

ATRA SUPPORTS SB1545

Clarification of the Incidence of Transaction Privilege Tax on Owner/Developers

Background

Under the transaction privilege tax (TPT) prime contracting classification, a prime contractor, which is typically a contractor working directly for an owner of real property, is subject to tax on 65% of the gross proceeds from the activity of contracting.

The current prime contracting statute creates confusion specifically in a situation where an owner/developer is developing real property and accepts a contract for the sale of that property. Under a current interpretation by the Department of Revenue, the owner becomes a prime contractor at the time of acceptance of the contract for sale even when title to the property has not yet passed. This can result in excess TPT being paid than would be owed on the sale price of the property because the prime contractor owes TPT on its gross proceeds from its construction contract while the owner is being charged TPT on the sale price of the property. This scenario also causes confusion as to which party is subject to TPT and on what activity.

Basis for ATRA's Support

SB1545 would rectify this problem by providing that the owner/builder does not become a taxable prime contractor unless that owner performs contracting activity after passage of title to a new owner of the property, ultimately limiting the TPT on the contract to 100% - no more, no less.

The retroactivity to January 8, 1991 is the date of the Arizona Court of Appeals *SDC Management* decision that precluded the Department from taxing an owner/developer unless that owner/developer actually acted as a contractor and performed contracting activities. SB1545 would make the conclusion in that decision applicable to the contracting classification as well. Total refunds are capped at \$10,000 and the statute of limitations is not extended for either assessment or refund.

ATRA ASKS FOR YOUR SUPPORT OF SB1545



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