

Sales/Use/Indirect:

Arizona: Appellate Court Says Online Retailer Has Nexus During Pre-Wayfair Periods at Issue

Case No. 1 CA-TX 23-0002, Ariz. Ct. App. (4/2/24). In a case involving an out-of-state online retailer during the pre-Wayfair Arizona transaction privilege tax (TPT) periods at issue (*i.e.*, for the audit period from April 1, 2013 through April 30, 2019) who regularly worked with in-state suppliers to fulfill in-state orders it accepted online, an Arizona Court of Appeals (Court) reversed a 2023 Arizona Tax Court decision [see Case No. TX 2020-000778, Ariz. Tax Ct. (4/11/23), and *State Tax Matters*, Issue 2023-17, for more details on the Arizona Tax Court's decision] to hold that the retailer's in-state activities through these contracted distributors established a substantial nexus in Arizona pursuant to existing state caselaw at the time. In doing so, the Court explained that the online retailer's in-state distributors had:

URL: <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2024/1%20CA-TX%2023-0002%20RockAuto.pdf>

URL: <https://superiorcourt.maricopa.gov/media/7954/tx2020-000778.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230428_7.html

1. Maintained inventory in Arizona;
2. Shipped items for many of its Arizona customer orders from within Arizona and were obligated to use the retailer's branded tape and include its promotional magnet with each order; and
3. Accepted/processed returns from many of its Arizona customers in Arizona.

The Court reasoned that these activities of the in-state distributors, coupled with the retailer's own employees making four business trips to Arizona, supported its conclusion that the online retailer had a physical presence in Arizona for the prior tax periods at issue. Please contact us with any questions.

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