

Staff Summary Report

REVISED



Council Meeting Date: 11/20/08

Agenda Item Number: 45

SUBJECT: Request approval of a resolution approving and authorizing the Mayor to sign the Intergovernmental Agreement between the State of Arizona and the City of Tempe regarding the uniform administration of transaction privilege tax.

DOCUMENT NAME: 20081120fspf01 **REVENUE-TAXATION ADMINISTRATION (0210-01)**
RESOLUTION NO. 2008.99

SUPPORTING DOCS: No

COMMENTS: This Agreement establishes procedures for the sharing of information between the City of Tempe and the Arizona Department of Revenue, the safeguarding of such information, the coordination of joint audits, and various administrative matters to comply with the requirements of state statutes.

PREPARED BY: Phil Falcosky, Tax Audit Supervisor (350-8685)

REVIEWED BY: Jerry Hart, Financial Services Manager (350-8505)

LEGAL REVIEW BY: Dave Park, Assistant City Attorney (350-8907)

FISCAL NOTE: N/A

RECOMMENDATION: Adopt Resolution No. 2008.99 approving and authorizing the Mayor to sign the Intergovernmental Agreement for the City of Tempe.

ADDITIONAL INFO: This agreement replaces contract C90-119 dated September 13, 1990. The City of Tempe routinely enters into intergovernmental agreements with the State of Arizona Department of Revenue and other Arizona cities to provide for the coordination of joint audits and to promote the uniform application of the Model City Tax Code. This agreement updates the existing agreement to incorporate the requirements of changes to state statute and to clarify existing language.

RESOLUTION NO. 2008.99

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE CITY OF TEMPE REGARDING THE UNIFORM ADMINISTRATION OF TRANSACTION PRIVILEGE TAX

WHEREAS, Title 11, Chapter 7, Article 3 (A.R.S. § 11-952) authorizes two or more public agencies to enter into intergovernmental agreements to contract for services, if authorized by their legislative or governing bodies; and

WHEREAS, A.R.S. § 42-6001 et seq. provides for uniform audit functions including joint audits of a taxpayer by the State of Arizona Department of Revenue and cities or towns where the taxpayer conducts business, and that the State of Arizona Department of Revenue and any city or town may enter into intergovernmental contracts or agreements to provide a uniform method of administration, collection, audit and licensing of transaction privilege tax, use tax, severance tax, jet fuel excise and use tax, and rental occupancy taxes imposed by the State or Cities or Towns; and

WHEREAS, it is in the best interests of the City of Tempe and its citizens that the City enter into such an intergovernmental agreement with the State of Arizona Department of Revenue.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, THAT:

The Intergovernmental Agreement Between the State of Arizona and the City of Tempe is hereby approved, and

The Mayor is authorized to sign the Intergovernmental Agreement Between the State of Arizona and the City of Tempe for the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND A NON-PROGRAM CITY

THIS AGREEMENT is entered into this _____ day of _____, 20__ , by and between the ARIZONA DEPARTMENT OF REVENUE, hereinafter referred to as DEPARTMENT OF REVENUE, and the CITY OF TEMPE, hereinafter referred to as the CITY. This Agreement shall supersede and replace all previous intergovernmental agreements entered into by the DEPARTMENT OF REVENUE and the CITY regarding taxpayer joint audits and the uniform method of administration, collection, audit and licensing of transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy taxes imposed by the state or cities or towns.

WHEREAS, Title 11, Chapter 7, Article 3 (A.R.S. § 11-952) authorizes two or more public agencies to enter into intergovernmental agreements to contract for services, if authorized by their legislative or governing bodies, and

WHEREAS, A.R.S. § 42-6001 et seq. provides for uniform audit functions including joint audits of a taxpayer by the DEPARTMENT OF REVENUE and cities or towns where the taxpayer conducts business, and that the DEPARTMENT OF REVENUE and any city or town may enter into intergovernmental contracts or agreements to provide a uniform method of administration, collection, audit and licensing of transaction privilege tax, use tax, severance tax, jet fuel excise and use tax, and rental occupancy taxes imposed by the state or cities or towns, and

WHEREAS, the DEPARTMENT OF REVENUE and the CITY now desire to enter into such an intergovernmental agreement.

The parties agree to the following:

1. Disclosure of Information Furnished by the CITY

(a) **Statutory Authority:** The disclosure (by any means) of confidential CITY tax information is governed by Model City Tax Code Section 510.

(b) **Scope:** In accordance with Model City Tax Code Section 510(h), the CITY may disclose to the DEPARTMENT OF REVENUE'S tax officials any information regarding the enforcement and collection of privilege or use taxes by the CITY. Any taxpayer information released by the CITY to the DEPARTMENT OF REVENUE may only be

used for internal purposes and may not be disclosed to the public in any manner that does not comply with the Model City Tax Code or other confidentiality standards established by the CITY. The DEPARTMENT OF REVENUE hereby agrees that any release or use of confidential information contrary to the terms of this Agreement will result in the immediate suspension of any rights of the DEPARTMENT OF REVENUE to receive taxpayer information.

2. Information Furnished by the CITY.

(a) Within ten (10) days after the execution of this Agreement, the CITY shall provide the DEPARTMENT OF REVENUE with a copy of its ordinance imposing the taxes to be collected hereunder, as then amended. If information has already been provided to the DEPARTMENT OF REVENUE by the CITY, it is not necessary for the CITY to provide the same information until said ordinance is again amended.

(b) Within fifteen (15) days following the adoption of an annexation ordinance, one copy of the ordinance and notification of the effective date of such ordinance shall be sent to the DEPARTMENT OF REVENUE.

(c) Within the constraints outlined in Section 1 above, the CITY shall provide to the DEPARTMENT OF REVENUE, on a monthly basis, a list of the business licenses that it has issued to each new taxpayer who is or may be taxable by the DEPARTMENT OF REVENUE. The list will include information such as the new taxpayers' legal business name, DBA's, physical address, mailing address, owners' first and second names, phone number for the contact person or business, NAICS codes, and identification numbers such as state TPT license number, EIN and social security number.

(d) Upon request, the CITY shall provide to the DEPARTMENT OF REVENUE any data processing lists of accounts, by geographical areas, activity classification or other breakdowns for which data processing programs have been developed.

(e) Upon request, the CITY shall provide to the DEPARTMENT OF REVENUE any information regarding development and impact fees to assist the DEPARTMENT OF REVENUE with the auditing of taxpayers and billing and collection of taxes.

(f) Upon request by the DEPARTMENT OF REVENUE, the CITY shall allow inspections of any CITY tax audits by DEPARTMENT OF REVENUE tax officials during regular CITY business hours.

(g) Upon request by the DEPARTMENT OF REVENUE, the CITY shall provide the DEPARTMENT OF REVENUE with a listing of all audits performed by the CITY, including the taxpayer's name, City license number, address, audit period, classification, and amount assessed, if the audits relate to a taxpayer who is or may be taxable by the DEPARTMENT OF REVENUE.

3. **Disclosure of Information Furnished by DEPARTMENT OF REVENUE.**

(a) **Statutory Authority:** The disclosure (by any means) of confidential Arizona tax information is governed by A.R.S. § 42-2001 et seq. which strictly controls the accessibility and use of this information. Individuals who receive confidential tax information from the DEPARTMENT OF REVENUE are subject to the criminal penalties imposed by A.R.S. § 42-2004 if they misuse or improperly disclose this information to unauthorized individuals.

(b) **Scope:** Pursuant to A.R.S. § 42-2003(H), the DEPARTMENT OF REVENUE may disclose to the CITY's tax officials only transaction privilege tax, use tax, severance tax, jet fuel excise and use tax, and rental occupancy tax information relating to a taxpayer who is or may be taxable by the CITY. Furthermore, any taxpayer information released by the DEPARTMENT OF REVENUE to the CITY may only be used for internal purposes and may not be disclosed to the public in any manner that does not comply with confidentiality standards established by the DEPARTMENT OF REVENUE. (See Appendix A.) The CITY hereby agrees that any release or use of confidential information contrary to the terms of this Agreement will result in the immediate suspension of any rights of the CITY to receive taxpayer information. A notice of suspension will be sent to the CITY requesting response to the allegation within fifteen (15) days and a review will occur to determine the length of the suspension. The CITY shall provide a list of the names and job titles of employees authorized to receive confidential tax information. This list shall include any independent auditors who must agree to be bound by the provisions of A.R.S. § 42-2001 et seq. The CITY shall promptly inform the DEPARTMENT OF REVENUE of any additions, deletions or changes to this list within fifteen (15) business days.

4. **Information Furnished By The DEPARTMENT OF REVENUE.**

(a) Within the constraints outlined in Section 3 above, the DEPARTMENT OF REVENUE shall provide to the CITY, on a monthly basis, a list of the licenses that it has issued to each new taxpayer who is or may be taxable by the CITY.

(b) Upon request, the DEPARTMENT OF REVENUE shall provide to the CITY any data processing lists of accounts, by geographical areas, activity classification or other breakdowns for which data processing programs have been developed.

(c) Upon request by the CITY, the DEPARTMENT OF REVENUE shall allow inspections of all information or audits relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax, and rental occupancy tax if the information or audits relate to taxpayers who are or may be taxable by the CITY. Such inspections shall take place during regular DEPARTMENT OF REVENUE business hours.

(d) In addition, the DEPARTMENT OF REVENUE shall provide the CITY with a copy of its statutes imposing the taxes to be collected hereunder, as then amended, within ten (10) days after the execution of the Agreement. If the information has been provided

by the DEPARTMENT OF REVENUE, it is not necessary for the DEPARTMENT OF REVENUE to provide the same information again until said statutes are again amended.

(e) Upon request by the CITY, the DEPARTMENT OF REVENUE shall provide the CITY with a listing of all audits performed by the DEPARTMENT OF REVENUE, including the taxpayer's name, license number, address, audit period, classification, and amount assessed, if the audits relate to a taxpayer who is or may be taxable by the CITY.

5. **Storage and Destruction of Confidential Information.**

The DEPARTMENT OF REVENUE has promulgated confidentiality requirements which are attached to this Agreement as Appendix A. All confidential information provided by the DEPARTMENT OF REVENUE or the CITY shall be stored in accordance with these requirements so as to maintain the confidentiality of this information. Prior to discarding, the confidential information shall be destroyed in the following manner, in conformity with 26 U.S.C. § 6103(p)(4)(F) :

(a) Confidential information furnished to the user and any material generated therefrom, such as extra copies, photo impressions, computer printouts, carbon paper, notes, stenographic notes, and work papers should be destroyed by burning, mulching, pulping, shredding, or disintegrating.

(b) The following precautions should be observed when destroying confidential information:

(1) *Burning precautions:* The material is to be burned in either an incinerator that produces enough heat to burn the entire bundle or the bundle should be separated to ensure that all pages are consumed.

(2) *Shredding precautions:* To make reconstruction more difficult, the paper should be inserted so that lines of print are perpendicular to the cutting line and not maintain small amounts of shredded paper. The paper should be shredded to effect 5/16-inch wide or smaller strips; microfilm should be shredded to effect 1/35-inch by 3/8-inch strips. If shredding is part of the overall destruction of DEPARTMENT OF REVENUE data, strips can in effect be set at the industry standard (currently 1/2"). However, when deviating from DEPARTMENT OF REVENUE'S 5/16" requirement, DEPARTMENT OF REVENUE data, as long as it is in this condition (i.e., strips larger than 5/16"), must be safeguarded until it reaches the stage where it is rendered unreadable.

(3) Pulping should be accomplished so that all material is reduced to particles one inch or smaller.

(4) Magnetic tape containing confidential information must not be made available for reuse by other offices or released for destruction without first being subjected to electromagnetic erasing. If reuse is not intended, the tape should be

destroyed by cutting into lengths of 18 inches or less or by burning to effect complete incineration.

(5) Whenever disk media leaves the physical or systemic control of the agency for maintenance, exchange, or other servicing, any confidential information on it must be destroyed by:

(i) Completely overwriting all data tracks a minimum of three times, using maximum current that will not damage or impair the recording equipment; or

(ii) Running a magnetic strip, of sufficient length to reach all areas of the disk over and under each surface a minimum of three times. If the information cannot be destroyed as suggested, the disk will be damaged in an obvious manner to prevent use in any disk drive unit and discarded.

(iii) Note: Hand tearing, recycling, or burying information in a landfill are unacceptable methods of disposal.

6. Multijurisdictional Audits.

Pursuant to A.R.S. § 42-6005 and Model City Tax Code Section 553, the DEPARTMENT OF REVENUE and the CITY may conduct a multijurisdictional audit pursuant to a taxpayer's request. The jurisdiction that conducts the audit will be considered the lead jurisdiction in charge of the audit. When a taxpayer requests a multijurisdictional audit, the parties agree to the following:

(a) The DEPARTMENT OF REVENUE and the CITY will use similar forms and procedures in order to expedite the multijurisdictional audit process including:

(1) Statute of Limitations Waiver;

(2) Sampling Agreement;

(3) Field Examination Agreement to Supply Additional Information.

The parties agree to secure these forms and have them executed when necessary in order to protect the interests of both parties.

(b) The CITY and the DEPARTMENT OF REVENUE hereby delegate authority to the lead jurisdiction's tax officials to sign the forms listed in (a) on their behalf with a taxpayer under multijurisdictional audit. The lead jurisdiction will supply a copy of the signed agreements to each jurisdiction participating in the audit.

7. Multijurisdictional Audits: Reviewing Workpapers.

When the DEPARTMENT OF REVENUE and the CITY share joint audit authority over a taxpayer, upon request, the lead jurisdiction shall allow the other jurisdictions involved in the multijurisdictional audit to inspect any workpapers or documentation collected or generated in a multijurisdictional audit during the lead jurisdiction's regular business hours.

8. Responsibility for Representation in Litigation.

The DEPARTMENT OF REVENUE and the CITY are each responsible for self-representation in any tax contest or appeal.

The DEPARTMENT OF REVENUE and the CITY agree that the lead jurisdiction in a multijurisdictional audit will cooperate in each other's defense of the audit by allowing the lead auditor to meet with their attorneys for informal interviews, providing documents and computer records, preparing for depositions, attending depositions and trial as witnesses, and assisting in trial/hearing preparation as needed.

9. Responsibility for Administrative Review.

Upon the adoption by any city or town of the Model City Tax Code, responsibility for administrative review shall be governed by Model City Tax Code Section 570.

10. Manner of Financing.

The costs incurred by any party in administering this Agreement shall be the obligation of that party. Costs incurred by the DEPARTMENT OF REVENUE in administering this Agreement shall be financed through the State general fund appropriation to the DEPARTMENT OF REVENUE.

11. Term of Agreement and Termination.

(a) This Agreement shall be applicable to multijurisdictional audits selected at any time through June 30th following the date of execution. This Agreement shall automatically be renewed for successive one year terms thereafter unless either party shall terminate this Agreement by notice, in writing, to the other not later than ninety (90) days prior to the expiration of the term then in effect. The notice of termination shall be mailed and served on the other party in accordance with Provision 13 of this Agreement.

(b) If any CITY/TOWN ordinance or state legislation enacted subsequent to the date of this Agreement substantially affects the performance of this Agreement by either party or substantially diminishes the benefits that either party would receive under this Agreement, either party may then terminate the Agreement, by giving at least a 30-day notice to the other party. The termination will become effective immediately upon the expiration of the notice period.

(c) The DEPARTMENT OF REVENUE, or the CITY may, within three (3) years after its execution, cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the DEPARTMENT OF REVENUE or CITY/TOWN is or becomes, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party of the contract with respect to the subject matter of the Agreement. Such cancellation shall be effective when written notice from the Governor or the City Manager or designee of the CITY is received by other parties to this Agreement, unless the notice specifies a later time.

(d) Notwithstanding any provision to the contrary herein, both parties may by mutual agreement provide for the termination of this contract upon such terms and at such time as is mutually agreeable to them.

12. Non-availability of Funds.

Every payment obligation of the DEPARTMENT OF REVENUE or CITY/TOWN under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the DEPARTMENT OF REVENUE or the CITY at the end of the period for which funds are available. No liability shall accrue to the DEPARTMENT OF REVENUE or the CITY in the event this provision is exercised, and the DEPARTMENT OF REVENUE or the CITY shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

13. Notice.

(a) When any Notice to the CITY is required under the terms of this Agreement, such Notice shall be sent to the CITY by certified or registered mail at the following address, directed to the attention of:

CITY OF TEMPE FINANCIAL SERVICES DEPARTMENT
Attn: Financial Services Manager
P. O. Box 5002
Tempe, AZ 85280

(b) When any Notice to the DEPARTMENT OF REVENUE is required under the terms of this Agreement, such Notice shall be sent by certified or registered mail to:

ARIZONA DEPARTMENT OF REVENUE
Attn: Director
1600 W. Monroe
Phoenix, AZ 85007

14. Non-discrimination.

(a) The DEPARTMENT OF REVENUE and the CITY shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The DEPARTMENT OF REVENUE and the CITY shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(b) The DEPARTMENT OF REVENUE and the CITY shall also comply with all state and federal laws concerning Immigration. In particular:

(1) The CITY warrants that it is in compliance with all federal immigration laws and regulations;

(2) The CITY warrants that all subcontractors to the CITY in fulfillment of this Agreement will execute similar warranties;

(3) The breach of any such warranty shall be deemed a material breach of this Agreement, subject to monetary penalties or other penalties up to and including termination of the Agreement; and

(4) The DEPARTMENT OF REVENUE shall retain the legal right to inspect the papers of any employee who works pursuant to the Agreement to ensure that the CITY is in compliance with its warranties.

15. Third Party Antitrust Violations.

The CITY assigns to the DEPARTMENT OF REVENUE any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the CITY toward fulfillment of this Agreement.

16. Audit of Records.

The CITY shall retain all data, books, and other records ("Records") relating to this Agreement for at least five (5) years (a) after termination of this Agreement, and (b) following each annual renewal thereof. All Records shall be subject to inspection by audit by the State at reasonable times. Upon request, the CITY shall produce the original of any or all such records. This Agreement is subject to A.R.S. § 35-215.

17. Amendments.

Any amendments to or modification of this Agreement must be executed in writing in accordance with the provisions of this Agreement.

18. Mutual Cooperation.

In the event of a disagreement between the parties with regard to the terms, provisions and requirements of this Agreement or in the event of the occurrence of any circumstances bearing upon or affecting this Agreement, parties hereby agree to mutually cooperate in order to resolve the said disagreement or deal with the said circumstance.

19. Arbitration.

To the extent required by A.R.S. §§ 12-1518(B) and 12-133, the parties agree to resolve any dispute arising out of this Agreement by arbitration.

20. Implementation.

The implementation and execution of the provisions of this Agreement shall be the responsibility of the Director of the DEPARTMENT OF REVENUE or his representative and the Mayor or his/her designee on behalf of the CITY.

21. Limitations.

Nothing in this Agreement shall be construed as limiting or expanding the statutory responsibilities of the parties in performing functions beyond those granted to them by law, or as requiring the parties to expend any sum in excess of their appropriations.

22. Signature Authority.

- (a) This Agreement is entered into and is effective as of the date filed with the Secretary of State.
- (b) By signing below, the signer certifies that he or she has the authority to enter into this Agreement and has read the foregoing and agrees to accept the provisions herein.
- (c) This Intergovernmental Agreement may be executed in counterpart.

Signature _____ Date _____	Signature _____ Date _____
Typed Name and Title _____	Typed Name and Title _____
Entity Name _____	Entity Name CITY OF TEMPE
Address _____	Address _____
City _____ State _____ Zip _____	City _____ State _____ Zip _____
RESERVED FOR THE ATTORNEY GENERAL:	RESERVED FOR CITY/TOWN ATTORNEY:
<p>Attorney General no. _____, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Department of Revenue represented by the Attorney General.</p> <p>Date: _____</p> <p style="text-align: center;">TERRY GODDARD The Attorney General</p> <p style="text-align: center;">_____ Signature Assistant Attorney General</p>	<p>APPROVED AS TO FORM AND AUTHORITY:</p> <p>BY: _____ ANDREW CHING City Attorney</p> <p>Date: _____</p>
	RESERVED FOR SECRETARY OF STATE:

APPENDIX A

ARIZONA DEPARTMENT OF REVENUE CONFIDENTIALITY REQUIREMENTS

General

- 1.1 All state tax returns are confidential. All information related to the filing, processing, examining, or auditing of a state tax return is confidential. The Arizona Revised Statutes, Title 42, Sections 2001 through 2004 are the laws governing confidentiality.
- 1.2 Data reported on license applications for transaction privilege tax, luxury tax, use tax, and withholding tax is confidential.
- 1.3 Confidential information shall not be disclosed if the Arizona Department of Revenue determines that disclosure would seriously impair any civil or criminal tax investigation. Confidential information shall not be disclosed if the disclosure is contrary to the United States Internal Revenue Code.
- 1.4 Confidential information may be used for legitimate tax administration activities only. Tax administration includes the following:
 - a. Assessment activities
 - b. Collection activities
 - c. Enforcement activities
 - d. Computer processing
 - e. Computer storage
 - f. Statistical gathering functions
 - g. Policy making functions
 - h. Management of all of the above
- 1.5 Only the Arizona Department of Revenue may respond to a request for information concerning the Department's confidential information. Refer any request for Department of Revenue information to the Department's Disclosure Officer.
- 1.6 All Department of Revenue materials, including paper, tape, microfilm, and microfiche, must be secured for confidentiality. Place all Department of Revenue materials in a locked drawer or cabinet when you leave the work area. Keep these materials away from the eye of the public. This includes cleaning people and security guards.
- 1.7 Statistical information derived from confidential information may be disclosed if it does not reveal confidential facts attributable to any one taxpayer. On a statewide basis, no statistical information may be released that contains information from fewer than three taxpayers in a grouping. For an area that is less than state level (county or city), data from at least ten taxpayers must be in a grouping.

- 1.9 All confidential materials must be returned to the Department of Revenue or shredded when no longer needed. Do not place confidential materials in the garbage or recycle bins.

Precautionary Notes

- 2.1 A third party can easily view confidential information on the screen of a computer terminal visible to the public. Terminals should be placed in such a manner that prohibits public viewing.
- 2.2 Employees assisting the public must ensure that information concerning other taxpayers is not visible to the taxpayer they are assisting. For example, if there is a stack of returns on your desk that you were working on prior to assisting someone, cover the top return with a blank sheet of paper while the taxpayer is sitting by your desk. Always secure information when the area is unsupervised.
- 2.3 Do not leave confidential printouts in public areas such as hallways. When transporting confidential materials you should make sure to cover the materials so that wandering eyes cannot see the information.
- 2.4 Do not discuss confidential information in elevators, restrooms, the cafeteria, or other public areas. Do not discuss confidential information with family members.