



LEGAL ALERT

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Arizona Legislature and Governor Enact Legislation Exempting Certain Pre-Construction Services from State Prime Contracting Transaction Privilege (Sales) Tax

Under new legislation enacted last month, and effective retroactive to tax years beginning after December 31, 2000, the gross income derived by a contractor from "design phase services" and "professional services" is not subject to the prime contracting classification of the Arizona transaction privilege (sales) tax if these services are included in a written contract that is separate from any construction contract and executed before any actual on-site work begins. This exemption applies regardless of whether the services are provided at the same time as taxable construction services under a separate construction contract. This exemption does not apply to any "construction phase services." Although the legislative change is retroactive, a taxpayer cannot claim a refund for past periods.

The devil, of course, is in the details. The definitions of "design phase services," "professional services," and "construction phase services" are long and detailed, and are beyond the scope of this alert. For example, "design phase services" includes, without limitation, the preparation



of preliminary cost estimates and the preparation of an initial schedule for the project, but it does not include any update to the schedule after the on-site work has begun. In addition, “professional services” generally includes architect, assayer, engineer, geologist, land surveying, and landscape architect services, with certain

qualifications. You can access the full definitions within the legislation, which can be found at <http://www.azleg.gov/legtext/48leg/2r/bills/hb2622s.pdf>.

Please contact Craig McPike at 602-382-6538 if you would like further information.



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Craig McPike is an associate with Snell & Wilmer’s Phoenix office. His practice includes federal, state and local tax matters, including taxation of for-profit and non-profit business organizations.

SNELL & WILMER WOULD LIKE TO THANK THE ARIZONA BUSINESS COMMUNITY FOR VOTING US THE TOP CORPORATE LAW FIRM IN PHOENIX FOR THE SEVENTH CONSECUTIVE YEAR.

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