September 17, 2024

Sent via E-mail & U.S. Mail

Mayor Brigette Peterson
Members of the Town Counsel
Town of Gilbert
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In re: Notice of Intent to Increase Gilbert's Sales Tax, Use Tax and Bed Tax Rates

Dear Mayor Peterson and Members of the Council:

The Gilbert Town Council recently approved a Notice of Intent to increase Gilbert's sales tax, use tax, and bed tax rates.[1] The final vote will happen on October 22, 2024, and if approved, the new tax rates will go into effect January 1, 2025.

The Notice of Intent and related public notice materials available on Gilbert's website explain the taxation proposals. The sales tax is "paid for by residents, visitors, and businesses who purchase certain goods and services in Gilbert." 2025 Proposed Tax Rates, Gilbert, AZ,[2] (last visited Sept. 17, 2024). The use tax is "paid for by residents and businesses when purchases are made online with vendors who do less than $100K of sales in Arizona per year." *Id.* The bed tax is "paid for by travelers who rent accommodations in a hotel, motel, or other lodging in Gilbert," which includes short term rentals, and is paid in addition to the sales tax. *Id.* These proposed taxes include taxation on services.

Taxation on any service violates the Arizona Constitution. Ariz. Const. art. IX, § 25. The Arizona Constitution states:

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[1] *See* Notice of Intent – Proposed New or Increased Fees, Gilbert, AZ, Aug. 21, 2024, https://www.gilbertaz.gov/home/showpublisheddocument/49752.
[2] https://www.gilbertaz.gov/departments/finance-mgmt-services/2025-proposed-tax-rates#:~:text=Sales%20Tax%3A%20Gilbert%20currently%20has,between%201.5%25%20and%202.9%25.

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> The state, any county, city, town, municipal corporation or other political subdivision of the state … shall not impose or increase any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from, any service performed in this state.

Id.

This provision broadly encompasses *any* services performed in the state. And a "service" includes a broad range of covered enterprises, including taxing activities that do not produce "goods." *See, e.g.*, SERVICE, Black's Law Dictionary (12th ed. 2024) ("[*S*]*ervice* denotes an intangible commodity in the form of human effort, such as labor, skill, or advice.") (emphasis in original); SERVICE, Merriam-Webster,[3] (last visited Sept. 11, 2024) ("useful labor that does not produce a tangible commodity"); *see also State v. Mixton*, 250 Ariz. 282, 290 (2021) ("When the Arizona Constitution does not define its terms, we look to their natural, obvious, and ordinary meaning." (citations omitted)). The term services generally encompasses activities of and businesses in the hospitality industry, including hotels, restaurants, bars, and the like. *See* HOSPITALITY, Merriam-Webster, (last visited Sept. 11, 2024) ("the activity or business of providing services to guests in hotels, restaurants, bars, etc.").

The Arizona Constitution is clear that any portion of the proposed tax that imposes or increases a tax on *any* service performed in the state is unconstitutional. This would include Gilbert's proposed sales tax, bed tax, and may include the new use tax. Consequently, we urge the Town to disapprove the new proposed taxes or any proposed tax wherein it would violate the Arizona Constitution.

We are available to discuss this matter with you at any time. Should you have any questions, I can be contacted at sskankey@goldwaterinstitute.org.

Sincerely,

Stacy Skankey
Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute

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[3] https://www.merriam-webster.com/dictionary/services.

cc (email only):

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