales to nonresident entities.**

Sales to a bona fide nonresident entity (e.g., corporation, partnership) that has no business location or nexus in Arizona may qualify for a transaction privilege tax statutory deduction under Categories 1, 2, 4, and 5 of this procedure. The entity's representative (i.e. corporate officer, partner, L.L.C. member) must be a nonresident of Arizona, must possess a driver's license from the same jurisdiction as that in which the nonresident entity is located, and must complete a Form 5011 or Form 5012. Payment for the motor vehicle must be made by the nonresident entity in the form of a business check or credit card issued in the entity's name, or financing must be done in the name of the nonresident entity. Copies of the entity's articles of incorporation, a valid out-of-state business license, or other official documentation may be used to substantiate that the business is a nonresident entity.

An out-of-state entity that has a business location or nexus in Arizona does not qualify as a nonresident of Arizona and is not eligible for the statutory deductions and exemptions described in this procedure. However, sales made to an out-of-state entity may be exempt from transaction privilege tax as sales made in interstate or foreign commerce, pursuant to A.R.S. § 42-5061(A)(24). For the requirements in documenting sales made in interstate or foreign commerce, see **Arizona Administrative Code** (A.A.C.) rule R15-5-170.

### **Category 8) Sales to nonresident military personnel stationed in Arizona.**

The Arizona transaction privilege tax statutes do not provide a specific statutory deduction or exemption regarding sales of motor vehicles to nonresident military service members stationed at an Arizona facility. However, the *Servicemembers Civil Relief Act* allows a nonresident member of the U.S. armed forces who is stationed at a military facility in Arizona to be considered a resident of his or her state of domicile, regardless of the length of assignment to the Arizona military facility. Therefore, the service member may qualify for exemption from tax as a nonresident when purchasing a motor vehicle in Arizona, as long as the vehicle will be registered in the service member's state of residence or domicile.

Depending on the service member's specific state of residence or domicile, one of the statutory deductions (exemptions) for sales of motor vehicles to nonresidents discussed in Categories 1, 2, 4 and 5 of this procedure may apply to the sale of a motor vehicle to a nonresident military person stationed in Arizona, if the motor vehicle is purchased to be registered in the nonresident service member's state of domicile or residence. However, in addition to the proper documentation required by these categories, a copy of the service

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member's official military orders indicating that the person is currently stationed at an Arizona facility must be provided to the seller.

If the motor vehicle is purchased by a service member and his or her spouse, each person must separately qualify as a nonresident pursuant to the listed requirements in order for an exemption to apply. If the nonresident military service member who purchases a vehicle under a statutory deduction specific to nonresidents registers the vehicle in Arizona within 365 days after the issuance of the special ninety-day nonresident registration permit, the service member is liable for an amount equal to the state transaction privilege tax, county excise tax and city privilege tax that the seller would have been required to pay on a taxable sale, plus applicable penalties and interest computed from the date of sale.

<b>Category 9) Sales to enrolled Native Americans residing on a reservation located within Arizona established for the Native American's tribe.</b>
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A.R.S. § 42-5061(A)(28)(b) provides a specific deduction from the tax base for income derived from "[t]he sale of a motor vehicle to ... [a]n enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe." This statutory deduction is only applicable to Native Americans residing on reservations within the borders of Arizona. A Native American who does not reside on the reservation established for his or her tribe is ineligible for this statutory deduction. (Native Americans who reside on reservations in other states may qualify for a statutory deduction as a nonresident of Arizona under Categories 1, 2, 4, and 5 of this procedure.)

A.R.S. § 28-2154(C) provides in pertinent part that "[a]n enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe and who purchases an unregistered vehicle in this state for removal to the Indian reservation shall obtain a special ninety day nonresident registration permit for the vehicle."

The state transaction privilege tax deduction provided by A.R.S. § 42-5061(A)(28)(b) has no effect on city privilege tax that may apply to the gross income derived from the sale. City privilege tax will apply in full to the net sales price of the motor vehicle pursuant to MCTC provisions.

To qualify for this statutory deduction from state transaction privilege tax and county excise tax, the motor vehicle seller must retain:

- 1) A **Form 5013** completed by the Native American purchaser.
- 2) A copy of the Native American's tribal identification card or documentation.

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- 3) A copy of the special ninety-day nonresident registration permit issued pursuant to A.R.S. §§ 28-2154(C) and 28-2154.01, if the vehicle is to be removed to the Indian reservation exclusively. (If the vehicle is intended for registration in Arizona, a temporary registration plate may be issued pursuant to A.R.S. §§ 28-4546 through 28-4554, rather than the special ninety day nonresident registration permit.)
- 4) A legible copy of a current valid Arizona driver's license issued to the purchaser, indicating an address on an Indian reservation located within Arizona. (If the Arizona driver's license indicates a P.O. Box in an adjacent city, additional documentation, such as a current utility bill for the purchaser's residence on the reservation, must be supplied.)

<b>Category 10 Taxable Sales to Nonresidents and Native Americans.</b>
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Sales of motor vehicles to nonresidents or Native Americans that do not qualify pursuant to the detailed requirements of the above categories are subject to state transaction privilege tax, county excise tax, and city privilege tax, unless a separate statutory deduction or exclusion applies. For the sale of a motor vehicle by a taxable retailer to a nonresident that does not qualify for exemption from transaction privilege tax, the completion of either Arizona Form 5011 or 5012 is unnecessary. For these taxable sales, the motor vehicle seller may issue the special ninety-day nonresident registration permit for the vehicle by having the nonresident purchaser sign the nonresident affidavit prescribed by the Arizona Department of Transportation.

Gale Garriott, Director

Signed: October 7, 2008

Explanatory Notice: The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.