

Arizona Could See Income Tax Cut Under Budget Deal

By **James Nani**

Law360 (May 24, 2019, 8:05 PM EDT) -- Changes to Arizona's income tax rates and brackets, federal tax conformity and post-Wayfair and marketplace facilitator provisions are all on the table under an Arizona budget deal struck by the state's governor and legislative leaders.

The tax proposals in H.B. 2757 were approved by the House Rules Committee along party lines on Thursday, 4-3, coming after Republican Gov. Doug Ducey said last week that he had reached a deal with legislative leaders on the budget. As of Friday afternoon, it was still not known whether the tax bill, part of a larger package of budget bills, was going to be taken up by the full House.

The bill, sponsored by House Ways and Means Committee Chair Benjamin Toma, R-Peoria, aims to conform the state tax code with the Internal Revenue Code, incorporates local retail tax provisions into state code and updates statutes to address the U.S. Supreme Court's [Wayfair](#) decision.

Toma told Law360 on Friday that his bill was about trying to find parity between in-state brick-and-mortar retailers and online retailers.

"It's really not about revenue generation; it really is fundamentally about reform and parity," Toma said.

The bill includes a three-year phase-in of thresholds for remote sellers to pay transaction privilege tax, Arizona's version of a use tax, on retail sales of tangible personal property. Unlike in most other states, the tax is imposed on the vendor rather than the purchaser. The threshold would start at \$200,000 or more in sales in 2019, then hit \$150,000 for 2020 and finally land at \$100,000 for 2021 and thereafter.

The bill would also require marketplace facilitators to pay the tax if their gross proceeds or gross income with customers in Arizona is more than \$100,000 in the previous or current calendar year, according to a bill analysis.

The bill would define marketplace facilitators, such as platforms like Amazon.com or eBay, and lays out when marketplace facilitators and remote sellers wouldn't be eligible for liability relief for failure to pay the correct amount of tax, according to a legislative overview.

In addition, the bill would require that all "affiliated persons" be aggregated for the purpose of determining whether someone meets the state's economic nexus threshold, and defines an affiliated person, in part, as someone who has an ownership interest of more than 5% in another person, or entity.

"The discussion around that was that we wouldn't allow sellers to on-paper diversify and avoid having to remit the tax," Toma said.

Diane Yetter, president of the Sales Tax Institute, told Law360 that if the bill passed, Arizona would be the only state to implement a tiered remote seller threshold over three years. She also said Arizona could also be one of the few states to require "affiliated companies" with more than 5% ownership to combine their sales to determine if they exceed the threshold.

Yetter also said she approved of proposals that cut down on local tax burdens for businesses.

"It is very positive that it prohibits the cities and towns from requiring a business license and also that the seller doesn't have to pay the city registration fee," Yetter said.

In a release from Ducey's office, his administration called the changes in the budget deal "common sense" and revenue-neutral. **Ducey in January** said he would not raise taxes and proposed increasing the state's rainy day fund to \$1 billion.

"The reform makes Arizona's tax code simpler and more fair, while protecting investments in the things that matter and prioritizing middle- and low-income earners," Ducey's office said.

For individuals, the proposal also would match the state's standard deduction to the federal standard deduction, increasing the Arizona deduction for single filers from \$5,312 to \$12,200 and for married filers from \$10,613 to \$24,400, according to Ducey's office.

The bill also proposes a new child tax credit equal to \$100 per dependent child and would allow those who take the standard deduction to add 25 percent of their annual charitable donations to their deduction starting Dec. 31, 2018.

Glenn Farley, chief economist for Ducey's office, said the new income tax rates would range from 2.59% to 4.50%, while the number of tax brackets would fall from five to four. He said the changes would be the first reduction in the number of income tax brackets in Arizona in nearly 30 years.

The bill also includes a host of other tax-related provisions. One section would exempt the Department of Revenue from rulemaking requirements for one year after the provisions take effect.

And as a way of easing the burden of remote sellers, the bill would also adopt certain local retail transaction privilege tax provisions, such as definitions, into the state code for the first time, shifting control of those provisions from localities to the state, Toma said. In addition, the bill would allow localities to levy transaction privilege taxes on the gross proceeds or gross income of sales that generally aren't online, such as retail food sales and community college bookstore sales.

Ken Strobeck, executive director of the League of Arizona Cities and Towns, told Law360 that the group was happy the post-Wayfair provisions were moving forward. He added that despite previous resistance to having any part of local city tax codes put into state budget for fear of loss of local control, when the league agreed to conform the group's model city code dealing with online retailers to the state's proposed code, they were essentially already giving up that control.

"Since we have a different tax base in the model city tax code than the state does we eventually agreed to allow them to consolidate the retail section of the state and the local code and define that and put that all in state statute, so long as we are able to retain some of our city-only taxes as options," Strobeck said.

Toma said the local retail provisions were incorporated so that remote sellers didn't have to deal with the local codes of more than 90 jurisdictions in the state.

"We felt there would be considerable legal risk to ask an out-of-state retailer to comply with TPT based on a code that's not in statute," Toma said.

--Editing by Vincent Sherry.