

Sales/Use/Indirect:

Arizona DOR's Draft Ruling for Comment Addresses Taxability of Rented Servers and Web Hosting

Transaction Privilege Tax Ruling TPR 21-2, Ariz. Dept. of Rev. (11/21); *Draft Documents for Public Comment*, Ariz. Dept. of Rev. (11/21). The Arizona Department of Revenue has posted for public comment a draft Arizona transaction privilege tax ruling addressing whether providing remotely accessed web hosting and servers is taxable as a rental of tangible personal property under Arizona Revised Statutes § 42-5071 and Model City Tax Code § -450. Among its conclusions, the draft ruling provides that assuming a taxpayer has nexus under *Wayfair*, a server rental (including dedicated servers, virtual private servers and dedicated virtual or physical servers) generally is considered taxable under the personal property rental classification when:

[URL: https://azdor.gov/sites/default/files/media/DRAFT_RULINGS_TPT_TPR21-2.pdf](https://azdor.gov/sites/default/files/media/DRAFT_RULINGS_TPT_TPR21-2.pdf)

[URL: https://azdor.gov/legal-research/public-comment-rulings-procedures-and-other-documents](https://azdor.gov/legal-research/public-comment-rulings-procedures-and-other-documents)

- The server is intended to be used by an “Arizona located lessee”;
- The lessee is provided exclusive use and control of the server, or server features, for a fixed payment;
- The agreement, if not renewed, terminates at either a specific time (*e.g.*, subscription agreements) or upon a specific event (*e.g.*, termination notice or nonpayment); and
- After termination the lessee no longer has access to the server.

Comments on this draft transaction privilege tax ruling are due by December 16, 2021. Please contact us with any questions.

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